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12/17/87

Third Supplement to Memorandum 87-101

Subject: Topics and Priorities for 1988 and Thereafter (Effect of  
Homicide on Succession)

Attached as Exhibit 1 is a letter from Daniel B. Crabtree, of San Diego, urging Commission review of the Probate Code provisions governing the effect of homicide on the right to take by testate or intestate succession. Specifically, he sees ambiguities and a lack of clarity in the existing statutes that "should be rectified as soon as possible."

Unless the Commission is inclined to give this matter a higher priority, the staff would add it to the "probate back burner" list to be taken up at some time in the future, as the Commission's schedule may permit.

Respectfully submitted,

Nathaniel Sterling  
Assistant Executive Secretary

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August 4, 1987

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

Re: Probate Code 250 et seq. - Effect of Homicide.

Dear Mr. DeMouilly:

After having dealt extensively with Probate Code Sections 250 through 257 I would suggest there are some deficiencies specifically in Probate Code Section 254. That Section specifies that a final judgment of conviction is conclusive against the perpetrator of a homicide and that a determination in the absence of a conviction can be made by the Probate Court based on a preponderance of the evidence.

First I would suggest that no place in the Probate Code are the words felonious and intentional killing defined although it has been generally accepted that a conviction of first or second degree murder or voluntarily manslaughter is felonious and intentional while a killing that is accidental or involuntarily manslaughter is not felonious and intentional.

The second problem is that no place in the Probate Code are the words "final judgment of conviction" defined. Is a final judgment one that is entered in the Court records when sentencing occurs or is it one that occurs after all the entire appeal process is completed? I would suggest that final judgment of conviction should be defined as the time that judgment is entered and sentence is announced rather than after the entire appeals process because of the time delay involved in closing an estate. In addition, under Probate Code Section 254(b) the word "final" is conspicuously missing in the first clause that states "in the absence of a conviction of felonious and intentional killing". I would suggest that if the word final means through the entire appellate process the word final should also be included in part (b) so that the Probate Court in the absence of a final conviction of felonious and intentional

August 4, 1987

To: Mr. John DeMouilly

From: Daniel B. Crabtree

Page: Two

killing may use a conviction by the jury to decide by a preponderance of the evidence that the killing was felonious and intentional. As it now stands, the Probate Court could conclude that a final judgment of conviction means the entire appellate process and since Probate Code Section 254(b) says only in the absence of a conviction that the interim between sentencing and the time that the complete appellate process runs, the Probate Court hands are tied and the Probate Court cannot render a decision under Probate Code 254(b). This appears to be an anomaly that should be rectified as soon as possible.

Very truly yours,



Daniel B. Crabtree

DBC/tlm