

Memorandum 86-204

Subject: Study L-800 - Nonresident Decedents (Comments on Tentative Recommendation)

The Commission distributed for comment its tentative recommendation relating to nonresident decedents in September 1986. We have received 27 letters commenting on the tentative recommendation.

As a general matter, the authors of the letters overwhelmingly approve the tentative recommendation. Well over half of the commentators express their general approval. The remainder had comments addressed to specific points in the tentative recommendation.

We received one letter of disapproval. State Bar Study Team 2 (Exhibit 27), consisting of Jim Goodwin, Jim Rogers, and Ken Klug, was in general disagreement with the tentative recommendation. The team summarizes its position at the conclusion of the letter:

In summary, then, Team 2 believes that this tentative recommendation suffers from numerous ambiguities resulting from overly broad definitions and would make significant changes in California law which are neither necessary nor desirable. The existing probate code sections dealing with nonresident decedents have worked well without suffering from all of the problems outlined above. We recommend that this tentative recommendation be abandoned and that the existing law on nonresident decedents be retained with minor technical modifications.

We will look at the specific problems Team 2 mentions as we review comments addressed to particular provisions of the tentative recommendation.

The negative view of Team 2 is clearly not shared by the other commentators. Some of the general expressions of approval we received are worth quoting:

Recommendations appear to be good and understandable, and also seem to carry out the intentions in ancillary and related proceedings to expedite same, protect the interests involved, and control expense.

Jerome Sapiro of San Francisco (Exhibit 3)

Regarding the proposal for simplification of distribution or administration of California assets of nonresident decedents, I think it is all workable, sensible, and an improvement.

Beryl A. Bertucio of Matthew Bender (Exhibit 21)

The proposed changes and procedures make sense and will facilitate handling of the estates of non-resident decedents.

Ruth A. Phelps of Burbank (Exhibit 23)

Attached to this memorandum is a copy of the tentative recommendation that was distributed. Following each section of the draft to which comments were directed we have summarized and analyzed the comments. Our objective is to review the comments and make any necessary changes to enable us to conclude a final recommendation on this subject for submission to the Legislature.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

BELAN M. WAGNER
ATTORNEY AT LAW
15200 SUNSET BOULEVARD, SUITE 207
PACIFIC PALISADES, CA 90272
(213) 454-0637

October 10, 1986

California Law Revision Committee
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Re: Tentative recommendations relating to
The New Estate and Trust Code

Gentlemen:

I received and approve of the tentative
recommendations relating to:

1. Administration of Estates of Missing
Persons Presumed Dead;
2. Determining Class Membership;
3. Preliminary Provisions and Definitions;
4. Non-resident Decedent;

PLEASE NOTE MY NEW ADDRESS as shown on this
letterhead:

Belan M. Wagner, Attorney
15200 Sunset Boulevard, Suite 207
Pacific Palisades, CA 90272

Very truly yours,


BELAN M. WAGNER

BMW:df

CHAMBERS OF
The Superior Court
VENTURA, CALIFORNIA
ROBERT R. WILLARD, JUDGE

L-1040
L-1033
L-1035
L-800
L-1045

October 10, 1986

California Law Revision Commission
4000 Middlefield Rd.
Suite D-2
Palo Alto, CA 94303-4739

Gentlemen:

I have reviewed the five tentative recommendations relating to probate law and procedure that you mailed October 3, 1986.

In my opinion each change has merit, and I have no additional changes to suggest.

I am sending the tentative recommendation on public guardians and administrators to the Ventura County Public Guardian and Administrator for her comments, if any.

Sincerely,


Robert R. Willard
Judge of the Superior Court

RRW:vm

cc: Catherine E. Johnston
Public Administrator & Guardian

Memo 86-204

EXHIBIT 3

L-1045
L-800
L-1035
L-1033
L-1040

JEROME SAPIRO
ATTORNEY AT LAW
SUTTER PLAZA, SUITE 808
1388 SUTTER STREET
SAN FRANCISCO, CA, 94109-5416
(415) 928-1515

Oct. 10, 1986

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA, 94303-4739

Re: Tentative Recommendations,
dated September, 1986
Proposed Estate and Trust Code

Hon. Commissioners:

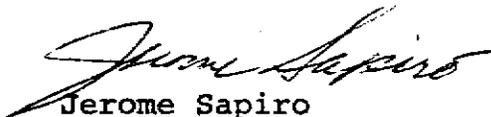
Thank you for the opportunity to review and comment upon your proposed recommendations concerning the following subjects.

NON-RESIDENT DECEDENT, #L-800, Sept. 1986

Recommendations appear to be good and understandable, and also seem to carry out the intentions in ancillary and related proceedings to expedite same, protect the interests involved, and control expense.

In any event, I do appreciate the chance to review these proposals in advance. It is part of the educational process.

Respectfully,


Jerome Sapiro

JS:mes

HENRY ANGERBAUER, C.P.A.
4401 WILLOW GLEN CT.
CONCORD, CA 94529

L-1040
L-1033
L-1035
L-800
L-1045

10/13/86

Law Revision
Commission

I have read the following Tentative Recommendations
Relating to the new estate and trust code

1. NonResident Decedent
2. Preliminary Provisions and Definitions
3. Determining Class membership
4. Administration of Estate of Missing Persons
Presumed Dead
5. Public Guardian and Public Administration

and agree with the Commission's conclusions
and recommendations and that the Commission
should make its views known to the Legislature
herewith. Thanks for permitting me to make
my views known.

Sincerely
H.A.



Western Surety Company

Office of General Counsel

October 14, 1986

California Law Revision Commission
State of California
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Gentlemen:

Re: Studies L-800 & L-1040; Tentative Recommendations
Relating to Nonresident Decedents and Public Guardian
and Public Administrator (Our File CA 4372-B)

I am writing in general support of these recently distributed tentative recommendations relating to the proposed new estate and trust code. This Company writes fiduciary bonds of the sort contemplated in this proposal in all 50 states.

L-800

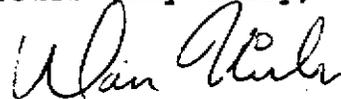
Under proposed §12570 the foreign personal representative may maintain actions and proceedings in California and be sued in California regarding the estate upon filing proof of authority from the foreign jurisdiction. Included in subsection (b) is "the bond given by the foreign personal representative, if any."

We perceive a problem with this section arising out of the fact that the law in several other states does not require such a bond in many of the circumstances California does. For example, certain sections of the Uniform Probate Code (3-603 et seq.) waive the bond in many more circumstances than is the case in California. These liberal waiver provisions have been specifically considered and rejected in California. In that respect, see generally your Study L-1010 and "The UPC: Analysis and Critique" published by the State Bar of California. Section 12570 as drafted could deny to Californians with financial interests in foreign estates the protection they would have received had the will been administered in California. For that reason, we believe proposed §12570 should be amended to provide that if no bond is on

California Law Revision Commission
Page Two
October 14, 1986

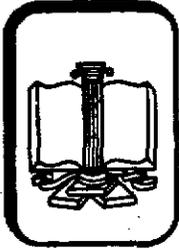
file in a foreign jurisdiction, one will be required in California, unless excused pursuant to the terms of proposed §8481.

Yours very truly,



DAN L. KIRBY

DLK:glh
cc: A-K Associates, Inc.

**McGEORGE SCHOOL OF LAW**

UNIVERSITY OF THE PACIFIC 3200 Fifth Avenue, Sacramento, California 95817

October 15, 1986

California Law Revision Commission
4000 Middlefield Road, #D2
Palo Alto, CA 94303-4739

Attention: Mr. John H. DeMouly
Executive Secretary

Re: Probate Estate and Trust Code, #L-800

Dear Mr. DeMouly:

With reference to Part 13, Non-Resident Decedents, I have the following observations:

Pursuant to proposed section 9050 requiring personal notification of known creditors, it would appear that it should be made applicable to non-resident representatives because of Mennonite Board of Missions v. Adams (1983) 462 U.S. 791.

Should a section be included either to make independent administration applicable or non-applicable to these proceedings?

Would it be better to revise the first part of section 12553 to read:

"12553. Notwithstanding any other provision of this article, if the property to be delivered to the foreign personal representative consists of funds of less than \$1,000 in an account in a financial institution:"

I trust I will continue to receive the tentative recommendations of the new code.

Very truly yours,

BENJAMIN D. FRANTZ
Professor of Law

BDF:bk

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October 14, 1986

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Gentlemen:

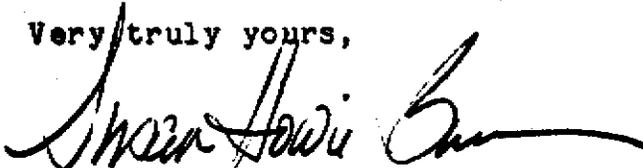
I have no comment with regard to most of the tentative recommendations relating to probate law, as most appear both necessary and useful.

I do object, however, to the change of title. I see no particular purpose in changing the name of the code from Probate Code to Estate and Trust Code, particularly in light of the fact that we are accustomed to dealing with a Uniform Probate Code as is most of the country.

The change of title is unnecessary, expensive, will create confusion, and in the long run will cost a great deal of money in changing the cross-references which currently exist in other California Codes.

My suggestion is that the title remain the same.

Very truly yours,



SUSAN HOWIE BURRISS

SHB:cd

GILBERT MOODY
VERNON JOHNSON
EDWIN MACH

ATTORNEYS AT LAW

THOMAS HOLSINGER
October 15, 1986

250 WEST MAIN, TURLOCK, CA 95380 - (209) 632-1086

California Law Revision Commission
4000 Middlefield Rd., Suite D-2
Palo Alto, CA 94303-4739

Re: Probate Law Revision

Gentlemen:

Thank you for sending me your recommendations relating to probate law and procedure. I think there are some very good proposed revisions, and there is only one part that disturbs me and to which I object. This has to do with the Public Guardian and Public Administrator. I think the Public Administrator's powers and reimbursement for expense should be much limited and restricted from their present powers rather than expanded. In fact, I think if there is anyone else available to act as a guardian or administrator, particularly administrator, he should be given precedence over the Public Administrator, and the Public Guardian and Public Administrator should be at the bottom of the list of those who may be appointed.

I think too in a Will contest the law should provide for appointment of a Public Administrator only if requested by all parties to a contest.

Our experience with the PA office has led to this conclusion. Some of the employees seem to run rough-shod over the needs and feelings of people and those interested as friends, relatives, or heirs. I have one probate administration where it was reported to me by a client that she had been told by the Public Administrator's employee that she should not have a private attorney handle the administration; that the Public Administrator's office should do it, and that if it was turned over to a private attorney the time and cost would be much greater than if the Public Administrator handled it.

I had another incidence where a client was in a mental health unit for a short time because of his alcoholism. When he returned home, he found that the Public Guardian had cleaned out his house and sold all of his furnishings for a rather small amount, and including some rather valuable antique ware and furniture.

October 15, 1986

Page 2

Likewise, I do not think the Public Administrator's fees for conserving an estate should be increased to \$350.00, and I don't think there should be any standard fee; that they should be required to apply to the court for an allowance after proper notice according to the time and trouble they have had in conserving the estate.

I am also enclosing the questionnaire regarding probate practice, and I would strongly object to the proposal relating to changing the fees to a review process. The present system allows for adjustment of the statutory fees and commission which is sufficient protection in my view. I think adoption of the proposal would just promote rabid competition by some offices, with heirs going from office to office to check out the lowest bids.

I do think there should be a minimum fee and commission allowed for estates under \$15,000.00. I have handled estates where there has been real property of a value of \$500.00 or \$1,000.00 or \$2,000.00 or \$3,000.00, and obviously 4% of these values does not begin to pay for the work. Fortunately the courts have been generous in allowing extraordinary fees, but I would suggest a minimum of \$250.00 to \$300.00.

What can happen in relation to fee allowances can be illustrated by what happened in our county a few years ago. Attorneys had normally been asking for \$500.00 extraordinary fees for preparing federal estate tax returns. A couple Judges took the position that the work wasn't worth more than \$250.00, so we and perhaps quite a few other attorneys just quit doing them and the Judges never said a word about payment of \$750.00 to accountants.

Thank you for your consideration.


GILBERT MOOBY

GM/dw

L-1040
L-1033
L-1035
L-800
L-1045

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JOSHUA L. BRIGHT

A. W. BRUNER (1901-1982)

October 16, 1986

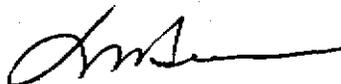
Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Dear Mr. DeMouilly:

I received the Law Revision Commission's tentative recommendations relating to probate law with your cover letter of October 3, 1986. I reviewed the enclosures and find them to be a very excellent job and really have no particular comment other than my congratulations to the Commission. I would like to receive any future mailings.

Very truly yours,

CHANDLER, BRUNER & RICKS



Leland W. Bruner

LWB/tm

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EVERETT HOUSER
WARREN L. SANBORN

October 22, 1986

California Law Revision Commission
4000 Middlefield Road, #D-2
Palo Alto, California 94303-4739

My review of the tentative recommendations of the Estate and Trust Code are as follows:

L-1045 - Useful

L-1035 - Okay

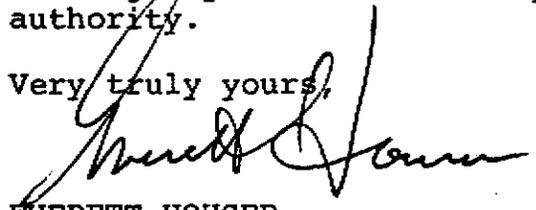
L-1033 - Fine

L-1040 - Okay as far as it goes. My experience has been in Los Angeles County where both of these offices are sadly behind schedule. Some means should be devised to require a more rapid termination of cases, or the use of private attorneys by court appointment when the schedules get more than six months behind.

L-800 - Approved

This is my first shipment of papers, so I may have missed something. I am involved right now with a trust which should be revocable under §2280 of the Civil Code. Husband and wife set up the trust to benefit each other and after the death of the survivor to go to numerous beneficiaries. The wife died first. The husband wishes to revoke the trust, and the defense is that everyone of the contingent beneficiaries has to be notified and given a chance to protect his contingency. I think this point should be settled by statutory authority.

Very truly yours,



EVERETT HOUSER

EH:da

WILBUR L. COATS
ATTORNEY AND COUNSELOR AT LAW

TELEPHONE (619) 748-6512

October 23, 1986

California Law Revision Commission
4000 Middlefield Rd., Suite D-2
Palo Alto, Ca 94303

Dear Commission Staff:

Comments relate to studies 1033, 1035, 1040, 1045, and 800.

I concur with all changes except as set forth below concerning study 1040.

The term "reasonable fee for service" in referring to fees to be charged for services rendered by the Public Guardian and Public Administrator appear too broad and are going to cause a great deal of non-uniformity throughout the State. Each court will determine the fee according to its "liberal" or "conservative" view of charges for service rendered. It appears to me that the State has an obligation, as it does in setting probate fees, except for extraordinary fees, to state with specificity the range of fee charges. I suggest that a minimum dollar amount be set forth and a percent above that pegged to the dollar value of the property handled be established in the code as the proper fee. I believe it is important to establish specific guidelines rather than the subjective term "reasonable".

Regarding the appraisal of an estate it appears that if an estate consists of real property only or real property and other personal assets not exceeding a value of \$1000.00 or some similar dollar amount the estate should be appraised by the nominated or appointed Guardian or Conservator. Especially onerous for a Guardian or Conservator is the necessity to either borrow money or sell an asset to pay an appraiser when an estate does not have any cash or a minimal amount of cash but may have a valuable piece of real property which may be the residence of the conservatee or the minor.

Thank you for the opportunity to review the proposed changes.

Very truly yours,


Wilbur L. Coats

KILPATRICK, CLAYTON, MEYER & MADDEN
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ATTORNEYS AT LAW

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October 22, 1986

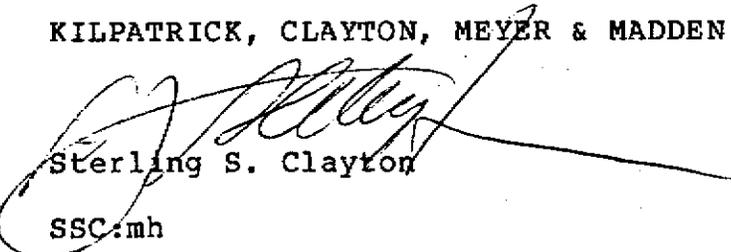
Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
4200 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Dear Mr. DeMouilly:

I have reviewed the five tentative recommendations pertaining to probate law and procedure sent to me for review and comment. I think the recommended changes are all improvements in existing law, and the only particular observation I would make pertains to the tentative recommendations regarding the public guardian and public administrator. Apparently, it is now proposed that the public guardian will not be restricted insofar as statutory fees are concerned and that it will be left simply with a "reasonable fee" determination. It would seem to me that the determination of a reasonable fee, or at least its approval, should be subject to court review and authorization.

Yours very truly,

KILPATRICK, CLAYTON, MEYER & MADDEN


Sterling S. Clayton

SSC:mh

DIETRICH, GLASRUD & JONES

AN ASSOCIATION INCLUDING LAW CORPORATIONS

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 RICHARD E. AUNE
 LAW CORPORATION

October 28, 1986

CALIFORNIA LAW REVISION COMMISSION
 4000 Middlefield Road, Suite D-2
 Palo Alto, CA 94303-4739

Re: Tentative Recommendations Relating To
 Proposed New Estate and Trust Code

Ladies and Gentlemen:

I have completed my review of the tentative recommendations which were forwarded to me. Although my review was not intensive, I believe I have a good overall impression of and feeling for the new code. I would be interested in learning, however, what takes the place of Division 3 (Administration of Estates of Decedents) which has been moved to Division 7 (new).

I commend you on your decision to refer to everyone as "personal representatives". I, for one, will gladly adopt the change. The older practitioners, however, will have a great deal of trouble with this concept; especially those who still refer to multiple, female executors as "co-executrices".

I also am in complete favor of adopting a requirement that the county clerk provide a letter or other document outlining the duties of the personal representative and the addition to the code for the procedure allowing for actual notice to creditors. Your rejection of the proposals to eliminate mandatory publication of notice to creditors, especially in instances where actual notice is given, seems rather close-minded. When you are dealing with an extremely small estate (house, car, a couple of bank accounts, etc.) and the probate has not been established with any thought to foreclosing creditors, could not an affidavit given by the personal representative attesting to the notification of

October 28, 1986
Page Two

all known creditors be used in lieu of publication? In my view, actual notice to known creditors far exceeds the effectiveness of publication in a legal newspaper and certainly is much less expensive. Even reducing the number of publication times (perhaps to one in the case of the giving of actual notice) would greatly assist the personal representative who is faced with a liquidity problem.

I look forward to receiving and reviewing your further comments and recommendations.

Very truly yours,

DIETRICH, GLASRUDE & JONES



JUDITH A. WARD
Probate Administrator

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SABBAN &
BRUCKER

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(213) 274-1152

October 28, 1986

Mr. John De Mouly
California Law Revision Commission
4000 Middlefield Road
Suite D-2
Palo Alto, California 94303

Re: Tentative Recommendations Relating to Probate Law

Dear Mr. De Mouly:

I have several comments relating to the newly released tentative recommendations.

Study L-1035 (Missing Persons):

The provisions deal only with a person who is not heard from for five years. My only experience with this section has been a couple who mysteriously disappeared on the day before they were to testify before a grand jury. The court issued an order approximately six months later determining that the couple had died on the date of their disappearance, despite the fact that the bodies were never located. I have heard of other incidents of a similar nature. Also, I expect that there are other comparable situations (such as where a person takes a private plane or small boat on a trip, and a portion of the wreckage is discovered but the bodies are never found).

It appears that in appropriate circumstances, the courts are willing to make a finding of death (based on adequate evidence) before the end of the five-year period mentioned in the statute. These cases should be taken into account in such provisions as Section 12404(c)(3) and, in particular, Section 12401.



Mr. John De Mouilly
October 28, 1986
Page 2

Study L-800 - Non-resident Decedents.

Recognition should be given to the fact that non-U.S. persons often have multiple wills, one for their U.S. property and another for their foreign property.

Study L-1045 - Preliminary Provisions.

Section 28 (dealing with community property) should be amended to deal with the "bicoastal marriage," where one spouse lives in California and the other spouse lives in another state. Under current law, the non-resident spouse receives a half interest in the resident spouse's earnings, while the non-resident spouse's property remains separate property under the laws of that spouse's domicile. This could create a problem if the spouses later move to a separate property state which does not recognize quasi-community property. Also, if the non-resident spouse dies, or if the parties acquire joint property, or upon a divorce, an unequal result could obtain.

Very truly yours,

Paul Gordon Hoffman

PGH:bd

LAW OFFICES OF
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STUART D. ZIMRING
NANCY O. MARUTANI
GIG KYRIACOU

November 4, 1986

John H. DeMouilly
Executive Secretary
California Law Revision Commission
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Palo Alto, CA 94303-4739

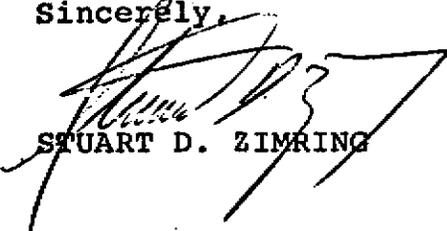
Re: Tentative Recommendations Relating to Probate Law

Dear Mr. DeMouilly:

Enclosed are my comments regarding the five tentative recommendations recently sent to me for review.

I appreciate this opportunity to assist the Commission and thank you for soliciting my input.

Sincerely,


STUART D. ZIMRING

SDZ:zw
Enclosure

October 31, 1986

COMMENTS ON TENTATIVE RECOMMENDATIONS OF THE CALIFORNIA LAW
REVISION COMMISSION

Non-Resident Decedent

1. As a general comment, I applaud the Commission's codification of definitions for drafting convenience.

2. §12522(a)(2). The phrase "interested persons" is ambiguous. "Interested persons" is defined one way under California law, but may be defined differently under a foreign jurisdiction's laws. The Section does not state whose definition will apply.

3. Section 12522(a)(3) states "the determination in the foreign jurisdiction is final, IS NOT SUBJECT TO REVOCATION, ..." I am not sure the word "revocation" is the right choice. There are circumstances where judgments or orders may be subject to collateral attack long after the time for appeal has run. Must the foreign determination be beyond those time limits? Would it be more in keeping with the overall philosophy of the new Code to simply say that the determination is entitled to full faith and credit and/or is final?

4. Section 12551(b) uses the word "debtor" in the first sentence. However, the term appears at no other place in the Statute. Apparently the term is to refer to the person referred to in sub-section (2) of Section (a). However, such a person may

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November 11, 1986

California Law Revision Commission
 4000 Middlefield Road, Suite D-2
 Palo Alto, CA 94303-4739

Re: Tentative Recommendations Relating To
 The New Estate and Trust Code

Gentlemen:

This letter is written with respect to solicited comments on a number of tentative recommendations relating to The New Estate and Gift Tax Code. The following comments are a composite of comments of our office's Probate Department to particular tentative recommendations.

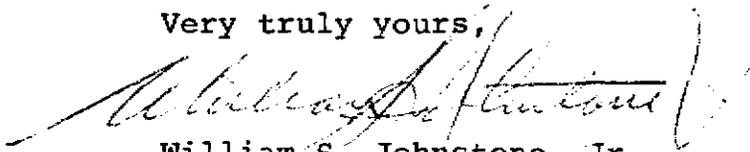
Nonresident Decedent:

Our only comment with respect to the tentative recommendation is as follows:

Section 12553, authorizing an exception in the case of funds in an account under \$1,000.00 with a financial institution, should be revised in the opening sentence thereof to make it clear that it only applies where the funds in the aggregate in an account in a financial institution are under \$1,000.00. Moreover, the \$1,000.00 figure should state that it is the amount as of the time of the decedent's death, and not as of the time of delivery to the foreign personal representative. In other words, if the funds in accounts in the aggregate in a financial institution are not more than \$1,000.00 as of the time of the decedent's death, the provisions of Section 12553 should be applicable notwithstanding that with interest accrued after death and before delivery to the foreign personal representative, the amount may exceed at that time \$1,000.00.

Should you wish to discuss any of the foregoing comments, please feel free to call me.

Very truly yours,


 William S. Johnstone, Jr.
 of HAHN & HAHN

WSJ:g



CALIFORNIA CONTINUING EDUCATION OF THE BAR

2300 Shattuck Avenue, Berkeley, CA 94704
(415) 642-3973; Direct Phone: (415) 642-8317

November 12, 1986

California Law Revision Committee
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Re: Study L-1040; Tentative Recommendation Relating to
Public Guardian and Public Administrator

Sirs:

I have reviewed the foregoing and am wondering if the judiciary has been consulted to determine whether proposed Probate Code 2921 provides them adequate flexibility to order appointment of the Public Guardian in the situations which the judges face. I also think that the necessity of a determination that no other person is qualified and willing to act may be an undesirable restriction. What if the public guardian is willing to act and the court believes that it is best to appoint the public guardian because of disputes among family members who are technically qualified and willing?

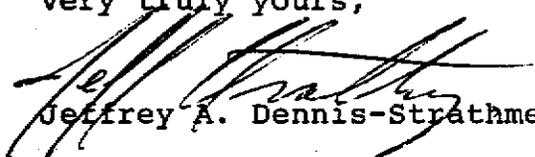
I suspect that the one-fourth of one percent fee bond is much higher than the actual cost to the county.

I don't understand the rationale of having the court determine the clerk's fee in 7680(a)(2).

It should not be necessary for heirs to wait four months to collect an estate under \$60,000 if they could have collected it without administration, if the public administrator had not gotten involved.

I have also made a very cursory review of studies L-800, L-1033, L-1035, and L-1045. The principal proposed changes will improve the Code.

Very truly yours,


Jeffrey A. Dennis-Strathmeyer

JAD-S:kg

The Surety Association of America

100 WOOD AVE. S. EISELIN, NEW JERSEY 08830 (201) 494-7600

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Vice President

GAETON SACCOCCIO
Senior Statistician

Surety Department
DENNIS E. WINE
Vice President

November 12, 1986

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Re: Law Revision Commission Tentative Recommendation
Relating to Probate Law

Dear Mr. DeMouilly:

This is to acknowledge and thank you for your letter and enclosures of October 3.

We have reviewed the latest set of recommendations (L-1040, L-800, L-1033, L-1035, L-1045) and are in general support of them.

We would, however, like to echo the comments of the Western Surety Company which had written to you on October 14, 1986.

Please keep us on your mailing list to receive future recommendation studies.

Thank you for your assistance.

Sincerely,


William L. Kelly
Manager-Surety

WLK:poh

POST OFFICE BOX 158

RAWLINS COFFMAN
ATTORNEY AT LAW
RED BLUFF, CALIFORNIA 96080

TELEPHONE 527-2021
AREA CODE 916

November 13, 1986

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Attn: John H. DeMouilly, Executive Secretary

Dear Mr. DeMouilly:

Thank you for your communication and transmittal of October 3, 1986.

My comments with respect to tentative recommendation #L-800, "Nonresidential Decedent", include the following:

FIRST: It would appear to me that some reference should be made to the method of resolving tax problems. For example: How is the California "pick up tax" reserved when the California portion of a large estate is to be distributed to a non California resident?

SECOND: At what stage of the proceedings, if any, is clearance required from the Franchise Tax Board under Revenue and Taxation Code Section 19262?

* * * * *

Very truly yours,



RAWLINS COFFMAN

RC:tm

P.S. Please keep me on your mailing list.



Writer's Direct Dial Number

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COUNTY OF ORANGE

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834-6333

November 14, 1986

California Law Revision Commission
 4000 Middlefield Road, Suite D-2
 Palo Alto, California 94303-4739

Dear Commission:

Thank you for sending me the revised tentative recommendations regarding the Public Guardian/Public Administrator, Determining Class Membership, Preliminary Provisions, Nonresident Decedent, and Administration Of Estates Of Missing Persons Presumed Dead sections of the new Estate and Trust Code.

Due to the birth of my first child, I have had difficulty finding the time to respond before now. I am sending my response before the deadline of November 15, but it may not reach you until after the deadline. I hope you will consider my comments as if timely received.

As before, I note that these are my individual views. I do not write here as a representative of the Orange County Counsel, the Orange County Public Administrator/Public Guardian, or the County of Orange.

Nonresident Decedent - No comments.

I look forward to receiving your further recommendations.

Very truly yours,

Howard Serbin
 Deputy County Counsel
 Orange County

HS:jp

cc: Carol Gandy, Linda Martinez, Dwight G. Tipping, Chris Salas -
 Office of Public Administrator/Public Guardian;
 James F. Meade, Nicholas S. Chrisos - Office of County Counsel

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DEPUTIES

**Matthew Bender**

**Matthew Bender
& Company, Inc.**
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Oakland, CA 94604
(415) 446-7100

November 17, 1986

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, suite D-2
Palo Alto, CA 94303-4739

Re: Studies # L-800 (Nonresident Decedents), L-1033 (Determining Class Membership), L-1035 (Estates of Missing Persons), L-1040 (Public Guardians/Administrators), and L-1045 (Definitions).

Gentlemen:

Thank you for the September, 1986 versions of the tentative recommendations of the above-referenced proposals. It is helpful to have the latest thinking of the commission regarding the preliminary provisions and definitions while reviewing the other proposals.

I know this will arrive after your November 15th deadline, but computer malfunction has made timely transcription of this letter impossible.

Regarding the proposal for simplification of distribution or administration of California assets of nonresident decedents, I think it is all workable, sensible, and an improvement. Also:

§12522 (validity of foreign will): I especially like the proposed provision conforming the criteria for validity of a nonresident's will to those in Prob C § 6113.

§§12553, 12554 (payment of small accounts): Shouldn't Totten trust accounts be excepted from those which may be delivered to a foreign representative? If there are competing claims by a Californian entitled to distribution without administration and a foreign representative, are they to be resolved in the state where the primary administration is pending or may they be resolved here? The requirement of § 12553(b) and the discharge from liability provisions of Prob C § 13106 seem to favor the California claimant, allowing the institution to pay the California claimant and requiring the foreign representative then to establish a superior claim. Is that your intention?

Regarding the proposal for determination of class membership: § 320 (Proceeding authorized): Are there some situations in which both these proposed proceedings and proceedings under Prob C § 1080 will be available?

§ 322(b) (Notice of Hearing): This is not one of the matters listed at Prob C § 1200(a). Given Prob C § 1200(d) and the trend to limit the responsibility of the clerks for posting notices, why not drop subdivision (b)?



Matthew Bender

§ 323 (Response): Answers can support (admit) as well as deny, too. Do you think it might simplify things to require the response/answer be filed sooner than before the hearing? Is earlier filing required in some counties by virtue of local rules? I think that procedurally these proposed proceedings and proceedings under Prob C § 1080 should be substantially similar.

I like all the changes regarding administration of estates of missing persons. I agree that there is no reason to perpetuate different notice, hearing, or distribution waiting-period requirements for estates of missing persons. I also think the changes adopting the new general definition of interested person and charging the costs of any additional required search to the estate are appropriate.

I like all the changes regarding public guardians and administrators. Specifically, I agree:

§ 2921: that domicile is a more workable basis for jurisdiction;

to be drafted (re W & I C § 8011): that appraisals are wasteful and unnecessary in small estates;

§§ 2631, 2942: that the public guardian should have authority to pay expenses of general administration on the same basis that present law provides for payment of funeral and last illness expenses;

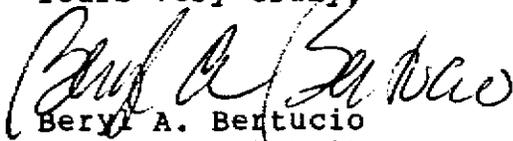
§ 2941: that the public guardian should be allowed more flexibility in arranging for legal representation;

§§ 7643, 7683(b): that unclaimed funds in an estate administered by the public administrator are more properly turned over to the county; and

§ 7682-7684: that the new creditor protection provisions are appropriate.

Regarding the current version of preliminary provisions and definitions, generally, they all seem sensible. Specifically, I like the new § 46 definition of insured account because it equalizes the treatment between the three most prevalent types of financial institutions and because it is keyed to the insurance coverage. I think the latter is especially important since representatives under pressure to maximize income to the estate are likely to forget that some of the "investment certificates" are not insured.

Yours very truly,


Beryl A. Bertucio
Senior Legal Writer

cc George A. Meier

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DAVID B. FLINN

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November 17, 1986

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Attention: John H. DeMouly, Executive Secretary

Gentlemen:

Thank you for the opportunity to review the tentative recommendations contained with your letter of October 3. I have comments on only two of them.

Firstly, as to the recommendations for preliminary provisions and definitions, Section 21 regarding a definition of "account" is substantially broadened by the type of "accounts" mentioned and the term "other like arrangements," but is limited by the term "financial institution." While one is reluctant to go so far as to include any type of "creditor," it would seem wise to include brokerage firms. As mentioned in the comment to Section 20, one of the relevant aspects of this definition is the provision relating to appraisal by the personal representative. We are constantly coming upon "money market accounts" at the brokerage firms as assets in probate estates, and there appears no reason why the personal representative should not appraise such items since the institution issues the same type of monthly statement as the financial institutions do.

My second comment is as to the provisions regarding non-resident decedents, and particularly summary procedures with relation thereto. As you are no doubt aware, the securities industry attempts to set its own rules as to probate, and California's summary affidavits are often ignored. I have one estate in which I am representing a non-resident heir of a non-resident decedent who left AT&T shares in a California safe deposit box. We have been almost two years trying to obtain transfer by the company. I would strongly recommend that the summary probate procedures include a section allowing for a form of penalties for bad faith non-compliance.

Sincerely,



David B. Flinn

DBF:js

Studies: L-800
L-1033
L-1035
L-1040
L-1045

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A PROFESSIONAL CORPORATION
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RUTH A. PHELPS
DEBORAH BALLINS SCHWARZ
HARLAN L. BRANSKY

November 17, 1986

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Attention: John H. D'Moulley, Executive Secretary

Re: Law Revision Commission Tentative
Recommendations Relating to Probate
Law

Dear Mr. D'Moulley:

I am writing to you with my comments on the Tentative Recommendations of the California Law Revision Commission relating to the new Estate and Trust Code and the Public Guardian and Public Administrator.

For your convenience in organizing the comments, I have put my comments for each separate code on separate sheets. If you have any questions, or if I can be of any further assistance, please call.

Very truly yours,

MACCARLEY, PHELPS & ROSEN
A Professional Corporation

By: Ruth A. Phelps
Ruth A. Phelps

RAP:mr
0612m

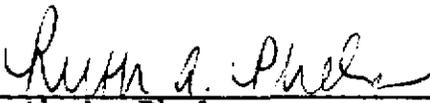
Comments to Recommendations Relating to the
New Estate Trust Code
Non Resident Decedent
L-800
September, 1986

The proposed changes and procedures make sense and will facilitate handling of the estates of non-resident decedents.

I have only one comment.

Regarding section 15321, sale of Real Property and the Non-Resident Decedent, regarding the second sentence, I assume that the sale can proceed either by way of Advice of Proposed Action or court confirmation. It was not clear to me from reading the code sections that the court could grant Independent Administration of Estates Acts powers to a local personal representative. I assume that that would be determined at the time that the petition for ancillary administration was filed. Also, I have never handled a petition for ancillary administration so I am not familiar with this procedure.

Respectfully submitted,



Ruth A. Phelps

0612m

J. Earle Norris
Vice President and
Senior Claims Counsel

November 17, 1986

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
4000 Middlefield Road
Suite "D-2"
Palo Alto, CA 94303-4739

Re: California Law Revision Commission
Study L-800 - Nonresident Decedent
Study L-1033 - Determining Class Membership
Study L-1035 - Administration of Estates of Missing Persons
Presumed Dead
Study L-1040 - Public Guardian and Public Administrator
Study L-1045 - Preliminary Provisions and Definitions

Dear Mr. DeMouilly:

I have submitted copies of the above-mentioned studies to the Subcommittee members of our special committee of the CLTA Forms and Practices Committee for review and comment in October, 1986.

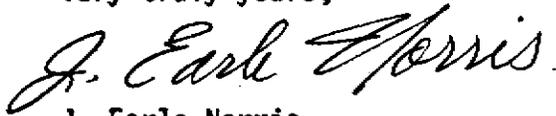
I apologize for the late response since I noticed that you requested comments no later than November 15, 1986. From the responses I have received from the Subcommittee members, it would not appear that there is anything in all of the studies that would cause any concern for the members of our industry.

I would suggest one recommendation with regards to Study L-1035, tentative recommendation relating to the Administration of Estates of Missing Persons Presumed Dead. That comment would concern proposed Section 12408, Recovery of Property by Missing Persons Upon Reappearance. In Sub-Section (a) (2) there is a statute of limitations from the recovery of property from distributees "to the extent that recovery from distributees is equitable in view of all the circumstances . . . ". I would like to suggest that it would be of assistance if there were a third sub-paragraph to indicate that conveyances by distributees to third party bona fide purchasers for value would protect such purchasers and the missing persons recovery would be limited to recovery only from the immediate distributee. This would clarify that the missing person would be left with a monetary cause of action against the distributee but that the title as conveyed to the bona fide purchaser would be protected.

Letter to John H. DeMouly
November 17, 1986
Page Two

Thank you very much for the opportunity to review the proposed recommendations to the legislature in the Law Revision Commission's continuing work.

Very truly yours,



J. Earle Norris

JEN:elm

cc:Gordon Granger
Richard M. Klarin
Robert L. Manuele
Robert Cavallaro
James Wickline
Collyer Church
Clark Staves

Superior Court of the State of California
County of Sacramento

PROBATE DIVISION
(916) 440-5621

October 14, 1986

720 NINTH STREET - ROOM 20
SACRAMENTO, CALIFORNIA

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303

Dear Sir,

Before commenting on the most recent Tentative Recommendations by the California Law Revision Commission, I would like to briefly express concern as to the trend to divest the Probate Court regarding probate matters.

I have been a Probate Examiner in Orange and Sacramento counties for 16 years. I have reviewed volumms of probate files and have arrived at the conclusion that Probate Court supervision is most beneficial to the proper administration of probate estates.

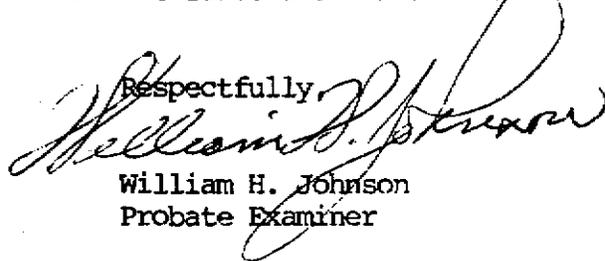
The reduction of Judicial intervention is desirable and expedient, however, it has been my experience that many attorneys are not sufficiently knowledgeable to provide the necessary protection for beneficiaries, conservatees and minors.

The trend to reduce Court supervision is presupposing the expertise and competency of attorneys and fiduciaries in the administration of probate proceedings. The contrary is exhibited on a daily basis. Upon review of calendar notes, one can observe numerous incidences of noncompliance with the Probate Code.

To divest the Court of substantial supervision may result in expediency, but such expediency many times is to the detriment of those persons entitled to protection. Inasmuch as probate proceedings are predominately non-adversarial, the Court is preforming a vital service to the probate community in assuring the proper administration of probate estates.

Revised PC 12552 discontinues the requirement of the State Controller to consent to transfers required under former PC 1043. By discontinuing such consent, question if collection of California Estate Taxes under R & T 13301 et seq may be thwarted.

Respectfully,



William H. Johnson
Probate Examiner

WHJ/vi

redi-letter

MCP®

TRIP

TO

CALIFORNIA LAW REVISION COMMISSION
4000 MIDDLEFIELD ROAD SUITE D-2
PALO ALTO, CA 94303-4739

FROM

MELVIN C. KERWIN, ESQUIRE
1040 MARSH ROAD SUITE #120
MENLO PARK, CA 94025

(415) 327-8060

SUBJECT TENTATIVE RECOMMENDATIONS RELATING TO PROBATE LAW

DATE 10/22/86

MESSAGE

PLEASE FIND ENCLOSED THE COPIES OF THE TENTATIVE RECOMMENDATIONS RELATING TO PROBATE LAW WHICH WAS SENT TO MY ATTENTION FOR MY REVIEW. I HAVE WRITTEN MY COMMENTS ON THE RECOMMENDATION DOCUMENTS, PLEASE FEEL FREE TO CONTACT MY OFFICE WITH ANY QUESTIONS REGARDING MY COMMENTS.

SIGNED

MELVIN C. KERWIN

REPLY

SIGNED

DATE / /

REDIFORM 4S 471

SEND PARTS 1 AND 3 INTACT -
PART 3 WILL BE RETURNED WITH REPLY.

POLY PAK (50 SETS) 4P 471

carbonize

Tentative Recommendation
relating to
Estate and Trust Code:

NONRESIDENT DECEDENT

Primary administration of a decedent's estate is at the decedent's domicile. If a nonresident decedent leaves property in California, ancillary administration (secondary probate) may be necessary in California to protect local creditors or to transfer title to real property.¹ Ancillary administration is time-consuming and expensive.² *Who says! Conclusory - compared to what?*
Existing Summary Procedures to Avoid Ancillary Administration

California has a number of procedures that may be used as an alternative to ancillary administration:

(1) Close relatives of the decedent who are entitled to the decedent's personal property under the will or under the intestate succession laws of the decedent's domicile may use California's summary procedure for collection of personal property by affidavit.³

(2) If the decedent's estate is worth \$20,000 or less, the decedent's surviving spouse or minor children may use California's small estate set-aside provisions to collect the decedent's California real and personal property, whether or not there is an inconsistent will.⁴

1. See Kimbrough & Lindgren, Ancillary Administration, in 2 California Decedent Estate Administration § 34.16, at 1354 (Cal. Cont. Ed. Bar 1975); 2 A. Bowman, Ogden's Revised California Real Property Law § 29.27, at 1449 (Cal. Cont. Ed. Bar 1975).

2. Kimbrough & Lindgren, supra note 1, §§ 34.21-34.22, at 1356-57.

3. Prob. Code §§ 13100-13115; see Kimbrough & Lindgren, supra note 1, § 34.22, at 1357.

4. Prob. Code §§ 6600-6614; see Kimbrough & Lindgren, supra note 1, § 34.22, at 1357.

(3) The decedent's surviving spouse may use California's summary procedure for collecting salary or other compensation due to the decedent for personal services, and for collecting real and property passing to the surviving spouse by will or intestate succession.⁵

(4) The personal representative appointed at the decedent's domicile ("foreign personal representative") may come into California, collect the decedent's personal property and debts owed to the decedent, and remove the property from California without court proceedings in California, if the following steps are followed: The foreign personal representative publishes a notice to creditors, waits three months for possible objections and, if there are no objections, collects the property by showing proof of appointment and publication and presenting an affidavit of relevant facts.⁶

Recommendations

The new code supplements existing procedures that enable transfer of property without ancillary administration with the following procedures.

Summary collection of small accounts. The existing summary procedure for collection of accounts in a financial institution by a foreign personal representative requires publication of notice to creditors and beneficiaries and a 30-day wait for objections before the funds may be released.⁷ In the case of a small account (an account of \$1,000 or less) the cost of publication is unduly great in relation to the size of the account. In the case of a large account the 30-day wait is unreasonably short when compared with the normal four month creditor claim period. The new code resolves these problems by enabling summary collection of small accounts without prior publication and by imposing a four month delay after publication in the case of large accounts.⁸

5. Prob. Code §§ 13600-13606.

6. Prob. Code § 1043. If a creditor, heir, or devisee objects, this procedure may not be used.

7. Prob. Code § 1043a.

8. In this connection, the new code replaces the existing three month waiting period of Probate Code Section 1043 with a uniform four month period for summary collection of the decedent's property. This parallels the period under the general creditor claim statute. See Prob. Code § 700.

Summary authorization to bring suit in California. Under existing law, if a foreign personal representative wants to bring suit in California to collect a debt due to the decedent or other property of the decedent, the personal representative must first be appointed as a local personal representative in California ancillary proceedings.⁹ This involves unnecessary duplication of procedural steps already accomplished in the foreign estate proceeding.¹⁰ The new code permits the foreign personal representative to sue in California upon filing proof of appointment in the other jurisdiction, a copy of any bond given in the other jurisdiction, and a copy of the decedent's will, if any.¹¹ This will save time and expense to the estate.

9. Under existing law, a foreign personal representative who has not also been appointed in California ordinarily may not sue in California. Code. Civ. Proc. § 1913; 7 B. Witkin, Summary of California Law Wills and Probate § 58, at 5581 (8th ed. 1974); 4 B. Witkin, California Procedure Pleading § 98, at 134 (3d ed. 1985). Appointment of the foreign personal representative in a California ancillary proceeding confers the same powers the personal representative would have in a California domiciliary proceeding. Kimbrough & Lindgren, supra note 1, § 34.47, at 1372. Such powers include the power to maintain actions or proceedings in California. 7 B. Witkin, Summary of California Law Wills and Probate § 337, at 5813 (8th ed. 1974); see Prob. Code §§ 573-577.

10. The foreign personal representative must petition for probate of the will or for letters of administration, publish notice, prove the validity of the will (if any), give bond if not waived, and obtain letters before an action may be commenced. Prob. Code §§ 323, 327, 329, 361, 440, 441, 541; see also Prob. Code § 481. Thus the foreign personal representative must do a second time what has already been done in the foreign proceeding.

11. The Uniform Probate Code has similar provisions. Uniform Probate Code §§ 4-204, 4-205; see also Uniform Probate Code § 4-206 (substitution of local personal representative for domiciliary foreign personal representative in actions or proceedings). Under the new code, as under these Uniform Probate Code provisions, the foreign personal representative submits to the jurisdiction of the California courts by filing the papers required before suing in California.

Who says its unnecessary to gain a conclusion not a reason.

But how to carry standards!

Other technical and substantive revisions. The new code liberalizes the requirements for the validity of a foreign will¹² to conform to the rules for determining the validity of a California will.¹³

The new code deletes the requirement that the State Controller must consent to removal of the property from California in the case of informal collection of the decedent's personal property.¹⁴ The repeal of the inheritance tax¹⁵ in California makes this provision unnecessary. The new code also makes a few other clarifying changes in the summary collection procedure.¹⁶

The new code makes clear that a foreign personal representative who does specified acts in California thereby submits to the jurisdiction of the California courts.¹⁷ This is consistent with general civil practice.¹⁸

12. The will is valid if it would be valid either under the law of the testator's domicile at death or under California law. Prob. Code § 362.

13. The will is valid if it would be valid under the law of the place of execution or the place where at the time of execution or death the testator was domiciled, had an abode, or was a national. Prob. Code § 6113.

14. Prob. Code § 1043.

15. Rev. & Tax. Code § 13301.

16. Under the new code the foreign personal representative must show that no other letters on the decedent's estate are then outstanding "in this state". The new code also makes clear that in summary proceedings the foreign personal representative may collect money or other personal property of the decedent but may not enforce debts owed to the decedent.

17. This provision is drawn from Sections 4-301 and 4-302 of the Uniform Probate Code.

18. Code Civ. Proc. § 410.10.

**ESTATE PLANNING, TRUST AND
PROBATE LAW SECTION
THE STATE BAR OF CALIFORNIA**

Chair

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Executive Committee

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November 7, 1986

Mr. James V. Quillinan
444 Castro Street
Mountain View, CA 94041

Re: Tentative Recommendation --
Nonresident Decedent

Dear Jim:

The following are the comments of Team 2 on the above-referenced tentative recommendation. These comments represent the result of a conference call among Jim Goodwin, Jim Rogers, and me. Jay MacMahon, Owen Fiore, Bill Plageman, and Mike Vollmer were not available to participate.

As a general matter, we object to two significant and substantive changes which the tentative recommendation proposes. First, the tentative recommendation equates a personal representative from another country with a personal representative from another state. While that may be acceptable where the personal representative is subject to the direct supervision of the California Courts, it is unacceptable where the personal representative may avail himself of summary transfer procedures as this tentative recommendation would allow. For example, the tentative recommendation would allow a personal representative from another country to bring an action and collect California property belonging to a nonresident decedent and to remove that property without any constitutional protections to heirs or other persons interested in the estate. Furthermore, the personal representative from a foreign country would then be able to utilize the property for purposes which are illegal or against the public policy of California. Suppose a California nonresident leaves a Will which gives his entire estate to a nonprofit corporation for the advancement of apartheid. Is there any doubt that such a provision contained in a Will would be declared void by the California Courts or by the

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court of any state of the United States? Nonetheless, this proposal would permit a South African personal representative to remove property from California and utilize the estate in South Africa for purposes contrary to the public policies of California and the United States. We believe it is improper for the California Probate Code to allow such a result: to establish a procedure which would permit nonresidents of California to obtain the protections and benefits of keeping property in California without subjecting that property to the laws and public policies of the United States and of California is unwarranted. For this reason, we believe that it is bad policy to equate a personal representative from a foreign country with a personal representative from another state of the United States. I will address this problem in more specificity in this letter as I review particular code sections.

The second major problem with the tentative recommendation is that it gives to a foreign personal representative more authority than California residents have. Under the proposal, a personal representative from another state of the United States may collect and receive money or other personal property of the decedent without any limitation on value, and may remove the property to another state. Presumably, such property would then be administered under the laws of the other state, which may include procedures which California has declined to adopt. (It should be remembered that a personal representative may be appointed in some states by merely filing documents with the county clerk's office, without notice to anyone.) A California resident who may be equally entitled to the property of a nonresident has no such summary procedure available, nor does a California resident entitled to property of a California decedent.

Thus, this tentative recommendation would give to a foreign personal representative powers far in excess of those powers granted to close family members of a California resident. To highlight but one anomaly: Suppose the decedent is a resident of another state, and has adult children in California. Because the decedent had regularly visited his children in California, he had maintained substantial bank accounts and/or other personal property in California which exceeds \$60,000 in value. A personal representative appointed in another state would be permitted to remove to the other state all of the decedent's personal property by a summary procedure and administer that property under whatever summary procedures another state may have adopted; whereas, the decedent's children, who are California residents, would not be

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permitted to obtain possession of the property by summary procedure. We don't believe such a dichotomy is justified.

To summarize our general observations, this tentative recommendation is defective because:

1. It does not provide limitations of value.
2. It does not provide for even the minimal constitutional protections of notice and due process.
3. It does not permit any judicial review of whether or not California property will be used for purposes against California public policy.
4. It provides for a procedure that grants to nonresident personal representatives powers far in excess of rights granted to California residents, and allows for property of nonresident decedents to be handled by summary procedures not available to estates of resident decedents.

Specifically, we have the following comments:

Section 12503. The definition of "foreign jurisdiction" should exclude jurisdictions outside the United States. Although the comment indicates that the definition "is intended for drafting convenience," the definition results in a significant substantive change in California law by allowing persons outside of the United States and outside of California access to a decedent's property without Court review.

Section 12504. Same comment as with Section 12503. In addition, the cross-reference refers to personal representative as defined in Probate Code Section 58. We assume that there is a proposal to renumber the definitional sections, but in my copy of the Probate Code, Section 58 defines personal property rather than personal representative.

Section 12506. Same comment as with respect to Section 12503. As the term "nonresident decedent" is used in this tentative recommendation, we urge that it be limited to residents of another state of the United States.

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Section 12522. This provision would require probate in California of a Will admitted to probate in a "foreign jurisdiction." If "foreign jurisdiction" is limited to one of the United States or U.S. territories, we have no objection. If "foreign jurisdiction" includes other countries, we do have an objection because there is no guarantee that the admission of a Will in the foreign country is governed by all of the constitutional protections that should apply with respect to California property.

Section 12550. This section allows a foreign personal representative to summarily collect personal property if the nonresident decedent died domiciled in another state. One major defect is that this provision is not limited to the foreign personal representative appointed in another state. Thus, the decedent could have died domiciled in New York, but could have left property in Yugoslavia. If a Yugoslavian personal representative is appointed, that "foreign personal representative" could come to California and remove personal property of unlimited value under Section 12550. Although we doubt that such result is intended, the section needs to be more carefully drafted to prevent that result.

Another problem with Section 12550 is that there is no limitation on value. Personal property far in excess of that which can be collected by family members under Section 630 could be removed by the foreign personal representative. What if the decedent died intestate? Would personal property permanently located in California be removed to the foreign jurisdiction to pass under the intestate succession laws of that jurisdiction, or should the California intestate succession laws apply to that property? This summary procedure would permit the foreign personal representative to circumvent the California intestate succession laws.

Section 12551. This section requires publication of notice. We see no benefit from the publication of notice. Under Section 12590, the personal representative subjects himself to the jurisdiction of the California Courts. Having subjected himself to that jurisdiction, what is the purpose of the published notice? We believe that constitutional due process requires, at a minimum, that actual notice be given all heirs at law and devisees of a decedent; we also believe that notice should be given to creditors under the same standards as may be adopted with respect to California probate estates. Actual notice is especially important considering that some states do not have formal notice procedures for appointment of personal representatives.

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Section 12552(b)(3). The proposed language is cumbersome. We believe that it would be less cumbersome if redrafted to provide as follows: "(3) An affidavit that there is no other personal representative of the decedent, that there is no petition for appointment of a personal representative pending in this state, and that there will be no ancillary administration commenced in this state." We believe that the language "to the best of the affiant's knowledge" is superfluous: no affidavit can ever be more evidentiary than to the best of the affiant's knowledge.

Section 12553. This section suffers from the same deficiency regarding the definition of "foreign personal representative" as indicated above.

Section 12554. This section would be a desirable addition to present California law.

Sections 12570 and 12571. These two sections represent a major change in the law of California. We do not see any reason for the change. Among other things, they would permit non-United States personal representatives to exercise powers in California by filing certain documents from the foreign jurisdiction. One of those documents is the foreign order for appointment, but no distinction is made between an order made by a clerk or a court. A foreign order may not be made pursuant to any constitutionally guaranteed protections. With respect to non-United States foreign personal representatives, how is the county clerk or any other person who is supposed to deal with such personal representative to judge the validity of the court appointment? Is an interpreter required to translate the order into English? Is the county clerk required to review every United States treaty to determine which governments are recognized by the United States? Does the effectiveness of an order appointing a personal representative for a decedent who resided in Beirut dependent upon whether the decedent was a resident of the Christian or Islamic sector? The mere filing of those papers with the county clerk cannot be deemed sufficient to pass upon the validity of those papers. That determination can be made only in open court.

Section 12571 allows the foreign personal representative to "maintain actions and proceedings" in this state. "Actions and proceedings" are not defined. Will this allow the foreign personal representative to sue the bank which

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refuses to turn over funds deposited in a nonresident decedent's name? Would it allow the foreign personal representative to sell California real property and remove the proceeds from California? This section would allow the foreign personal representative to collect or receive money or other property awarded in an action or proceeding pursuant to the provisions of §12550. It is not limited to personal property, so presumably a foreign personal representative could bring an action to quiet title to real property in a decedent's name; have the real property "awarded" to him; sell the real property and remove the proceeds. What is meant by "awarded?" Presumably, this would apply to a judgment of a California court. Would it also apply to a judgment by a California administrative agency? Would it apply to a judgment by an arbitrator pursuant to the rules of the American Arbitration Association? What about a settlement of a controverted matter? Would a settlement be limited to settlement of judicial actions or would a settlement of a threatened judicial action be included?

Despite the ambiguous language of §12550, we believe the availability of that section was intended to be limited to foreign personal representatives of other states. Since §§12570 and 12571 would also apply to foreign personal representatives of other countries and incorporate the procedures of §12550, do those sections override the limitation of §12550? It would appear so. In summary, we do not see any compelling reason to change the established law and enact a new summary procedure that is so wrought with complexities and ambiguities.

Section 12590. This section is a "long-arm" statute to obtain jurisdiction over a foreign personal representative. The section does not establish any procedure for service of process. Where a non-California resident is appointed "local personal representative" he is required to provide notice of permanent address and to designate the Secretary of State as the person authorized to receive service of process. (Prob. Code §405.1 et. seq.) Section 12590 should similarly establish (or incorporate) a procedure for service of process.

Section 12592. This section suffers from the same defects as the previous sections do insofar as it applies to jurisdictions outside of the United States. While the U. S. Constitution requires that full faith and credit be given to judgments of sister states, full faith and credit need not be given to judgments in foreign jurisdictions whose protections may not be equivalent to those enjoyed by United States

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residents. Even if this section were redrafted to exclude from its application judgments obtained in foreign countries, this section would reverse the long-standing California conflict of law principle that California has the primary right to determine matters relating to California real property.

Other problems with this section:

(a) An order made by another state construing a will would be binding upon all personal representatives, even though it may not otherwise be binding on a beneficiary who did not receive notice.

(b) The proposal would allow a non-California court to determine community property rights to California property. For example, a Texas court might determine that under Texas law all property held by the decedent and the spouse was true joint tenancy property, rather than community property, and that accordingly the personal representative had no interest in such property. Under §12592, that determination would be binding upon the personal representative with respect to California real property.

(c) An adjudication in South Africa made in favor of a South African personal representative that a bequest to advance apartheid is valid would be binding on the California local personal representative.

We see no reason for California to summarily accept another jurisdiction's determination of conflict of law rules with respect to California property.

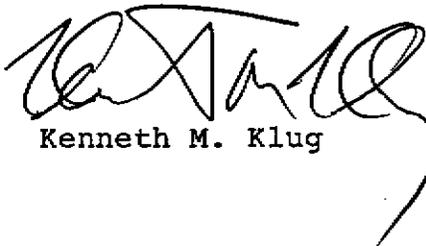
(d) The comment to this section is misleading in that it fails to state that it is a reversal of the present California conflict of interest principle that California has the primary right to determine matters with respect to California real property.

In summary, then, Team 2 believes that this tentative recommendation suffers from numerous ambiguities resulting from overly broad definitions and would make significant changes in California law which are neither necessary nor desirable. The existing probate code sections dealing with non-resident decedents have worked well without suffering from

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all of the problems outlined above. We recommend that this tentative recommendation be abandoned and that the existing law on nonresident decedents be retained with minor technical modifications.

Very truly yours,



Kenneth M. Klug

cc: Irwin D. Goldring
James C. Opel
James D. Devine
Lloyd W. Homer
Charles A. Collier, Jr.
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Tentative Recommendation
relating to
NONRESIDENT DECEDENT

Primary administration of a decedent's estate is at the decedent's domicile. If a nonresident decedent leaves property in California, ancillary administration (secondary probate) may be necessary in California to protect local creditors or to transfer title to real property.¹ Ancillary administration is time-consuming and expensive.²

Existing Summary Procedures to Avoid Ancillary Administration

California has a number of procedures that may be used as an alternative to ancillary administration:

(1) Close relatives of the decedent who are entitled to the decedent's personal property under the will or under the intestate succession laws of the decedent's domicile may use California's summary procedure for collection of personal property by affidavit.³

(2) If the decedent's estate is worth \$20,000 or less, the decedent's surviving spouse or minor children may use California's small estate set-aside provisions to collect the decedent's California real and personal property, whether or not there is an inconsistent will.⁴

1. See Kimbrough & Lindgren, Ancillary Administration, in 2 California Decedent Estate Administration § 34.16, at 1354 (Cal. Cont. Ed. Bar 1975); 2 A. Bowman, Ogden's Revised California Real Property Law § 29.27, at 1449 (Cal. Cont. Ed. Bar 1975).

2. Kimbrough & Lindgren, supra note 1, §§ 34.21-34.22, at 1356-57.

3. Prob. Code §§ 13100-13115; see Kimbrough & Lindgren, supra note 1, § 34.22, at 1357.

4. Prob. Code §§ 6600-6614; see Kimbrough & Lindgren, supra note 1, § 34.22, at 1357.

(3) The decedent's surviving spouse may use California's summary procedure for collecting salary or other compensation due to the decedent for personal services, and for collecting real and property passing to the surviving spouse by will or intestate succession.⁵

(4) The personal representative appointed at the decedent's domicile ("foreign personal representative") may come into California, collect the decedent's personal property and debts owed to the decedent, and remove the property from California without court proceedings in California, if the following steps are followed: The foreign personal representative publishes a notice to creditors, waits three months for possible objections and, if there are no objections, collects the property by showing proof of appointment and publication and presenting an affidavit of relevant facts.⁶

Recommendations

The new code supplements existing procedures that enable transfer of property without ancillary administration with the following procedures.

Summary collection of small accounts. The existing summary procedure for collection of accounts in a financial institution by a foreign personal representative requires publication of notice to creditors and beneficiaries and a 30-day wait for objections before the funds may be released.⁷ In the case of a small account (an account of \$1,000 or less) the cost of publication is unduly great in relation to the size of the account. In the case of a large account the 30-day wait is unreasonably short when compared with the normal four month creditor claim period. The new code resolves these problems by enabling summary collection of small accounts without prior publication

5. Prob. Code §§ 13600-13606.

6. Prob. Code § 1043. If a creditor, heir, or devisee objects, this procedure may not be used.

7. Prob. Code § 1043a.

and by imposing a four month delay after publication in the case of large accounts.⁸

Summary authorization to bring suit in California. Under existing law, if a foreign personal representative wants to bring suit in California to collect a debt due to the decedent or other property of the decedent, the personal representative must first be appointed as a local personal representative in California ancillary proceedings.⁹ This involves unnecessary duplication of procedural steps already accomplished in the foreign estate proceeding.¹⁰ The new code permits the foreign personal representative to sue in California upon filing

8. In this connection, the new code replaces the existing three month waiting period of Probate Code Section 1043 with a uniform four month period for summary collection of the decedent's property. This parallels the period under the general creditor claim statute. See Prob. Code § 700.

9. Under existing law, a foreign personal representative who has not also been appointed in California ordinarily may not sue in California. Code. Civ. Proc. § 1913; 7 B. Witkin, Summary of California Law Wills and Probate § 58, at 5581 (8th ed. 1974); 4 B. Witkin, California Procedure Pleading § 98, at 134 (3d ed. 1985). Appointment of the foreign personal representative in a California ancillary proceeding confers the same powers the personal representative would have in a California domiciliary proceeding. Kimbrough & Lindgren, supra note 1, § 34.47, at 1372. Such powers include the power to maintain actions or proceedings in California. 7 B. Witkin, Summary of California Law Wills and Probate § 337, at 5813 (8th ed. 1974); see Prob. Code §§ 573-577.

10. The foreign personal representative must petition for probate of the will or for letters of administration, publish notice, prove the validity of the will (if any), give bond if not waived, and obtain letters before an action may be commenced. Prob. Code §§ 323, 327, 329, 361, 440, 441, 541; see also Prob. Code § 481. Thus the foreign personal representative must do a second time what has already been done in the foreign proceeding.

proof of appointment in the other jurisdiction, a copy of any bond given in the other jurisdiction, and a copy of the decedent's will, if any.¹¹ This will save time and expense to the estate.

Other technical and substantive revisions. The new code liberalizes the requirements for the validity of a foreign will¹² to conform to the rules for determining the validity of a California will.¹³

The new code deletes the requirement that the State Controller must consent to removal of the property from California in the case of informal collection of the decedent's personal property.¹⁴ The repeal of the inheritance tax¹⁵ in California makes this provision unnecessary. The new code also makes a few other clarifying changes in the summary collection procedure.¹⁶

11. The Uniform Probate Code has similar provisions. Uniform Probate Code §§ 4-204, 4-205; see also Uniform Probate Code § 4-206 (substitution of local personal representative for domiciliary foreign personal representative in actions or proceedings). Under the new code, as under these Uniform Probate Code provisions, the foreign personal representative submits to the jurisdiction of the California courts by filing the papers required before suing in California.

12. The will is valid if it would be valid either under the law of the testator's domicile at death or under California law. Prob. Code § 362.

13. The will is valid if it would be valid under the law of the place of execution or the place where at the time of execution or death the testator was domiciled, had an abode, or was a national. Prob. Code § 6113.

14. Prob. Code § 1043.

15. Rev. & Tax. Code § 13301.

16. Under the new code the foreign personal representative must show that no other letters on the decedent's estate are then outstanding "in this state". The new code also makes clear that in summary proceedings the foreign personal representative may collect money or other personal property of the decedent but may not enforce debts owed to the decedent.

The new code makes clear that a foreign personal representative who does specified acts in California thereby submits to the jurisdiction of the California courts.¹⁷ This is consistent with general civil practice.¹⁸

The new code makes clear that a California personal representative is bound by an adjudication in favor of or against any personal representative in another state.¹⁹ This will avoid multiplicity of actions.

17. This provision is drawn from Sections 4-301 and 4-302 of the Uniform Probate Code.

18. Code Civ. Proc. § 410.10.

19. This provision is drawn from Section 4-401 of the Uniform Probate Code. The adjudication is not binding if made in ancillary proceedings elsewhere and the California personal representative did not have notice and an opportunity to defend. The matter is less likely to have been vigorously litigated in ancillary proceedings, where the amounts involved may be small.

Outline

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- § 12503. Foreign jurisdiction
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- § 12505. Local personal representative
- § 12506. Nonresident decedent

CHAPTER 2. ANCILLARY ADMINISTRATION PROCEEDINGS

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- § 12511. Jurisdiction and venue
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Article 2. Probate of Will of Nonresident Decedent

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Article 3. Distribution of Property to Foreign Personal Representative

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CHAPTER 3. PROCEEDINGS WITHOUT ANCILLARY ADMINISTRATION

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- § 12551. Notice of intent to collect
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- § 12553. Delivery of funds under \$1,000
- § 12554. Discharge from liability

Article 2. Miscellaneous Powers of Foreign Personal Representative

- § 12570. Filing proof of authority
- § 12571. Maintaining actions and proceedings

CHAPTER 4. JURISDICTION OVER FOREIGN PERSONAL REPRESENTATIVE

- § 12590. Jurisdiction by act of foreign personal representative
- § 12591. Jurisdiction by act of decedent
- § 12592. Effect of adjudication for or against personal representative

CONFORMING REVISION

DISPOSITION OF EXISTING SECTIONS

PART 13. NONRESIDENT DECEDENT

CHAPTER 1. DEFINITIONS

§ 12500. Application of definitions

12500. Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this part.

Comment. Section 12500 is comparable to Section 20.

Note. *Stuart D. Zimring of North Hollywood (Exhibit 15) states, "As a general comment, I applaud the Commission's codification of definitions for drafting convenience." State Bar Team 2 (Exhibit 27), on the other hand, criticizes a number of the definitions because they are overbroad in failing to distinguish between residents of another state and residents of another country. The fault here, if any, is not in the definitions as such, but in the places where they are used. It is the application of the definitions for particular purposes that is important; we will get to the meat of the Team 2 concerns when we get to the substantive provisions.*

§ 12501. Ancillary administration

12501. "Ancillary administration" means proceedings in this state for administration of the estate of a nonresident decedent.

Comment. Section 12501 is new. It is intended for drafting convenience.

CROSS-REFERENCES

Definitions

Nonresident decedent § 12506

Note. "Ancillary administration is used in Sections 12510-12, 12520, 12530, 12552, 12570-71, 12590.

§ 12502. Authenticated copy

12502. "Authenticated copy" means a copy of a writing that satisfies the requirements of Article 2 (commencing with Section 1530) of Chapter 2 of Division 11 of the Evidence Code.

Comment. Section 12502 is drawn from a portion of the first sentence of former Section 361. It is intended for drafting convenience.

Note. "Authenticated copy" is used in Sections 12521, 12570.

§ 12503. Foreign jurisdiction

12503. "Foreign jurisdiction" means the jurisdiction of the nonresident decedent's domicile.

Comment. Section 12503 is new. It is intended for drafting convenience.

Note. "Foreign jurisdiction" is used in Sections 12504, 12521-22, 12550, 12552, 12570. State Bar Team 2 is concerned about the breadth of this definition. See discussion above in the Note under Section 12500 (application of definitions).

§ 12504. Foreign personal representative

12504. "Foreign personal representative" means a personal representative appointed in a foreign jurisdiction.

Comment. Section 12504 is new. It is intended for drafting convenience.

CROSS-REFERENCES

Definitions

Foreign jurisdiction § 12503
Personal representative § 58

Note. "Foreign personal representative" is used in Sections 12530-31, 12550-53, 12570-71, 12590-91. State Bar Team 2 is concerned about the breadth of this definition. See discussion above in the Note under Section 12500 (application of definitions).

§ 12505. Local personal representative

12505. "Local personal representative" means a nonresident decedent's personal representative appointed in this state.

Comment. Section 12505 is new. It is intended for drafting convenience.

CROSS-REFERENCES

Definitions

Nonresident decedent § 12506
Personal representative § 58

Note. "Local personal representative" is used in Sections 12510, 12571, 12592.

§ 12506. Nonresident decedent

12506. "Nonresident decedent" means a person who dies domiciled in a jurisdiction other than this state.

Comment. Section 12506 is new. It is intended for drafting convenience. The term "nonresident decedent" is not limited to a decedent who dies domiciled in another state (defined in Section 74), but also includes a decedent who dies domiciled in another country. However, some provisions of this part apply only to nonresident decedents who die domiciled in another state. See Sections 12530-12531 (distribution of property to foreign personal representative) and 12550-12554 (collection of personal property).

Note. "Nonresident decedent" is used in Sections 12501, 12503, 12505, 12520-12522, 12530, 12550, 12564, 12591-92. State Bar Team 2 is concerned about the breadth of this definition. See discussion above in the Note under Section 12500 (application of definitions).

CHAPTER 2. ANCILLARY ADMINISTRATION

Article 1. Opening Ancillary Administration

§ 12510. Commencement of proceedings

12510. Any interested person may commence ancillary administration by a petition to the proper court for either or both of the following:

- (a) Probate of the decedent's will.
- (b) Appointment of a local personal representative.

Comment. Section 12510 supersedes former Section 360, and continues a portion of the first sentence of former Section 361 without substantive change. As used in Section 12510, "interested person" includes the person named as executor in the decedent's will. See Section 48. For the proper court, see Section 12511.

CROSS-REFERENCES

Definitions

Ancillary administration § 12501
Interested person § 48
Local personal representative § 12505
Will § 88

Note. Paul Gordon Hoffman of Beverly Hills (Exhibit 14) believes recognition should be given to the fact that citizens of foreign countries often have multiple wills, one for their United States property and another for their foreign property. This could be done by adding a reference in subdivision (a) to a will "that affects property in this state." The staff is not sure how useful such a provision would be.

§ 12511. Jurisdiction and venue

12511. Ancillary administration shall be in the superior court in one of the following counties:

(a) If property of the decedent is located in the county in which the decedent died, the county in which the decedent died.

(b) If no property of the decedent is located in the county in which the decedent died or if the decedent did not die in this state, any county in which property of the decedent is located, regardless where the decedent died. If property of the decedent is located in more than one county, the proper county is the county in which a petition for ancillary administration is first filed, and the superior court in that county has exclusive jurisdiction of the administration of the estate.

Comment. Section 12511 restates former Section 301(2)-(3) without substantive change.

CROSS-REFERENCES

Definitions

Ancillary administration § 12501
Property § 62

§ 12512. Procedure

12512. Notice of ancillary administration shall be given and, except as provided in Article 2 (commencing with Section 12520), the same proceedings had as in the case of a petition for probate of a will or appointment of a personal representative of a person who dies domiciled in this state.

Comment. Section 12512 restates the last sentence of former Section 361 without substantive change.

CROSS-REFERENCES

Definitions

Ancillary administration § 12501
Personal representative § 58
Will § 88

Article 2. Probate of Will of Nonresident Decedent

§ 12520. Procedure not exclusive

12520. A petition for probate of the will of a nonresident decedent in ancillary administration may be made either under Part 2 (commencing with Section 8000) or under this article.

Comment. Section 12520 is new. It codifies case law. See Estate of Glassford, 114 Cal. App. 2d 181, 188-92, 249 P. 2d 908 (1952).

CROSS-REFERENCES

Definitions

Ancillary administration § 12501
Nonresident decedent § 12506
Will § 88

§ 12521. Petition for probate of will

12521. A petition for probate of a nonresident decedent's will under this article shall include both of the following:

(a) The will or an authenticated copy of the will.

(b) An authenticated copy of the order admitting the will to probate in the foreign jurisdiction or other evidence of the establishment or proof of the will in accordance with the law of the foreign jurisdiction.

Comment. Section 12521 supersedes a portion of the first sentence of former Section 361. For the persons who may petition under Section 12521, see Section 12510.

CROSS-REFERENCES

Definitions

Authenticated copy § 12502
Foreign jurisdiction § 12503
Nonresident decedent § 12506
Will § 88

§ 12522. Admission of will to probate

12522. (a) The nonresident decedent's will shall be admitted to probate in this state and no contest or revocation of probate shall be permitted if it appears from the order admitting the will to probate in the foreign jurisdiction or otherwise that all of the following conditions are satisfied:

(1) The will was admitted to probate or established or proved in accordance with the laws of the foreign jurisdiction.

(2) All interested persons were given notice and an opportunity for contest in the foreign jurisdiction.

(3) The determination in the foreign jurisdiction is final, is not subject to revocation, and is based on a finding that the decedent was domiciled at death in the foreign jurisdiction.

(4) The will was valid at the time of execution under the law of any of the following jurisdictions:

(A) This state.

(B) The place where the will was executed.

(C) The place where at the time of execution or at the time of death the decedent was domiciled, had a place of abode, or was a national.

(b) If a nonresident decedent's will is admitted to probate under this section, the will shall have the same force and effect as the will of a person who dies domiciled in this state that is admitted to probate in this state, and a personal representative shall be appointed to execute the will.

Comment. Section 12522 restates former Section 362 and a portion of the first sentence of former Section 361. The requirement of former Section 362 that the will must be valid under the law of the testator's domicile at death or under the law of this state is broadened to require that the will be valid under the law at the time of execution of the place where the will was executed, under the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode, or is a national, or under the law of this state. This change makes Section 12522 consistent with the rule for determining the validity of a will first offered for probate in California. See Section 6113.

CROSS-REFERENCES

Definitions

Foreign jurisdiction § 12503
Interested person § 48
Nonresident decedent § 12506
Personal representative § 58
Will § 88

Note. Subdivision (a)(2) requires that notice and an opportunity to be heard shall have been given in the proceeding in the foreign jurisdiction where the will was admitted to probate. Stuart D. Zimring of North Hollywood (Exhibit 15) is concerned that "interested persons" may not mean the same thing here as in the foreign jurisdiction. On reflection, the staff believes that it would not be good to tie this down

too tightly. We would revise this to refer to "interested parties", as in existing law, in order to avoid the implication that the very broad California definition controls.

Subdivision (a)(3) requires that the court judgment admitting a will to probate in a foreign jurisdiction be final and not subject to revocation. Mr. Zimring believes the non-revocability requirement may be overbroad. "There are circumstances where judgments or orders may be subject to collateral attack long after the time for appeal has run. Must the foreign determination be beyond those time limits?" The staff assumes the reference to non-revocability is intended to cover direct attacks on the will by way of a contest after the will is admitted to probate, although the concept of revocability certainly seems to raise an implication of collateral attack. The staff agrees with Mr. Zimring that "revocability" should be deleted from the draft in reliance on "finality", which has an accepted legal meaning. We would elaborate in the Comment that a judgment is not final if it remains subject to direct attack, including a contest after admission to probate.

Subdivision (a)(4) conforms the criteria for valid execution of the will of a nonresident with the criteria for valid execution of the will of a resident. Beryl A. Bertucio of Matthew Bender (Exhibit 21) says, "I especially like the proposed provision conforming the criteria for validity of a nonresident decedent's will to those in Prob C § 6113."

State Bar Team 2 (Exhibit 27) believes this section is O.K. as applied to a will admitted in another state, but objects to its application to a will admitted in another country. "There is no guarantee that the admission of a Will in the foreign country is governed by all of the constitutional protections that should apply with respect to California property." The staff is puzzled by this objection. To begin with, the section restricts wills admitted in other jurisdictions to those in which all interested persons were given notice and an opportunity for contest. We are not sure what additional constitutional protections Team 2 might have in mind. In addition, existing law expressly authorizes admission of a will that "has been admitted to probate in another state or country." Prob. Code § 362. This has been the California law unchanged since 1851, and we have never heard of any problems with it. In fact, Team 2 itself comments that the existing provisions "have worked well" and recommends that existing law be retained.

Article 2.5. Estate Administration

Note. We have collected here for convenience of review a number of comments and suggestions in the letters relating to administration of the estate in ancillary administration.

Notice to creditors. Professor Benjamin D. Frantz of McGeorge (Exhibit 6) notes that our general probate procedures require actual notice to creditors, and ancillary administration should as well. The staff believes that all general administration provisions are automatically picked up in ancillary administration, since ancillary administration is full administration, as it affects a nonresident decedent's California property. Perhaps it would be worth adding a section to emphasize that, "Except to the extent otherwise provided in this chapter, administration of a decedent's estate under this chapter is

subject to all other provisions of this title, including but not limited to opening estate administration, inventory and appraisal, creditor claims, estate management, independent administration, compensation, accounts, payment of debts, distribution, and closing estate administration."

Independent administration. Ruth A. Phelps of Burbank (Exhibit 23) states, "It was not clear to me from reading the code sections that the court could grant Independent Administration of Estates Acts powers to a local personal representative. I assume that would be determined at the time that the petition for ancillary administration was filed." Professor Frantz also suggests that a specific provision be included addressed to independent administration. The proposal immediately above would cover this matter.

Taxes. Rawlins Coffman of Red Bluff (Exhibit 19) raises questions about the resolution of tax problems. Tax problems in ancillary administration are resolved the same way as tax problems in ordinary administration. We could add a reference to resolution of tax problems in the provision proposed above, if this would be helpful.

Article 3. Distribution of Property to Foreign Personal Representative

§ 12530. Conditions for distribution

12530. (a) In the case of a nonresident decedent who dies domiciled in another state, the court in ancillary administration may make an order for preliminary or final distribution of all or a portion of the personal property of the decedent in this state to the foreign personal representative if distribution is for the best interest of the estate or interested persons.

(b) The court order shall be made in the manner and pursuant to the procedure provided in, and is subject to the provisions of, Chapter 1 (commencing with Section 11600) of Part 10.

Comment. Section 12530 supersedes portions of former Section 1000, a portion of the first sentence of former Section 1040, the last sentence of former Section 1041, and former Section 1042.

Under Section 12530 a petition may be made by the local personal representative, a beneficiary, or other interested person. Section 11600 (petition for distribution). Notice of the hearing on the petition is given in the manner provided in Section [1200.5]. Any interested person may oppose the petition. Section 11602 (opposition to petition). Preliminary distribution may not be ordered unless two months have elapsed and distribution may be made without loss to creditors or injury to the estate or any interested person. Sections 11620 (time for petition) and 11621 (order for distribution). Final distribution may not be ordered unless the estate is in a condition to be closed. Section 11640 (petition and order). Distribution may not be made to a personal representative in another country under this article. See Section 74 ("state" defined). Distribution in compliance with the court order

entitles the local personal representative to a full discharge, and when the order becomes final it is conclusive against all interested persons. Sections 11753 (filing receipts and discharge) and 11605 (conclusiveness of order).

It should be noted that distribution may be made to the foreign personal representative in ancillary administration only upon a court determination that the distribution is for the best interest of the estate or interested persons. In other cases, distribution is made directly to the beneficiaries. See *In re Estate of Hudson*, 63 Cal. 454 (1883); 2 California Decedent Estate Administration § 34.56, at 1376 (Cal. Cont. Ed. Bar 1975).

CROSS-REFERENCES

Definitions

Ancillary administration § 12501
Foreign personal representative § 12504
Interested person § 48
Nonresident decedent § 12506
State § 74

Note. If the decedent's estate in the other jurisdiction is insolvent, for the protection of creditors distribution of the solvent estate should be made under this section to the foreign personal representative and not directly to beneficiaries. The staff would add such a provision to the statute.

§ 12531. Sale of real property and delivery of proceeds

12531. If necessary to make distribution pursuant to this article, the court may direct that real property in the estate be sold and the proceeds distributed to the foreign personal representative. Such a sale shall be made in the same manner as other sales of real property of a decedent.

Comment. Section 12531 restates the last portion of the first sentence and all of the second sentence of former Section 1040, and broadens those provisions so that the court may order a sale of real property of the estate by way of either preliminary or final distribution.

CROSS-REFERENCES

Definitions

Foreign personal representative § 12504
Real property § 68
Sales of real property of decedents generally §§ 10050-10142

Note. Ruth A. Phelps of Burbank (Exhibit 23) states, "I assume that the sale can proceed either by way of Advice of Proposed Action or court confirmation." See Article 2.5, above, for a discussion of independent administration.

CHAPTER 3. PROCEEDINGS WITHOUT ANCILLARY ADMINISTRATION

Article 1. Collection of Personal Property

§ 12550. Informal collection authorized

12550. In the case of a nonresident decedent who dies domiciled in another state, the foreign personal representative may, pursuant to the procedure prescribed in this article, collect or receive any money or other personal property of the decedent in this state and remove the property to the foreign jurisdiction.

Comment. Section 12550 restates the first portion of former Section 1043. This section does not apply to foreign personal representatives of other countries. See Section 74 ("state" defined).

CROSS-REFERENCES

Definitions

Foreign jurisdiction § 12503
Foreign personal representative § 12504
Nonresident decedent § 12506
State § 74

Note. *The summary collection provisions for nonresident decedents are limited to decedents who died domiciled in another state, as opposed to another country. State Bar Team 2 (Exhibit 27) is worried that the decedent could die domiciled in another state, but have a personal representative appointed in another country who removes the assets to the other country, under this section. They needn't worry. Although this section authorizes a "foreign personal representative" to act, this means a personal representative appointed in the jurisdiction of the decedent's domicile. See the definitions at Sections 12503 and 12504. We do make specific reference to these definitions in the cross-references.*

*On the other hand, an argument can be, and has been, made that these provisions should be extended to foreign country personal representatives. See Kitada, *Shedding the Cloak of Ancillary Administration: Application of Summary Probate Procedures to Estates of Decedents Formerly Domiciled in Foreign Countries*, 4 U. S. F. L.Rev. 655 (1983). Kitada makes the argument that the public policy of simplifying probate and facilitating foreign investment in California argues for extension of the summary collection provisions to foreign country personal representatives, provided adequate protections for interested persons are preserved. "It is both feasible and reasonable to broaden sections 1043 and 1043a of the Probate Code" to do this. 4 U. S. F. L.Rev. at 672. He believes expansion of the law would not impair the interests of California creditors, which are adequately protected by the existing publication and authentication requirements.*

Team 2 also objects to the informal collection procedure on the ground that there is no limitation on value. "Personal property far in excess of that which can be collected by family members under Section 630 could be removed by the foreign personal representative." The team

is concerned about large amounts of personal property being taken from the jurisdiction so as to pass beneficiaries under the law of the decedent's domicile rather than under California law.

Once again, the staff is puzzled by the team's position. The objectionable provisions were enacted 30 years ago, and were an elaboration of case law that has existed for more than 70 years. See discussion in *Selected 1957 Code Legislation*, 32 Cal. S. B. J. 583 (1957). Presumably these provisions have not been causing problems. The procedure here is not equivalent to removal under Section 630 affidavit, in any case, since the procedure here requires publication of notice and an opportunity for interested persons to object to the removal. Moreover, we don't understand the team's concern that movable property will pass in accordance with the law of the decedent's domicile rather than under California law. After all, it is well established and universally accepted that California must apply the law of the decedent's domicile to determine succession to personal property located in California. See, e.g., *Civil Code* 946; *Estate of Apple*, 66 Cal. 432, 6 Pac. 7 (1885); *Kimbrough and Lindgren, Ancillary Administration*, in 2 *California Decedent Estate Administration* § 34.17 at p. 1355 (1975).

§ 12551. Notice of intent to collect

12551. (a) Except as provided in Section 12553, the foreign personal representative shall publish a notice that includes all of the following information:

- (1) The name and address of the decedent.
- (2) The name and address of the person in this state holding money or other personal property of the decedent.
- (3) A statement that the foreign personal representative intends to collect or receive the money or other personal property and remove the property from this state.
- (4) A statement that any creditor or beneficiary may object to removal of the property by making written objection to the person holding the property of the decedent within four months after first publication of the notice. If the property consists of funds in an account in a financial institution, the written objection may be made to the financial institution at the office or branch where the account is located.

(b) Publication shall be in a newspaper of general circulation published in the county where the debtor resides or where the property is located, or if there is no such newspaper, in a newspaper of general circulation in the county. For this purpose, funds in an

account in an office or branch of a financial institution are deemed to be located in the county in which the office or branch is located. Publication shall be pursuant to Section 6063 of the Government Code.

Comment. Section 12551 restates the first, second, third, and sixth sentences of former Section 1043 and all of former Section 1043a with the following changes:

(1) Publication of all notices under Section 12531 is pursuant to Section 6063 of the Government Code. Under prior law, publication under former Section 1043a was made pursuant to Section 6063 of the Government Code, but publication under former Section 1043 was made pursuant to Section 6064 of the Government Code.

(2) The references to consent of creditors are omitted.

(3) Objection must be made within four months in all cases, rather than one month in the case of a financial institution and three months in the case of other persons.

(4) An exception to publication is made in the case of an account in a financial institution of less than \$1,000. See Section 12553 (delivery of funds in accounts under \$1,000).

CROSS-REFERENCES

Definitions

Account § 21

Beneficiary § 24

Financial institution § 40

Foreign personal representative § 12504

Person § 56

Note. *Stuart D. Zimring of North Hollywood (Exhibit 15) points out that the term "debtor" in subdivision (b) should actually be "person holding money or other personal property of the decedent." The staff agrees, and will make this change.*

State Bar Team 2 (Exhibit 27) doesn't see any use for the publication required by this section. They believe that due process of law requires actual notice to beneficiaries and creditors. "Actual notice is especially important considering that some states do not have formal notice procedures for appointment of personal representatives." The staff agrees that creditors should receive actual notice, at least. However, we would supplement and not replace published notice because published notice is effective for many creditors who subscribe to services that monitor such notices. Since one of our main objectives in this statute is to protect California creditors, the staff would retain the published notice. With respect to actual notice to beneficiaries, the staff does not feel strongly. After all, we are simply transferring the property to the personal representative, who in turn will distribute to the beneficiaries. The added expense to the estate to notify beneficiaries that the personal representative is gathering more estate assets seems unwarranted.

§ 12552. Payment or delivery to foreign personal representative

12552. Except as provided in Section 12553, the person holding money or other personal property of the decedent shall deliver the property to the foreign personal representative if all of the following conditions are satisfied:

(a) The time prescribed in Section 12551 has expired and the person has not received written objection from any person claiming as a creditor or beneficiary.

(b) The foreign personal representative has presented to the person all of the following documents:

(1) An affidavit of publication of notice.

(2) An authenticated copy of the letters of the foreign personal representative and an affidavit that the foreign personal representative is still serving in that capacity.

(3) An affidavit that in this state, to the best of the affiant's knowledge, there is no other personal representative of the decedent, there is no pending petition for appointment of a personal representative, and there will be no ancillary administration commenced.

Comment. Section 12552 restates the fourth sentence of former Section 1043 with the following changes:

(1) The State Controller's consent to transfer required under former Section 1043 is not continued, since the California inheritance tax has been repealed. See Rev. & Tax. Code § 13301. However, the State of California may be a creditor of the estate.

(2) In paragraph (3) of subdivision (b), it is made clear that the affidavit must relate to other activities "in this state." This is the same in substance as Section 4-201 of the Uniform Probate Code.

(3) The former provision concerning discharge from liability is continued in Section 12554.

(4) The references to consent of creditors are omitted.

(5) Payment or delivery is mandatory rather than permissive.

(6) An exception is made in the case of an account in a financial institution of less than \$1,000. See Section 12553 (delivery of funds in accounts under \$1,000).

A declaration under penalty of perjury may be used in lieu of the affidavit required by this section. See Code Civ. Proc. § 2015.5.

This section provides for delivery of money or other personal property where no objection is received by the person holding the property. In cases where an objection is received, the person holding the property should not deliver the property to the foreign personal representative but should continue holding the property until collected by a local personal representative in ancillary administration proceedings.

CROSS-REFERENCES

Definitions

Ancillary administration § 12501
Authenticated copy § 12502
Foreign jurisdiction § 12503
Beneficiary § 24
Foreign personal representative § 12504
Letters § 52
Person § 56
Personal representative § 58

Note. State Bar Team 2 (Exhibit 27) finds the proposed language of subdivision (b)(3) cumbersome and would rewrite it to read:

(3) An affidavit that there is no other personal representative of the decedent, that there is no petition for appointment of a personal representative pending in this state, and that there will be no ancillary administration commenced in this state.

The staff has no problem with this draft.

Existing law also includes a requirement that the State Controller has consented to turning over the property to the foreign personal representative. The current draft omits this requirement because of the repeal of the inheritance tax. AB 2056 (Speier 1987), currently pending in the Legislature, would also delete this requirement from existing law. William H. Johnson, a probate examiner for Sacramento County (Exhibit 13), asks whether this omission could thwart the collection of the California estate tax. The staff does not know; we suggest that the progress of AB 2056 be monitored before the Commission attempts to act further in this area. [As of this writing it has passed out of the Assembly without opposition.]

Suppose the foreign personal representative presents all necessary documents, but the person in possession or control of the property fails to turn it over. This problem was the subject of comment by David B. Flinn of San Francisco (Exhibit 22), who states, "As you are no doubt aware, the securities industry attempts to set its own rules as to probate, and California's summary affidavits are often ignored. I have one estate in which I am representing a non-resident heir of a non-resident decedent who left AT&T shares in a California safe deposit box. We have been almost two years trying to obtain transfer by the company." He strongly recommends inclusion of a section allowing penalties for bad faith non-compliance. We deal with the same problem expressly in the small estate affidavit procedure, Section 13105(b):

(b) If the holder of the decedent's property refuses to pay, deliver, or transfer any personal property or evidence thereof to the successor of the decedent within a reasonable time, the successor may recover the property or compel its payment, delivery, or transfer in an action brought for that purpose against the holder of the property. If an action is brought against the holder under this section, the court shall award attorney's fees to the person or persons bringing the action if the court finds that the holder of the decedent's property acted unreasonably in refusing to pay, deliver, or transfer the property to them as required by subdivision (a).

This provision could be adapted for the nonresident decedent procedure.

§ 12553. Delivery of funds in accounts under \$1,000

12553. Notwithstanding any other provision of this article, if the property to be delivered to the foreign personal representative consists of funds in an account in a financial institution under \$1,000:

(a) The foreign personal representative need not publish a notice pursuant to Section 12551 or present an affidavit of publication of notice pursuant to Section 12552.

(b) The financial institution shall deliver the funds to the foreign personal representative if the financial institution has not received written objection from any person claiming as a creditor or beneficiary within 30 days after the foreign personal representative has presented to the financial institution the documents required by Section 12552.

Comment. Section 12553 is new. It excuses publication and provides for expedited delivery in a case of funds in an account under \$1,000.

CROSS-REFERENCES

Definitions

- Account § 21
- Beneficiary § 24
- Financial institution § 40
- Foreign personal representative § 12504
- Person § 56

Note. This section excuses publication and provides for expedited delivery in the case of funds in an account under \$1,000 in a financial institution. A number of commentators note that as drafted, the provision is not clear whether it is \$1,000 in any one account or \$1,000 total in all accounts in the financial institution. See the comments of Professor Benjamin D. Frantz of McGeorge (Exhibit 6), Stuart D. Zimring of North Hollywood (Exhibit 15), and the probate department of Hahn & Hahn of Pasadena (Exhibit 16).

The Commission did not specifically consider this issue. Hahn & Hahn thinks the summary amount should be \$1,000 in the aggregate. Mr. Zimring thinks that's too low and the amount should be \$3,000 or \$5,000. The object here is to release small amounts with the minimum of time and expense. Thus the staff agrees that the amount should be an aggregate amount, per financial institution. If the total funds of the decedent in accounts in the financial institution are less than \$1,000 (or \$3,000 as suggested by Mr. Zimring), the financial institution would release them. If the total funds exceed \$1,000 (or \$3,000), the financial institution would not release any of them.

In this connection, Hahn & Hahn would measure the amount of funds as of the date of the decedent's death and not as of the date of delivery to the foreign personal representative. Thus interest accrued

after the decedent's death would not be considered in computing the total funds of the decedent on deposit in the financial institution. The staff disagrees with this analysis. It would be administratively simpler for the financial institution to check current records than to try to reconstruct a balance as of the date of death. In the ordinary case, the interest accruing on such a small amount will be insignificant anyway. And in cases where it is significant (i.e. many years have elapsed), the summary procedure should not be used.

Beryl A. Bertucio of Matthew Bender (Exhibit 21) asks whether Totten trust accounts should be excepted from this section. They should be, and the staff believes they are. A Totten Trust account is not part of the decedent's estate, hence would not be subject to this procedure. Perhaps this matter could be reinforced by referring in Section 12550 to "property in the decedent's estate" rather than to "property of the decedent."

Ms. Bertucio also raises the question of how to resolve a dispute between the foreign personal representative and a California claimant, the foreign personal representative claiming under this procedure and the California claimant claiming under the small estate affidavit procedure. Under this statute, the bank could not turn the property over to the foreign personal representative, but under the affidavit procedure statute the bank would be required to turn the property over to the California claimant. Ms. Bertucio asks whether this result is intended. It is; we want to keep the small estate affidavit procedure efficient and workable; the foreign personal representative must initiate ancillary administration in order to get the property in this situation.

State Bar Team 2 (Exhibit 27) raises the issue again of a "foreign personal representative" appointed in another country for a decedent domiciled in another state. As the staff has pointed out, the definitions in Sections 12503 and 12504 require that the personal representative be appointed in the jurisdiction of the decedent's domicile.

§ 12554. Discharge from liability

12554. A person who makes delivery pursuant to this article is discharged from further liability and responsibility for the money or other property without the necessity of inquiring into the truth of any of the facts stated in the documents presented to the person.

Comment. Section 12554 continues a portion of paragraph (4) of former Section 1043.

CROSS-REFERENCES

Definitions

Person § 56

Property § 62

Note. State Bar Team 2 (Exhibit 27) believes this section "would be a desirable addition to present California law." Actually, it is already part of California law. See Section 1043(4).

Article 2. Miscellaneous Powers of Foreign Personal Representative

§ 12570. Filing proof of authority

12570. If ancillary administration has not been commenced, a foreign personal representative may exercise the powers provided in this article upon filing in the superior court in any county in this state in which property of the decedent is located an authenticated copy of each of the following documents from the foreign jurisdiction:

- (a) The order for appointment of the foreign personal representative.
- (b) The bond given by the foreign personal representative, if any.
- (c) The decedent's will, if any.

Comment. Section 12570 is new. It is drawn from Section 4-204 of the Uniform Probate Code and from Sections 2129.02 and 2129.25 of the Ohio Revised Code. A filing under Section 12570 permits the foreign personal representative to maintain actions and proceedings in this state (Section 12571) and to be sued here in any proceeding relating to the estate (Section 12590).

CROSS-REFERENCES

Definitions

Ancillary administration § 12501
Authenticated copy § 12502
Foreign jurisdiction § 12503
Foreign personal representative § 12504
Property § 62
Will § 88

Note. The Western Surety Company (Exhibit 5) believes this section should provide that if no bond is on file in a foreign jurisdiction, one is required in California unless excused pursuant to general provisions on bonds in California administration. "Section 12570 as drafted could deny to Californians with financial interests in foreign estates the protection they would have received had the will been administered in California." This comment is echoed by the Surety Association of America (Exhibit 18).

Melvin C. Kerwin of Menlo Park (Exhibit 26) and State Bar Team 2 (Exhibit 27) question the advisability of this provision at all. Mr. Kerwin believes appointment of a foreign personal representative should be to California standards. The bar team is concerned about this and also about the potential difficulties in dealing with foreign language documents and diplomatic and treaty problems. "The mere filing of those papers with the county clerk cannot be deemed sufficient to pass upon the validity of those papers. That determination can be made only in open court." Their basic feeling is that there can be no assurance that the foreign personal representative is really the proper person to be acting in regard to the California property of the nonresident decedent, just because copies of the foreign papers are filed here.

The policy issue here is whether we need to open a probate just to allow a person appointed personal representative in another jurisdiction to sue and be sued in California. This section takes the position that if a person is appointed as personal representative in another jurisdiction, we will accept that for purposes of litigation in California. Will this create problems? The staff thinks probably not. But assume that another person shows up also purporting to be the validly appointed personal representative of the nonresident decedent in another jurisdiction? Perhaps the best way to handle this is simply to give the trial court authority to make orders determining the proper parties to the litigation. The trial court would then be in a position to consider the relevant facts and make a decision. This approach can be adopted without requiring the foreign personal representative to open a probate for the sole purpose of commencing a lawsuit.

§ 12571. Maintaining actions and proceedings

12571. (a) A foreign personal representative who has made the filing authorized by Section 12570 may maintain actions and proceedings in this state, subject to any conditions imposed on nonresident parties generally. The foreign personal representative may collect or receive money or other property awarded in the action or proceeding under the procedure prescribed in Article 1 (commencing with Section 12550).

(b) A local personal representative may be substituted for the foreign personal representative in any action or proceeding in this state.

Comment. Section 12571 is new. It is drawn from portions of Sections 4-205 and 4-206 of the Uniform Probate Code. Section 12571 supersedes the former rule under Section 1913 of the Code of Civil Procedure, under which a foreign personal representative ordinarily could not sue in California. See 4 B. Witkin, California Procedure Pleading § 98, at 134 (3d ed. 1985).

CROSS-REFERENCES

Definitions

Foreign personal representative § 12504

Local personal representative § 12505

Note. State Bar Team 2 (Exhibit 27) does not see "any compelling reason to change the established law and enact a new summary procedure that is so wrought with complexities and ambiguities." The complexities and ambiguities they see in this procedure may be summarized as follows:

(1) The personal property removal procedure of Section 12550 is limited to foreign personal representatives of other states. Section 12571 extends to foreign personal representatives of other states and other countries as well, but it incorporates the Section 12550 procedure. Is the incorporation intended to include foreign country personal representatives or not?

(2) The removal procedure of Section 12550 is limited to personal property. Section 12571 could enable a foreign personal representative to get a judgment awarding real property to the personal representative,

sell the real property, convert the proceeds to money, and remove the money under Section 12550, thereby effectively circumventing the personal property limitation.

(3) Section 12571 refers to property "awarded in the action or proceeding". The bar team believes "award" and "action or proceeding" are ambiguous; does this apply to administrative or arbitration proceedings, or to settlements?

Without getting into the merits of each of these points, the staff would resolve them by eliminating the second sentence of subdivision (a), which is the source of the bar team problems. The second sentence, we believe, was intended as a cross-reference and not as independent authority. Deleting it will require the foreign personal representative to find authority elsewhere to remove estate assets. This will achieve our original intent without causing any of the problems raised by the bar team.

CHAPTER 4. JURISDICTION OVER FOREIGN PERSONAL REPRESENTATIVE

§ 12590. Jurisdiction by act of foreign personal representative

12590. A foreign personal representative submits personally in a representative capacity to the jurisdiction of the courts of this state in any proceeding relating to the estate by doing any of the following:

(a) Filing a petition for ancillary administration under Chapter 2 (commencing with Section 12510).

(b) Receiving money or other personal property pursuant to Article 1 (commencing with Section 12550) of Chapter 3. Jurisdiction under this subdivision is limited to the amount of money and value of personal property received.

(c) Filing an authenticated copy of the order for appointment of the foreign personal representative pursuant to Section 12570.

(d) Doing any act in this state as a personal representative that would have given the state jurisdiction over the foreign personal representative as an individual.

Comment. Section 12590 is new and is drawn from Section 4-301 of the Uniform Probate Code.

CROSS-REFERENCES

Definitions

- Ancillary administration § 12501
- Authenticated copy § 12502
- Foreign personal representative § 12504
- Personal representative § 58

Note. State Bar Team 2 (Exhibit 27) suggests that this section incorporate a procedure for service of process on a foreign personal representative. Such a procedure already exists for California personal representatives who are nonresidents or who move outside the state. Prob. Code §§ 405.1-405.6. This procedure requires the nonresident to file a current address in the proceeding, and requires service by mail at that address through the Secretary of State. It looks to the staff like this procedure could be incorporated here with only minor adaptations, if appropriate.

§ 12591. Jurisdiction by act of decedent

12591. A foreign personal representative is subject to the jurisdiction of the courts of this state in a representative capacity to the same extent that the nonresident decedent was subject to jurisdiction at the time of death.

Comment. Section 12591 is new. It is drawn from Section 4-302 of the Uniform Probate Code and is consistent with Section 410.10 of the Code of Civil Procedure and with case law. See Mitsui Manufacturers Bank v. Tucker, 152 Cal. App.3d 428, 199 Cal. Rptr. 517 (1984). Nothing in this section excuses a creditor from compliance with any applicable creditor claim requirements in ancillary administration proceedings.

CROSS-REFERENCES

Definitions

Foreign personal representative § 12504

Nonresident decedent § 12506

§ 12592. Effect of adjudication for or against personal representative

12592. (a) Except as provided in subdivision (b), an adjudication in any jurisdiction in favor of or against any personal representative of a nonresident decedent appointed in that jurisdiction is as binding on the local personal representative as if the local personal representative were a party to the adjudication.

(b) If the adjudication was made in ancillary proceedings in the other jurisdiction against the local personal representative, the adjudication is binding on the local personal representative only if the local personal representative had reasonable notice of the proceedings in the other jurisdiction and an opportunity to defend.

Comment. Subdivision (a) of Section 12592 is drawn from Section 4-401 of the Uniform Probate Code. Subdivision (b) is new.

Section 12592 is based in part on the well-accepted principle that a probate decree in another jurisdiction binds all persons. See 7 B. Witkin, California Procedure Judgment § 231, at 668-69 (3d ed. 1985).

Under the full faith and credit clause of the United States Constitution, a judgment rendered by a court of another state is entitled to the same res judicata effect in California as it would have in the forum state. Id. § 203, at 640. See also Code Civ. Proc. § 1908 (judgment binding on successors in interest); Walker v. Hansen, 218 Cal. 619, 24 P.2d 764 (1933) (judgment against administrator binding on trustee of same estate). Nothing in this section excuses a creditor from compliance with any applicable creditor claim requirements in ancillary administration proceedings.

CROSS-REFERENCES

Definitions

Local personal representative § 12505

Nonresident decedent § 12506

Personal representative § 58

Note. State Bar Team 2 (Exhibit 27) objects to this provision because it appears to be overbroad in its application to foreign country judgments and to judgments affecting California real property. The staff agrees that the provision is overbroad. Rather than try to limit it to conform to the law on foreign country judgments and orders affecting real property, the staff would simply delete the provision in reliance on general law.

CONFORMING REVISIONS

Code Civ. Proc. § 1913 (amended). Sister state judicial records

SEC. . Section 1913 of the Code of Civil Procedure is amended to read:

1913. The effect of a judicial record of a sister state is the same in this state as in the state where it was made, except that it can only be enforced here by an action or special proceeding, and except also that the authority of a guardian, conservator, or committee, ~~or of an executor or administrator,~~ does not extend beyond the jurisdiction of the government under which such person was invested with authority.

Comment. Section 1913 is amended to delete the former reference to an executor or administrator. The authority in California of a foreign personal representative is governed by Sections 12500-12592.

DISPOSITION OF EXISTING SECTIONS

CHAPTER 1. PROBATE OF WILLS AND APPLICATION FOR LETTERS

Article 1. Jurisdiction

§ 301 (repealed). Jurisdiction and venue

Comment. . . . Paragraphs (2) and (3) of former Section 301 are restated in Section 12511 without substantive change.

Article 4. Foreign Wills

§ 360 (repealed). Authority to probate foreign will

Comment. Former Section 360 is superseded by Section 12510.

§ 361 (repealed). Procedure; notice

Comment. The first sentence of former Section 361 is superseded by Sections 12510, 12520, 12521, and 12522.

§ 362 (repealed). Effect of probate of foreign will

Comment. Former Section 362 is restated in Section 12522 with the following change: The former rule that the will must be valid under the law of the testator's domicile at death or under the law of this state is broadened in Section 12522 to require that the will be valid under the law at the time of execution of the place where the will was executed, under the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode, or is a national, or under the law of this state. This change makes Section 12522 consistent with the rule for determining the validity of a will first offered for probate in California. See Section 6113.

CHAPTER 16. DISTRIBUTION AND DISCHARGE

Article 1. Preliminary Distribution

§ 1000 (repealed). Petition for preliminary distribution

Comment. . . . The portion of the first sentence of former Section 1000 applicable to estates of nonresident decedents is superseded by Section 12530.

Article 4. Estates of Nonresidents

§ 1040 (repealed). Court order for delivery of property to foreign personal representative

Comment. The first sentence of former Section 1040 is superseded by Sections 12530 and 12531. The second sentence of former Section 1040 is restated in the second sentence of Section 12531 without substantive change.

§ 1041 (repealed). Petition; notice; objections

Comment. The first sentence of former Section 1041 is superseded by Section 12530. The portion of the second sentence of former Section 1041 that required the clerk to set the petition for hearing is continued in Section 7202. The portion of the second sentence of former Section 1041 concerning notice, and all of the third sentence, is superseded by Section 12530.

§ 1042 (repealed). Discharge of local personal representative; effect of order

Comment. Former Section 1042 is superseded by Section 12530. The former provision is broadened to apply to preliminary distributions as well as final distributions.

§ 1043 (repealed). Informal collection of personal property

Comment. The first, second, and third sentences of former Section 1043 are continued in Sections 12550 and 12551 without substantive change, except as follows:

(1) Publication of notice under Section 12551 is pursuant to Section 6063 of the Government Code instead of Section 6064.

(2) The required waiting period (formerly three months) is increased to four months, consistent with the general creditors' claims period. See Section 9100.

The fourth sentence of former Section 1043 is restated in Section 12552 with the following changes:

(1) The State Controller's consent to transfer required under former Section 1043 is not continued, since the California inheritance tax has been repealed. See Rev. & Tax. Code § 13301.

(2) In paragraph (3) of subdivision (b) of Section 12552, it is made clear that the affidavit must allege that "in this state" there is no other personal representative of the decedent. This is the same in substance as Section 4-201 of the Uniform Probate Code.

The provision in the fourth sentence of former Section 1043 concerning discharge from liability is continued in Section 12554 without substantive change.

The fifth sentence of former Section 1043 ("person" defined) is continued in Section 56 without substantive change. The sixth sentence of former Section 1043 is restated in Section 12551 without substantive change, except that the references to consent are omitted.

§ 1043a (repealed). Informal collection of accounts

Comment. Former Section 1043a is restated in Section 12551 without substantive change.