

#L-1025

6/7/85

Second Supplement to Memorandum 85-34

Subject: Study L-1025 - Probate Code (Presentation of Claims--
additional comments of Beverly Hills Bar Association)

Attached to this supplementary memorandum is a letter containing additional comments of the legislative committee of the Probate, Trust and Estate Planning section of the Beverly Hills Bar Association, relating to presentation of claims in probate proceedings.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

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May 28, 1985

Nathaniel Sterling, Esq.,
Assistant Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94306

Re: Study L-1025
New Probate Code Sections 7900ff
Presentation of Creditors' Claims

Dear Mr. Sterling:

The legislative committee of the Probate Trust and Estate Planning section of the Beverly Hills Bar Association has reviewed the Revised First Supplement to Memorandum 85-34. We agree with the positions of the Los Angeles County Bar Association Probate and Trust Law section and the two letters from the State Bar Estate Planning, Trust and Probate Law section in their letters reproduced in your Revised First Supplement, except the following:

<u>Section</u>	<u>Subject</u>	<u>Comment</u>
7901(b)	Actual notice to each creditor	In addition to the concerns mentioned, the two cases cited in Memorandum 85-34 raise due process questions.
7934	Claim covered by insurance	While we agree with the State Bar Section that court approval should be required to commence an action within the policy limits by serving the insurer because there could be liability for the personal representative, we would go one step further and require the plaintiff to file a claim against the estate as any other creditor.

This is yet another dual system (some creditors file a claim; some don't) which should be eliminated.

Nathaniel Sterling, Esq.
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<u>Section</u>	<u>Subject</u>	<u>Comment</u>
7968(a)	Reference to Commissioner or Referee	Both State Bar committees oppose this old probate code provision. One of the committees feels the determination is not binding on the parties. However, the last sentence of this subsection states that it shall be a judgment.

Over the past years there has been a movement to try more matters affecting probate estates in the probate court (Cf. §851.5), with great success. Allowing this resolution of disputed claims would be analogous to the mandatory settlement conference. Perhaps to allay the concerns of the State Bar Committee, it could be strengthened to make the result binding.

We look forward to the comments of the Los Angeles County Bar and State Bar Sections on our extensive suggestions to the proposal, also sent out with your Revised First Supplement.

Sincerely,



PHYLLIS CARDOZA
Member, Legislative Committee
Probate, Trust, & Estate Planning Section
Beverly Hills Bar Association

PC:lg
encl.

cc: Harley J. Spitler, Esq. (with enclosure)
State Bar Liaison with CLRC on Creditor's Claims
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