

First Supplement to Memorandum 87-5

Subject: Study L-1055 - Probate Code (Comments on General Provisions Relating to Notice)

The general provisions relating to notice were approved for inclusion in the 1987 probate bill, subject to further Commission review. We have received some comments from Team 2 of the State Bar Estate Planning, Trust and Probate Law Section which are attached to this supplement as Exhibit 1. Also attached is a letter from Deputy Attorney General James R. Schwartz. See Exhibit 2.

This supplement reviews the comments we have received and proposes revision where the staff believes it advisable. You should refer to the *Recommendation Relating to General Notice Provisions* attached to Memorandum 87-5. A new letter of transmittal was approved at the January meeting, replacing the letter of transmittal that follows the cover of the recommendation.

Operative Date

Team 2 of the State Bar Estate Planning, Trust and Probate Law Section asks why the procedural law on notices and orders is being revised and renumbered at this time. (See Exhibit 1, at 1, third paragraph.) Team 2's concern is based on the assumption that the estate management provisions and other matters included in the 1987 probate bill will become operative in 1989. However, as the bill is currently drafted, it will be operative on July 1, 1988. The notice procedures are closely related to the estate management provisions and are already included in the draft bill which is currently being prepared for introduction by the Legislative Counsel. A separate recommendation has been prepared, but this legislation will all appear in the same bill. The staff is currently reviewing this material to ensure that it is internally consistent.

This reorganization of the general notice and procedural provisions is intended to be permanent. Thus, these numbers have been selected so as to fit within the organizational scheme of the new

code. Conforming revisions will be made in existing sections, pending their revision later in this legislative session or in a future session, to refer to the renumbered and revised notice and procedural sections. The general procedural sections have been moved to make room for the notice provisions. We are not attempting a full overhaul of the general procedural provisions in the 1987 probate bill.

Repealing and enacting language

Team 2 suggests revising the language in the first two bill sections on page 11 of the recommendation. These sections as drafted conform to the style used in bills and in the codes for referring to articles, chapters, parts, divisions, and titles.

§ 1206(a). Notice to known heirs or devisees

Team 2 questions whether this section requires notice to an overly inclusive class by referring to "heirs named in the petition for letters" and to "devisees named in the petition for probate." (See Exhibit 1, at 2.) The reason given is that an heir or devisee named in the petition commencing probate "would not necessarily be a taker upon distribution."

Section 1206(a) is intended to flesh out the meaning of "known heir or devisee" for the purposes of giving notice. However, as provided in Section 1200(c), this rule does not apply to the extent that a particular provision is inconsistent. Thus, for example, Section 9883, relating to purchase of estate property by the personal representative pursuant to a contract, requires notice to be given to devisees of the property proposed to be purchased, if the estate is testate, or to all heirs, if the estate is intestate. As to the heirs, this is the same as existing Section 583. However, as to devisees, Section 9883 requires less notice than does existing Section 583, since existing law does not limit devisees to those whose interest would be affected.

§ 1206(b). Exception to notice where interest satisfied

Team 2 also expressed some concern over the provision in Section 1206(b) excusing notice where a person's interest has been satisfied

"pursuant to court order." (See Exhibit 1, at 2.) It appears that Team 2 did not ultimately have an objection to this language.

§ 1207. Exceptions to notice requirement involving parent-child relationship

Team 2 is concerned about the wording of existing Section 1201, which is carried forward in Section 1207 in the recommendation. (See Exhibit 1, at 3.) Team 2 does not suggest how this language might be improved.

§ 1209. Notice to State of California

When the Commission last considered this provision, it was suggested that we contact the Attorney General's office to see if any changes were needed. As indicated in the letter from Deputy Attorney General James R. Schwartz which is attached as Exhibit 2, this provision appears to be operating in a satisfactory manner.

§ 1215. Manner of mailing

Some members of Team 2 question whether the detailed list of appropriate depositories for mailed notice in Section 1215(c) is needed, preferring instead a reference simply to "deposited in the mail." (See Exhibit 1, at 3.) Section 1465(b) in the guardianship and conservatorship law is cited as a preferable approach.

Section 1465(b) presumably means the same thing as Section 1215(c), assuming that Code of Civil Procedure Section 1013 governs the meaning of "mailed." It is probably not very important whether or not this language is included in the Probate Code. However, the Commission has expressed a desire to avoid incorporation of the Code of Civil Procedure by implication. From the discussion of this provision at the December 1986 meeting, it also appears that clarity in what constitutes "mailing" is useful. At that time the question arose whether notice can be "mailed" by Federal Express or some other private carrier service. The staff concludes that on balance it is best to retain this provision in the general notice provisions. It should be remembered that it will appear only once in the entire code.

§ 1216. Personal delivery instead of mailing

Team 2 suggests that the Comment to Section 1216 relating to personal delivery as an option to mailing should state that it is applicable to private letter carriers. (See Exhibit 1, at 3.) The Commission discussed this possibility at its December meeting and decided not to attempt in the Probate Code to establish new rules relating to service by private carriers.

Team 2 also notes an error in the Comment to Section 1216. (See Exhibit 1, at 3.) The last two sentences of this comment should be deleted. The difference between delivery under Section 1216 and personal service under the Code of Civil Procedure actually arises under Code of Civil Procedure Section 415.20 relating to substituted service. Under Section 415.20, service by leaving a copy at the place of business or home of the person to be served is complete on the 10th day after a copy is mailed to the person. Under Section 1216, service is complete only when the paper is delivered.

§ 1220. Manner of mailing notice of hearing

Team 2 finds that Section 1220(a)(1) does not make sense. (See Exhibit 1, at 3.) This provision is intended to make the obvious clear, i.e., that notice is to be given as provided in this section in any case where another section provides that notice is to be given as provided in this section, Section 1220. In order to improve the readability of this provision, the staff proposes to revise subdivision (a) to read as follows:

1220. (a) Notice of a hearing shall be given as provided in this section in the following cases:

- (1) Where another section so requires.
- (2) Where notice of a hearing is required but no other period or manner of notice is prescribed by statute, unless the period or manner of notice is ordered by the court or judge.

Team 2 also suggests that in order to avoid having to give notice to oneself, Section 1220(b) should be revised. (See Exhibit 1, at 3.) This matter is covered by a general provision earlier in the chapter. See Section 1201.

§ 1250. Request for special notice

Team 2 suggests revision of Section 1250(c) relating to the matters of which special notice may be requested. (See Exhibit 1, at 3-4.) The suggested revisions consist of casting the items in plural form. This seems appropriate in this case since the request for special notice may cover a series of petitions and other filings. As a matter of general drafting rules, use of the singular does not limit the application of a section since the singular includes the plural as provided in Probate Code Section 10. Team 2 also suggests that subdivisions (e) and (f) be redrafted and combined.

Further review of this provision convinces the staff that it could be improved if redrafted as follows:

(c) Special notice may be requested of any or all of the following matters:

- (1) Petitions filed in the estate proceeding.
- (2) Inventories and appraisements of the estate, including any supplemental inventories and appraisements.
- (3) Objections to an appraisal made by the personal representative or probate referee.
- (4) Accounts of a personal representative.
- (5) Reports of status of administration.

(d) Special notice may be requested of any matter in subdivision (c) by describing it or of all the matters in subdivision (c) by referring generally to "the matters described in subdivision (c) of Section 1250 of the Probate Code" or by using words of similar import.

(e) A copy of the request shall be personally delivered or mailed to the personal representative or to the attorney for the personal representative. If personally delivered, the request is effective when it is delivered. If mailed, the request is effective when it is received.

(f) When the original of the request is filed with the court clerk, it shall be accompanied by a written admission or proof of service.

Team 2 also asks "why objections were limited to the appraisal made by the personal representative and probate referee, rather than to any objections filed to any petition during probate administration." (See Exhibit 1, at 4.) The matters described in Section 1250(c) are the same as under existing Section 1200.5, except that the lengthy description of types of petitions is summarized in Section 1250(c)(1). The description of objections in Section 1250(c)(3) is the same in

substance as existing Section 1200.5(a)(18). It should also be noted that additional references will need to be added to Section 1250(c), such as to special notice of a notice of proposed action under the Independent Administration of Estates Act.

The original request is filed with the clerk, as provided in Section 1250(a). A copy of the request is either delivered or mailed to the personal representative, as provided in Section 1250(e). Existing Sections 1202 and 1202.5 require both filing with the clerk and service on the personal representative, but does not indicate which paper is the original. The effective date of the request differs from that governing mailed notice generally. As provided in Section 1250(e), the request is effective only when it is received, not when it is deposited in the mail.

§ 1252. Notice to be given to person requesting special notice

Team 2 suggests that the person giving notice of a petition or other paper be required to serve a copy of the petition or other paper on the persons who have requested special notice. (See Exhibit 1, at 4.) To implement this suggestion, Section 1252(a) would be revised as follows:

1252. (a) If a request has been made pursuant to Section 1250 for special notice of a hearing, the person filing the petition, report, or account, or other paper shall give written notice of the filing, together with a copy of the petition, report, or account, and the time and place set for the hearing, by mail to the person named in the request at the address set forth in the request, at least 15 days before the time set for the hearing.

§ 1260. Proof of giving notice required

Team 2 discusses the question of making proof of notice before the hearing. (See Exhibit 1, at 4-5.) It is suggested that proof of notice cannot be established to the satisfaction of the court before the hearing. Team 2 states that the language of Section 1260 "may be subject to revision" but makes no suggestion as to the desired change. The staff is not bothered by the language, even though it may not be

entirely precise. The language of Section 1260(a) does not actually state that the court may be "satisfied" before the hearing, but only that the proof may be made at or before the hearing.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

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Re: Memorandum 87-5-Probate Code - General Provisions Relating to Notice

Dear Jim:

This is to advise that in response to your letter of January 8, 1987, Ken Klug phoned me on Thursday, January 8, 1987, and because he was going to be down at the USC Tax Institute this week asked me if I would step in for him to institute a conference call among the members of Team 2 and prepare a written report and send it to you by Wednesday, January 14, 1987.

This is to further advise that Team 2 held a conference call on Monday afternoon, January 12, 1987 for almost two hours (James F. Rogers, Owen G. Fiore James Goodwin and myself - Bill Plageman, Jr. was out of town), and we reviewed Chapter 22 Notices, section by section. Time ran out on reviewing Chapter 22.5 - Orders and Procedures, but because there was very little substantive changes in those sections (Sections 1280-1299) the participating members of Team 2 had no particular comments thereon.

I raised a threshold question which the participating members of Team 2 did not have a ready answer for, to wit, why are we rearranging, renumbering and to some minor degree revising the substantive/procedural law on Notices and Orders and Procedure in new Sections 1200-1299, when I believe it's proposed that new Division 7 dealing with the Administration of Estates of Decedents commencing with Section 700 is tentatively scheduled to be effective January 1, 1989? I am sure, Jim, you have a ready answer for this question considering your close working with the LRC and our participating team members would be interested in hearing it.

For example, with the thought of uniformity in mind, proposed Probate Section 1220 increases the notice period on all petitions, etc. to fifteen days; yet (outside probate administration) we noted that new Probate Section 13655, effective July 1, 1987, shortens the notice period for Spousal Property Petitions from twenty days to ten days, and new Probate Code Section 13153 requires that only ten days notice be given to all persons who are required to be named in the Petition brought under 13152 for determining title to real property not requiring administration.

Perhaps the quickest and easiest way to digest Team 2's comments is to merely run down proposed Chapter 22 dealing with Notices, section by section.

The introductory section repealing Chapter 22 perhaps should read: "Chapter 22 of Division 3 of the Probate Code is repealed", and delete the reference "(commencing with Section 1200) of Chapter 22."

§1200 - no comment.

§1201 - no comment.

§1202 - no comment.

§1203 - no comment.

§1204 - no comment.

§1205 - no comment.

§1206 - the team raised the issue in either an intestate estate or a testate estate whether the provisions of 1206(a)(1) and (2) were too broad when it required that notice be given to the "heirs named in the Petition...etc." or to the "devisees named in the Petition....etc.". The thought being that perhaps an heir or devisee named in the Petition commencing the probate would not necessarily be a taker upon distribution, and therefore, requiring notice might be unnecessary in a given case.

One team member raised the question on whether the language "pursuant to court order" in §1206(b) was necessary; we noted that both preliminary and final distributions require a court order even if the personal representative is acting under the Independent Administration of Estates Act [Probate Code 591.2(a)(3)], but we did not come up with an example where a person's interest could be formally satisfied short of a court order.

§1207 gave the team members some pause for concern, as apparently it has to others as reflected by its legislative history. We noted that the section was first added by Statutes 1985 Chapter 359, effective July 30, 1985, to provide that notice need not be given to an heir, devisee or legatee, if the person is an heir or a member of the class to whom a devise or bequest is made because of a stepchild or foster child relationship that constitutes a parent-child relationship, unless the person required to give notice has actual knowledge of facts that it is reasonable to believe would establish the relationship of parent-child in the same manner as an adoptive relationship. Section 1201 was then repealed (1985 Chapter 982) and reenacted with the clarification that the notice need not be given to a person who "maybe" an heir, devisee or legatee because of a "possible" parent-child relationship. Time did not permit further analysis, but the team members were not satisfied that the words "possible" and "maybe" necessarily clarified this exception to Section 1206.

§1208 - no comment.

§1209 - no comment.

§1215 - the "laundry list" set forth in §1215(c) (i.e. a post office, mail box, sub-post office, substation, mail chute, or other like facility regularly maintained by the United States postal service) caused some discussion; the issue was whether it could be simplified by stating the notice or other paper shall be "deposited in the mail" as set forth in Probate Code 1465(b) and other sections. However, a consensus of the participating members of the team felt that the itemization was okay.

§1216 - the participating members had two observations: (1) perhaps it should be stated in the Comment that this section (rather than 1215) would be applicable to private letter carriers (i.e. Federal Express, Purolater Courier, etc.); (2) the Comment states that "This rule differs from that applicable to personal service under Code of Civil Procedure Section 415.10"; the participating members felt that this perhaps was in error. The second sentence of CCP 415.10 states "service of a summons in this manner is deemed complete at the time of such delivery", which appears to be the same thrust as proposed §1216.

§1217 - no comment.

§1220 - as written 1220(a)(1) does not seem to make any sense, unless the section citation is simply incorrect.

Further, in order not to require a meaningless notice to yourself, §1220(b) should be modified to read "At least fifteen days...to all of the following persons (other than the petitioner or persons joining in the petition)"; the underlined language is taken from Probate Code 1460(b).

§1230 - no comment.

§1240 - no comment.

§1241 - no comment.

§1242 - no comment.

§1250 - §1250(c) perhaps should be revised, as follows:

(c) The request may request special notice of all of the following matters by referring generally to "the matters described in Subdivision (c) of §1250 of the Probate Code" or by using words of similar import, as to any of the following:

- (1) Petitions filed in the estate proceeding;**
- (2) Inventory and Appraisements of the estate;**

- (3) Objections to the appraisalment made by the personal representative or probate referee;
- (4) Accounts of a personal representative, and
- (5) Reports of status of administration.

Notes:

(1) Rather than using the word "any", "an" and "a" in the various subsections, it was felt that the introductory language should read "as to any of the following" and then deleting the reference to those words in the subsections;

(2) Because there are partial, amended, supplemental and final inventories, the reference to "inventory and appraisalment of the estate, including any supplemental inventory" may be unintentionally limiting;

(3) The participating members of Team 2 wanted to know why Objections were limited to the appraisalment made by the personal representative and probate referee, rather than to any objections filed to any petition during probate administration.

(4) §1250(e) and (f) perhaps should be combined to state the following:

(a) Does the original request have to be filed with the Clerk of the Court or simply delivered or mailed to the personal representative?

(b) When is the request effective?

(1) If personally delivered - upon receipt?

(2) If mailed - also upon receipt (as drafted), or upon deposit in the mail like proposed §1215(d) and Probate Code §1465(b)?

§1251 - no comment.

§1252 The participating members of Team 2 recognize that the present law, as well as the proposed law, requires sending only written notice of the filing, and not the actual document, except as provided in proposed §1252(b) (i.e. any inventory and appraisalment or any other paper that does not require a hearing), but felt that as a matter of good practice that the actual document should be required to be sent to the person requesting special notice.

§1260 - one of the participating members raised the issue as to how proof of giving notice of the hearing can be made to the satisfaction of the court before the hearing. We noted at Section 6.37 of 1. California Decedent's Estate Practice it

states "It is better practice, however, for counsel to file proof of service long enough before the hearing to permit the Commissioner or Clerk to report to the court by the hearing date that the required notice has been given", but that falls somewhat short of judicially establishing proof of giving notice of the hearing to the satisfaction of the court before the actual hearing. Consequently, this language may be subject to revision.

\$1261 - no comment.

\$1262 - no comment.

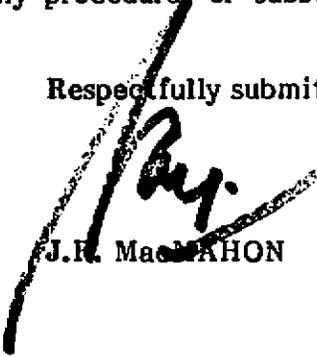
\$1263 - no comment.

\$1264 - no comment.

\$1265 - no comment.

As indicated at the outset of this letter report, the participating members of Team 2 did not have sufficient time to review Chapter 22.5 - Orders and Procedure. However, there appears to be little if any procedural or substantive changes in Sections \$1280 through \$1299.

Respectfully submitted,



J.R. MacMAHON

JRM:jmp

cc: Kenneth M. Klug
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January 21, 1987

JAN 22 1987
RECEIVED

Stan G. Ulrich
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Re: Probate Code Revision

Dear Stan:

This is to acknowledge receipt of your letter of January 12, 1987 regarding section 1209 of the above proposed Code. I am in agreement with you that the statutory language as currently drafted should suffice. If this office makes an appearance in an action, all notices will normally thereafter be provided to the individual Deputy Attorney General at his local office.

Please feel free to contact me if we can be of further assistance.

Very truly yours,

JOHN K. VAN DE KAMP
Attorney General

JAMES R. SCHWARTZ
Deputy Attorney General

JRS:my