

Second Supplement to Memorandum 87-29

Subject: Study L-1027 - Accounts (Comments on Staff Draft of  
Tentative Recommendation)

Attached are comments of the Legislative Committee of the Probate and Trust Law Section of the San Deigo County Bar Association concerning the draft of the accounts statute. The comments are addressed to Section 11002 (contest of account). They suggest that the prevailing party be awarded costs in a contest, along with reasonable attorney's fees where appropriate. They offer as a model Probate Code Section 9257 (AB 708), relating to costs in an action on a rejected claim. That section provides:

(d) The prevailing party in an action shall be awarded court costs and, if the court determines that the prosecution or defense of the action against the prevailing party was unreasonable, the prevailing party shall be awarded reasonable litigation expenses, including attorney's fees.

Respectfully submitted,

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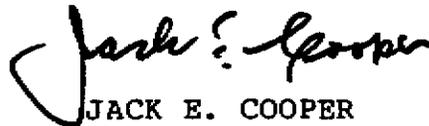
California Law Revision Commission  
4000 Middlefield Road, Suite D2  
Palo Alto, CA 94303-4739

Re: Proposed Probate Code Section 11002

Gentlemen:

On behalf of the Legislative Committee of the Probate and Trust Law Section of the San Diego County Bar Association, I submit the following comment. At the June meeting of our committee we discussed your memorandum 87-29 and have considered the comments made by the State Bar teams. It is our belief that Section 11002 should include a section which is very comparable to Code Section 9257 concerning litigation in creditors' claims. It is our belief that it is appropriate that the prevailing party receive court costs and, if appropriate, the prevailing party should be awarded reasonable litigation expenses including attorney fees.

Very truly yours,

  
JACK E. COOPER

JEC:jmo

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