

Memorandum 88-50

Subject: Study L-1026 - Probate Code (Payment of Debts--miscellaneous problems)

Probate Code § 9154. Waiver of formal defects

Under Section 9154 the personal representative may waive formal defects in a creditor's claim and elect to treat a bill or other demand for payment as a formal claim:

9154. Notwithstanding any other provision of this part, if a creditor makes a written demand for payment within four months after the date letters are first issued to a general personal representative, the personal representative may waive formal defects and elect to treat the demand as a claim that is filed and established under this part by paying the amount demanded before the expiration of 30 days after the four-month period if all of the following conditions are satisfied:

- (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 offsets.
- (d) The estate is solvent.

The election under this section is made simply "by paying the amount demanded before the expiration of 30 days after the four-month period" for filing claims. This provision takes effect on July 1.

Existing Section 929, which governs until July 1, is silent on the issue of when payment must be made. The prevailing practice in Southern California courts until now has been to require payment within four months; the practice in many Northern California courts, on the other hand, has been to impose no time limit on the payment of informal claims.

Meanwhile, the decision of the Court of Appeal in the case of Estate of Sturm, 88 Daily Journal D.A.R. 6157 (May 11, 1988), has been filed. See Exhibit 1. In the Sturm case the personal representative had paid debts, without requiring a formal claim, after expiration of the four-month claim period; the debts were valid debts and were paid in good faith. The personal representative argued that the payments made after expiration of the four-month period were proper because she had recognized the debts as proper charges against the estate through

initial payments on them during the four-month period and had simply completed payment after the four-month period. The Court of Appeal agreed with this analysis, holding that "The partial payment of the debt verifies the existence and knowledge of the debt within the time limit set by section 707, and justifies payment of the balance, if justly due and paid in good faith."

The Sturm case was decided under old Section 929, which remains in effect only until July 1, and which is silent on the issue of when the debt must be paid, thus leaving the matter to judicial development. The staff believes that Sturm would no longer be the rule after July 1, since new Section 9154 is quite explicit on the time of payment--the personal representative may elect to pay a debt without a formal claim "by paying the amount demanded before the expiration of 30 days after the four-month period."

Should Section 9154 be amended in some way to recognize the situation that occurred in the Sturm case? There are a number of possible approaches:

(1) Section 9154 could be revised to deal expressly with partial payments, e.g., by making clear that the personal representative may pay "all or part" of the demand and by adding a provision to the effect that "Nothing in this section precludes payment of a demand after the expiration of 30 days after the four-month period, provided that before expiration of that period, the personal representative has made a partial payment of the demand."

(2) As a somewhat broader approach, it could be provided that the personal representative may recognize an informal claim either by payment or by other means within the claim period. This would build on the concept of Sturm that claims "recognized" in the four month period (as evidenced by a partial payment) are properly paid during administration. Under this approach a claim could be recognized by an acknowledgment made within the claim period that the debt is a just debt of the decedent. "The personal representative may waive formal defects and elect to treat the demand as a claim that is filed and established under this part by paying the amount demanded or by otherwise acknowledging the right to payment before the expiration of 30 days after the four-month period." The Comment could note, for

example, that the acknowledgment may take the form of a formal notice of acceptance of the claim or an informal communication with the creditor.

(3) A provision could be added to deal with partial payments and related circumstances indirectly through the concept of estoppel or detrimental reliance. A problem in the partial payment situation, and also in cases where the personal representative recognizes the debt without making a partial payment, is that the creditor may rely on the personal representative's words or actions and not feel it necessary to file a formal claim. A provision could be added recognizing the ability of the court to apply equitable principles where appropriate, e.g., "Nothing in this section limits application of the doctrine of waiver, estoppel, laches, detrimental reliance, or of other equitable principles."

The Commission has dealt with a similar problem in connection with the case of Estate of Schweitzer, 182 Cal. App. 3d 330, 227 Cal. Rptr. 11 (1986). In that case the creditor had entered into settlement negotiations with the personal representative and was trapped by failing to present a formal claim, relying in good faith on the settlement negotiations. The Court of Appeal held that negotiations are in effect a "presentation" of the claim. However, the Commission obtained enactment of a provision requiring that the creditor file a formal claim with the court in every case, thereby undercutting the Schweitzer holding in the same way we are undercutting the Sturm holding. The Commission dealt with the Schweitzer problem by noting in the Comment to Section 9150 (how claim is filed) that, "The requirement of a formal claim would not preclude application of estoppel or other equitable doctrines if warranted under the facts of the case."

Arguably, such a provision should be made expressly applicable to the entire Probate Code. This is one of the points Mr. Elmore has been making in connection with the Commission's treatment of litigation involving a decedent, which he views as unduly formalistic and restrictive.

(4) The informal claim provision could be revised to provide that so long as the demand for payment is made within the initial four month period, the personal representative may recognize this by making payment at any time before close of administration. The Executive

Committee of the State Bar Estate Planning, Trust and Probate Law Section has been concerned about this provision in the past. They reconsidered this matter most recently in April of this year and after discussion voted 13 to 10 in approval of Section 9154 as is. See Exhibit 2.

(5) The Commission could do nothing in response to the Sturm case, with the result that after July 1 no payments on informal claims after 4 months and 30 days would be allowed even though initial payments were made earlier. The Commission has been fairly consistent in its attitude that formal requirements should be clear and should be strictly enforced, in the interest of expediting probate.

The staff favors solution #3--a provision expressly recognizing the ability of the court to apply equitable doctrines. The two cases we've had so far, Schweitzer and Sturm, demonstrate to our satisfaction that the probate procedures we've developed are too rigid in some situations. Rather than responding ad hoc to each type of case that comes up illustrating a new problem, the staff believes it is better simply to make clear that the court may deal with the problem. It looks like a safety-valve is necessary here.

Probate Code § 9250. Allowance and rejection of claims

Exhibit 3 is a letter from the special Creditor's Claim Team appointed by the Executive Committee of the State Bar probate section. The letter notes that Section 9250 requires a formal allowance or rejection of claims that have been filed. The team believes the provision could also be construed to require a formal allowance or rejection of informally paid demands under Section 9154. If Section 9250 were so construed, this "would create unwarranted paper work for the personal representative, the attorney, and the court. This additional paper work may also confuse the creditor who could receive notice of the acceptance of a claim after payment had been received. Often the assistance of the personal representative and/or the attorney would be required to clarify the situation."

The team believes this would substantially undercut the purpose of allowing the informal payment of demands and would violate the intent of the Commission and the Legislature. They would revise Section 9250 as follows:

9250. (a) When a claim is filed, the personal representative shall allow or reject the claim in whole or in part.

(b) The Except as provided in subdivision (d), the allowance or rejection shall be in writing. The personal representative shall file the allowance or rejection with the court clerk and give notice to the creditor as provided in Section 1215, together with a copy of the allowance or rejection.

(c) The allowance or rejection shall contain the following information:

- (1) The name of the creditor.
- (2) The total amount of the claim.
- (3) The date of issuance of letters.
- (4) The date of the decedent's death.
- (5) The estimated value of the decedent's estate.
- (6) The amount allowed or rejected by the personal representative.

(7) Whether the personal representative is authorized to act under the Independent Administration of Estates Act.

(8) A statement that the creditor has three months in which to act on a rejected claim.

(d) No written allowance is required for claims paid pursuant to the procedures authorized by Section 9154.

(e) The Judicial Council may prescribe an allowance or rejection form, which may be part of the claim form. Use of a form prescribed by the Judicial Council is deemed to satisfy the requirements of this section.

The staff is not sure there is in fact an implication in the statute that written allowance is required for informal payment of demands, but we are not opposed to clarifying the situation if the Bar is concerned. We are not completely happy with the draft offered by the Bar, however, since it could be read to impose some notification duties on the personal representative even though the allowance is not required to be written. Instead of the Bar draft, why don't we simply add a subdivision at the end of the section that states, "This section does not apply to a demand the personal representative elects to treat as a claim under Section 9154."

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

PROBATE AND TRUSTS

Cite as 88 Daily Journal D.A.R. 6157

ESTATE OF MIROSLAV STURM,
aka MIKE STURM, Deceased.
HELENA STURM, Administratrix,
Plaintiff-Appellant,

v.

IRENA STURM NOVAKOVA,
Defendant-Respondent.

No. B025605

Super. Ct. No. NCP11486G

California Court of Appeal

Second Appellate District

Division Five

Filed May 11, 1988

APPEAL from a judgment of the Superior Court of Los Angeles County. Robert P. Schifferman, Judge. Reversed and remanded for modification.

Fred, Lewin & Behesnilian and R. Stephen Duke for Plaintiff and Appellant.

Choate & and Joseph Choate, Jr. for Defendant and Respondent.

In this appeal, we must determine the time period in which a creditor's claim must be paid under Probate Code section 929, *infra*.

Miroslav Sturm, decedent, died intestate on January 23, 1984. Helen Sturm, appellant, his third wife, petitioned for letters of administration. In her petition, she declared that decedent had no children and that she was his sole heir at law. Letters of administration were issued to her.

In September of 1984, appellant filed her Inventory and Appraisal in the estate in which she declared that decedent's apartment house was the separate property of decedent. This was the primary asset in the estate.

On January 4, 1985, Irena Sturm Novakova, respondent, the daughter of decedent by his first marriage, filed a Petition to Determine Heirship. Respondent is a citizen of Czechoslovakia, as was decedent. Decedent had left Czechoslovakia in 1950; however, his first wife chose to remain behind with respondent. Appellant attempted to defeat the petition of respondent by alleging she had never heard of decedent having a daughter and that respondent was not in fact his daughter.

After a contested hearing, the court found that respondent was in fact the daughter of decedent and continued the hearing on the issue of whether the property was the separate property of decedent or community property. Prior to this hearing, respondent discovered a recorded prenuptial agreement entered into between decedent and appellant wherein appellant agreed that all property of decedent and herself would be and remain separate property. In the same agreement, appellant also relinquished all rights to inherit from decedent. Appellant then agreed to settle her various claims against the estate and litigation pertaining to the distribution. Under the terms of the agreement, appellant would receive 30 percent of the proceeds of the sale of the apartment house and respondent 70 percent. It was further agreed that if, at the hearing of the Final Accounting, appellant was surcharged for any improper items, the total amount of the surcharge would go to respondent.

On April 25, 1986, appellant filed her First and Final Accounting, Petition for Final Distribution. This accounting revealed that after the four-month period for the filing of creditors' claims, appellant had paid out \$27,911.58 for debts of decedent for which no creditors' claims were filed or presented. It was appellant's contention that her payment of these debts were proper under probate Code section 929, because they were justly due and paid in good faith.

After a hearing on the objections, the court made its order settling appellant's final account as follows: "IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOW: [1] 1. Helena Sturm is surcharged the sum of \$27,911.58 for and on account of payments made to creditors of decedent after the expiration of the 4 month period of Notice to Creditors and without Creditors' Claims being filed or presented. The Court expressly finds that inasmuch as the payments which form the basis of the surcharge were unsupported by Creditor's Claims and were not made within the 4 month period of Notice to Creditors, such payments cannot be approved pursuant to the provisions of Probate Code Section 929, notwithstanding that the estate was solvent and that the payments were made in good faith and were valid debts of decedent; the Court exercising its discretion in the matter to deny such credit for payment."

DISCUSSION

Probate Code sections 700 and 707 require creditors of an estate to file their claims or present them within a designated four-month period and any claim not so filed or presented is forever barred.¹ Section 929 of the Probate Code provides as follows: "If it appears that debts of the decedent have been paid without verified claims having been filed or presented and allowed and approved, and it shall be proven that such debts were justly due, were paid in good faith, that the amount paid was the true amount of such indebtedness over and above all payments or set-offs, and that the estate is solvent, the court, in settling the account, shall allow the sums so paid."

It is appellant's position that section 929 creates a statutory exception to section 707, and payments to creditors after the four-month period by her were proper, because they were claims she recognized during the four-month period through initial payments on the debts commenced during this period. Appellant concedes that \$27,911.58 was paid after the four-month period.

The court's order in connection with these debts stated, "that the payments were made in good faith and were valid debts of decedent . . ." therefor the only issue before us is whether section 929 authorizes payment of bona fide claims not filed within the four-month period, where partial payments had been made by the estate representative during that period.²

The court, in making its ruling in our present case, relied on *Estate of Erwin* (1953) 117 Cal.App.2d 203, but appellant claims reference to section 929 is only dictum and should not be followed. In the *Estate of Erwin*, the court refused to approve a claim for \$552.64 for expenses of decedent's last illness. No claim for this expense had been filed in the estate; however, the administratrix represented to the court that she believed the amount to be justly due and requested authorization to pay it. The appellate court agreed with the probate judge who refused the payment. In referring to section 707 the court noted, "[i]t is the plain duty of both the administratrix and the probate judge to protect the estate against the collection of a debt which the statutory law expressly declares to be 'barred forever.'" The reference to section 929 in the opinion was in conjunction with a reference to the *Estate of Houston* (1928) 205 Cal. 276. The court stated, "There is nothing in . . . *Estate of Houston* . . . which authorizes the administratrix or the probate court to allow a claim not filed in time. . . . [T]he *Houston* case deals with the payment of a debt of the decedent presumably before the time for presenting claims has expired, without requiring the presentation of a claim, as authorized by what is now section 929, Probate Code. { ¶ } The wisdom of not permitting the probate court and the administratrix to compromise the plain rights of the heirs in the fashion suggested here is well illustrated by the situation existing in this case. One-eighth of the estate goes to the administratrix and seven-eighths is distributed to heirs residing in Western Germany. If the estate is to be diminished by the payment of a claim which is declared by law to be 'barred forever' what protection is afforded the foreign heirs who have not consented thereto?" (117 Cal.App.2d at p. 205.)

We agree with the trial court that section 929 must be read in conjunction with section 707. The latter section plays a very important part in the statutory scheme designed to quickly expedite the closing and finalization of a decedent's estate. It is necessary to determine as soon as possible the assets of the decedent and the debts in order to protect the rights of the heirs. (*Estate of Erwin*, supra.) For this reason we believe the law, as stated in *Erwin* and *Houston*, is generally correct, and section 929 does not extend the time for paying bona fide debts where no claim has been filed or acknowledged by the representative of the estate. However, where as here a debt of the estate has been recognized by the representative by a partial payment within the four-month period, a different situation exists. If the balance due meets the requirements of section 929 the court pursuant to the section should have the authority to approve the payments. This exception does not defeat the objects of the statutory scheme, supra, of section 707. When a creditor's claim is filed within the four-month period and accepted by the representative of the estate, actual payment of the creditor's claim is quite often paid after the four-month period has expired. The partial payment of the debt verifies the existence and knowledge of the debt within the time limit set by section 707, and justified payment of the balance, if justly due and paid in good faith.

In this case, the court found that the \$27,911.58 payments would have satisfied the requirements of section 929, if paid in the four-month period. We are, however, talking about numerous debts and we cannot tell from the record whether all or some of the debts had been partially paid within the four-month period. Appellant's supplement to her final account state: "It is acknowledged that many debts were paid without the requested formal claims being filed but request is made for waiver and exemption from such requirements per Probate Code Section 929. . . ." This matter must be returned to the trial court in order to determine which debts had received partial payment during the four-month period required. If payments were made on all of the debts, then the judgment of the court shall be modified to approve these payments. If part of the \$27,911.58 includes debts that were not recognized and partially paid within the four-month period, then these debts shall be eliminated and the \$27,911.58 reduced accordingly.

The judgment is reversed and remanded for modification in conformity with this opinion. Costs to appellant.

HASTINGS, J.*

We concur:

ASHBY, Acting P.J.
BOREN, J.

1. There are statutory exceptions not pertinent to this appeal.

2. Although not controlling on the trial court or this court, the Probate Policy Memorandum of Los Angeles County as well as Alameda County, has interpreted the section as requiring payments made under the provisions of section 929 to be made within the four months allowed by section 707. The same position has been taken by Judge Arthur H. Marshall in his treatise, *California Probate Procedure* (3d ed.) and *Goddard, California Practice* (3d ed. 1977) volume 2, *Probate Court Practice*. All of the above base this interpretation upon *Estate of Erwin* (1953) 117 Cal.App.2d 203.

* Retired Associate Justice of the Court of Appeal serving as a Senior Judge by order of the Chairperson of the Judicial Council.

EXHIBIT 2

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May 3, 1988

Nathaniel Sterling
Assistant Executive Secretary
California Law Revision Commission
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CA LAW REV. COMM
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Re: AB 2841

Dear Mr. Sterling:

This letter is in response to that part of your March 21, 1988 letter regarding the payment of informal claims under Probate Code Section 11005.

During the April 16, 1988 meeting of the Executive Committee of the Estate Planning, Trust and Probate Section of the State Bar, the Committee discussed the informal payment of creditor's claims. The Committee considered the advisability of permitting a creditor's claim to be deemed to be justly paid if paid outside of the creditor's claim period; the reasons advanced for the more lenient position included economic reality (eg. closely held companies may not know about debts until after the close of the fiscal year) and the deductibility of claims for federal estate tax purposes. After the discussion, the Committee voted 13 to 10 as follows: in order for the payment of an informal claim to be considered justly due, the payment must be made within the creditor's claim period.

Thank you for your consideration.

Cordially,

Kathryn A. Ballsun

KATHRYN A. BALLSUN
A Member of
STANTON and BALLSUN
A Law Corporation

KAB/aat

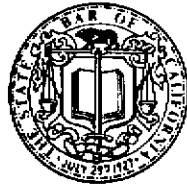
cc: J. Quillinan, Esq.
I. Goldring, Esq.
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CA LAW REV. COMMISSION

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June 17, 1988

Mr. Nathaniel Sterling
Assistant Executive Secretary
Law Revision Commission
4000 Middlefield Road; Suite D-02
Palo Alto, California 94303

Re: Clarification of Procedural Requirements for
the Allowance of Debts Paid (Section 9250)
Without the Presentation of a Formal Claim
(Section 9154)

Dear Nat:

The following is the recommendation of the special Creditor's Claim Team appointed by the Executive Committee regarding the clarification of Section 9250 as applied to claims paid pursuant to Section 9154.

Section 9154 is included in Chapter 4 which sets forth the procedures for the filing of claims. Under Section 9154, the personal representative can elect to treat a written demand for payment as a valid claim if specified conditions are met. The manner in which the personal representative indicates that the Section 9154 election has been made is the payment of the amount demanded. The procedure allowed by this Section is an exception to the rules applicable to formal claim.

Section 9250 is included in Chapter 6 which sets forth the procedures for the allowance and rejection of claims. Under Section 9250, the personal representative is required to indicate the rejection or allowance of a claim in a writing which contains extensive information and is filed with the court with notice to the creditor. As currently drafted, this section would appear to apply to all claims, including those demands for payment allowed by the personal representative without the presentation of a formal claim under Section 9154.

The Team believes that requiring the preparation and filing of a Section 9250 formal allowance with notice to the creditor would create unwarranted paper work for the personal representative, the attorney, and the court. This additional paper work may also confuse the creditor who could receive notice of the acceptance of a claim after payment had been received. Often the assistance of the personal representative and/or the attorney would be required to clarify the situation. These impositions on the personal representative, the attorney, and the court would appear to substantially undercut the purpose of allowing the informal (and direct) payment of demands pursuant to Section 9154. The Team does not believe it was the intent of the Law Revision Commission or the Legislature to require such a result.

It is the Team's recommendation that the requirements for processing informal demands which the personal representative has elected to treat as valid claims be clarified by amending Section 9250 to read as follows:

(a) When a claim is filed, the personal representative shall allow or reject the claim in whole or in part.

(b) Except as is provided in Subsection (d) below, [t]he allowance or rejection shall be in writing. The personal representative shall file the allowance or rejection with the court clerk and give notice to the creditor as provided in Section 1215, together with a copy of the allowance or rejection.

(c)

(d) No written allowance is required for claims paid pursuant to the procedures authorized by Section 9154.

(e) The Judicial Council may prescribe an allowance or rejection form, which may be part of the claim form. Use of a form prescribed by the Judicial is deemed to satisfy the requirements of this section.

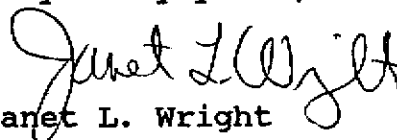
The Team considered amending Section 9154 to clarify the situation, but decided that it was more likely that an attorney would look for clarification as to the require-

Mr. Nathaniel Sterling
June 17, 1988
Page 3

ments for allowance of the claim in the Chapter specifically
addressing allowance procedures, i.e., Chapter 6.

The Team looks forward to working with you.

Very truly yours,


Janet L. Wright

cc: D. Keith Bilter
Irwin D. Goldring
Theodore J. Cranston
James D. Devine
James V. Quillinan
Lloyd Homer
Charles A. Collier
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