

#L-1026

3/27/85

Revised First Supplement to Memorandum 85-35

Subject: Study L-1026 - Probate Code (Payment of Demands--comments
of State Bar Association)

Attached to this memorandum are comments of the Executive Committee of the Estate Planning, Trust and Probate Law Section of the California State Bar relating to payment of demands against the estate. We will comment orally on the points made as we proceed through the draft statute on a section by section basis at the Commission meeting.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

EXHIBIT 1

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PROBATE LAW SECTION
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Re: Memos 85-31, 85-34, 85-35, 85-36

Dear John:

The Executive Committee of the Estate Planning, Trust and Probate Law Section of the California State Bar, has considered the following memoranda. Our comments are set forth as follows:

4. Memorandum 85-35 - Payment of Demands.

A. Section 8620 to 8625. Allocation of Claims Between State and Surviving Spouse. The Executive Committee approves this Section as continuing existing law.

b. Section 8635 and 8636. Property Not Possessed by Personal Representative. The Executive Committee approves this Section as continuing existing law with the inclusion of some long-arm jurisdiction language to hopefully assist the Court in having these types of orders obeyed. [Please note that the Memorandum has incorrect Section numbers 9245 and 9246.]

C. Section 8603(b) may not give the beneficiaries ample opportunity to review the Executor's account if the account constitutes the final account after payment has been ordered by the Court. The personal representative should be required to state in the petition that it is a final account because the estate will be exhausted or in the alternative to have the petition indicate that it is the final account because the personal representative believes the estate will be exhausted.

D. Section 8604(a). It may be helpful to have a cross reference to the Section on judgments in the comments.

E. Sections 8630 to 8636 - Proration of a Estate Tax. There is a serious problem with these Sections as they relate to Internal Revenue Code Section 2207a. IRC Section 2207a requires that the QTIP Trust pay the tax to the surviving spouse highest marginal tax bracket, the proration statute could require, in some instances, the beneficiaries of the surviving spouse's residuary estate deliver property to the QTIP beneficiaries since the QTIP beneficiaries will have paid more than their pro-rata share of the Federal Estate Tax. We have not seen this problem yet as the surviving spouses have not yet died. It is suggested that in 8633(a) after the word "exemptions" the following language be inserted - "credits, deductions, and charges".

F. Section 8631(b)(2). This Section is rather poorly written. It is desirable to clean up the language.

G. Section 8607 - Trust for Contingent Claim. In Subsection (b), the Court may authorize investment in assets that are "legal investments for saving banks". This language seems to be a little out of place in current context and should be changed to provide investments authorized for personal representatives or trustees.

H. Section 8600. The definition of "established claims" would appear to exclude debts which were paid by the personal representative within the time during which claims could have been filed but for which no formal creditor's claim were presented, claims which were "allowed" by the personal representative under IEAA but not submitted to the court for approval, claims which were rejected by the personal representative and thereafter reduced to judgement by suit against the estate and claims payable following administration by a trustee pursuant to 8607. All such claims should be considered "demands against the estate" for the purposes of making an order of payment. There is no definition for a "charge against the estate". The \$900 limitation on wage claims may be antiquated. The Federal Bankruptcy Code allows a \$2000.00 priority to wage claims. This \$2000.00 is suggested as a better amount.

I. Section 8602. Subparagraph (b) should require a reserve sufficient to pay federal and state claims having priority to reflect the priorities in 8601.

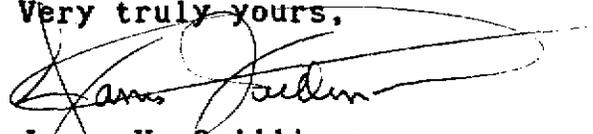
J. Section 8606. The LRC may wish to consider the advisability of permitting a decedent's estate to prepay debts without the incurrance of a prepayment penalty. This is somewhat analogous to successors in interests of time certificates of deposit.

K. Section 8609(b). This section is no longer needed as the Notice of Creditors must be now given for letters to issue.

L. Section 8623. The words "to show cause" need to added after the word "order" in line 3.

M. Section 8635. Concedeing the difficulty in this area, should the personal representaive have the "duty" to recover under this section?

Very truly yours,



James V. Quillinan
Attorney at Law

JVQ/agc

cc: Ken Klug
Chuck Collier
Ted Cranston