

Memorandum 90-27

Subject: Study L-3033 - Notice at County Seat Under Probate Code Sections 1215(d) and 1220(a)(3)

We have received an inquiry concerning the application of the emphasized language in the following provision from Probate Code Section 1215:

(d) In proceedings under this code concerning administration of a decedent's estate, the notice or other paper shall be addressed to the person at the person's place of business or place of residence, if known, or, if neither address is known, *to the person at the county seat where the proceedings are pending.*

The emphasized language also appears in Section 1220(a)(3) concerning mailing of notice of hearing. Both of these sections continue a provision found in former Section 1200.5(b), which descended from nearly identical language in Section 1200 of the Probate Code as enacted in 1931 ("addressed to them . . . at the county seat of the county where the proceedings are pending").

The reference to the county seat originated in the 1873-74 amendments of Section 1304 of the Code of Civil Procedure, which added the language "addressed to them [heirs], and deposited in the Post Office at the county seat of the county where the proceedings are pending." (1873-74 Code Amend. ch. 383, § 164.) On its face, this statute seems to allow for general delivery at the post office in the county seat. If this is what it meant, the language might have had some justification, since some people without addresses might be expected to call for mail. This language survived until 1929 when Section 1304 was amended to delete the reference to depositing the notice at the post office. (1929 Cal. Stat. ch. 78, § 1.) The staff does not know how the statute was applied from 1874 to 1929, but it lost something when it was reworded in 1929 that is still missing.

The question can be viewed as simply a technical matter of the form of address needed to satisfy the statute. Literally the "county seat" is the city that by law is the county seat of the county, but

notice to "John Adams, Quincy, CA 95971" would presumably be returned by the postal service for an insufficient address. "County seat" might be thought to refer to the county courthouse, but this is meaningless in the larger counties. The language should refer to the court where the proceedings are pending, and notice should be sent to the clerk of that court. Or maybe not; maybe the notice should be sent to the county clerk, perhaps with a duty to post the notice somewhere or put it in the file. Perhaps, if our surmise is correct, we should provide for mailing to the person, general delivery, at the main post office in the county seat, but we doubt that this scheme should be resurrected now, even if it is more likely to be received than under the existing statute.

Notice of this sort is obviously a fiction, and probably has not resulted in actual notice since 1929 or even 1874. In practice, notice under the county seat provision (whatever it means) is permitted only if the person giving notice describes the search made in an affidavit. See, e.g., Ross & Moore, California Practice Guide: Probate ¶¶ 3:209-3:211, 3:472-3:472.1 (Rutter Group, rev. ed. #1, 1989).

The staff is unable to suggest any repair of the county seat provision that would make it meaningful. Instead, the staff recommends that Sections 1215 and 1220 be conformed to Section 17102 in the Trust Law, which provides that if the address is unknown, the court may dispense with notice or require notice under Code of Civil Procedure Section 413.30 (manner reasonably calculated to give actual notice).

Respectfully submitted,

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