

#L-2009

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03/07/88

Sixth Supplement to Memorandum 88-8

Subject: Study L-2009 - AB 2841 (1988 Probate Legislation--State Bar  
Study Team Comments)

Attached are letters from State Bar Study Teams 1 and 4 received today concerning AB 2841. We will discuss any substantive points made in the letters orally at the meeting.

Respectfully submitted,

Nathaniel Sterling  
Assistant Executive Secretary

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MAR 2 - 1988

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March 1, 1988

BY TELECOPIER

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Valerie J. Merritt, Esq.  
Kindel & Anderson  
555 So. Flower Street  
Los Angeles, California 90071

Re: AB2841 (Study Team #1)

Dear Ms. Merritt:

William V. Schmidt, captain of Study Team #1, assigned me pages 55 through 69 of AB2841 for review and forwarding of comments to you. My comments are listed below by page/section number.

1. Page 54, Section 2940 (last line): Chapter 7 should read Chapter 4.
2. Page 55, Section 2942, paragraph (c): Why would the right of the public administrator to a "bond fee" be totally eliminated if the Conservatee is eligible for Social Security Supplemental Income ("SSSI") Benefits? It seems to me that the amount of the estate to be considered in determining the bond fee might more appropriately simply exclude the amount of SSSI benefits.
3. Page 55, Section 2943 (third line from bottom): "propert" should read "property".
4. Page 57, Section 3918, paragraph (d) (lines 7, 11 and 12): the phrase "a conservator of the minor" seems to me to be somewhat dated. Wouldn't "a guardian of the estate of the minor" be preferable?
5. Page 58, line 1 [part of Section 3918, paragraph (f)]: Is the guardian of the person of the minor or the conservator of the [person? estate?] of the minor the intended person to be able to remove a custodian and to appoint a successor? Might not the guardian of the estate be appropriate instead (and certainly after the guardian of the person and before the conservator of the estate of the minor)?

6. Page 59, Section 6112, paragraph (d), line 4: The phrase "that benefits a witness" seems too broad to me. Wouldn't the phrase "on the ground that the provision benefits a witness" be more restricted and hence more accurate?

7. Page 59, Section 6179 (last line on page): The second "had" on that line should be deleted, so that the line would read "had Chapter 842 of the Statutes of 1983 not been...."

8. Page 60, Section 6221.5: Section 8221 should read Section 8220.

9. Page 65, Section 7060, subparagraphs (a)(1) through (a)(3): The word "Where" at the beginning of each subparagraph would make better grammatical sense.

If you need further clarification, please call.

Very truly yours,



MICHAEL V. VOLLMER

cc: Charles Collier  
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James C. Opel  
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6th Supp. to Memo 88-8

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Study L-2009

MAR 4 - 1988

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FILE NO.

TEAM4001.01L

CA LAW DIV. COMM.

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March 1, 1988

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BY FAX

Re: Assembly Bill No. 2841; January 26, 1988;  
Pages 132-138, 151-152, 180-190

Dear Valerie:

On February 26, 1988, Team 4 (Lloyd Homer, Jim Willett and I) discussed the above-referenced pages of Assembly Bill No. 2841. Team 4's comments about the above-referenced pages are as follows:

1. Page 133, lines 1-6.
  - 1.1 Team 4 suggests that the clause commencing with "provided for" be redrafted so that it is a separate sentence; each clause should be separated by a semi-colon.
  - 1.2 Team 4 particularly suggests that lines 4 and 5 be redrafted; suggested language is: "any real or personal security for the claim, including but not limited to mortgage, deed of trust, etc."
2. Page 133, lines 6-10.
  - 2.1 The word "filed" is not a proper modifier of "person".
  - 2.2 Team 4 suggests that line 9 be rewritten as follows: "shall produce for an inspection or an audit by the court or any interested person."
3. Page 135, subparts 4 and 5.

Team 4 believes that sections 4 and 5 may be confusing inasmuch as they fail to explicitly state whether or not court approval is required. Team 4 suggests that the following language which is contained in section 3 (and which should be modified as appropriate for the subsection) should be added to sections 4 and 5: "The waiver may be executed without the need to obtain approval of the court [in which the probate is pending.]"

Valerie Merritt, Esq.

March 1, 1988

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4. Page 137, section 11004.  
Team 4 respectfully suggests that this section be deleted. The information required should be presented in any standard accounting. However, if the section remains, then certain other information such as losses on sales should be required.
5. Page 137, Section 11005.  
Team 4 once again respectfully asserts its position that the personal representative should be permitted to pay the decedent's just debts within the time prescribed in Section 9154; such claims should be allowed when persons interested in the estate consent to such payment. The reasons for Team 4's position are: 1) the practice of such payments is widespread, confirms with practical realities and results in no harm to an estate; 2) if such claims are disallowed, then the claims may not be allowed as deductions on the form 706, U.S. Estate Tax Return; 3) the thrust of recent case law and litigation is to permit creditors to perfect claims; the position set forth in new section 11005 appears to be contrary to this trend.
6. Page 151, Section 12000.  
Team 4 suggests that the section be redrafted as follows:  
"If a testator fails to set forth his intention, whether expressly or impliedly, the provisions of this chapter shall apply."
7. Page 151, line 17.  
The word "a" should appear before the word "minimum".
8. Page 151, section 12002.  
8.1 Re: Section 12002(b).  
Team 4 has the following questions regarding the application of this subsection:
  - (1) Does the term "other expenses" include a pro rata amount of the personal representative's fee, since the income generated the fee in part;
  - (2) Do the taxes include only income on which fiduciary income taxes are paid; are property taxes included?  
8.2 Re: Section 12002(c).  
The first sentence also should include the alternative language: "or one year after the date of the testator's death."

Valerie Merritt, Esq.  
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9. Page 152, Section 12005.
  - 9.1 line 17: Team 4 believes that the term "maintenance" creates an ambiguity; Team 4 suggests that the word "support" be used instead or in addition to the term maintenance.
  - 9.2 An unresolved issue appears to be when does interest accrue after the anniversary date?
10. Page 181, line 26.

The word "property" is misspelled.
11. Page 181, line 11.
  - 10.1 What does the word "locally" mean in the context of section 480?
  - 10.2 Team 4 believes that subsection (c) as presently drafted is confusing. Perhaps, the mobile home and real property provisions could be separated.
12. Page 181, line 15.

Team 4 believes that either the term "county recorder" or "assessor" should be used; the use of both terms is confusing.

Thank you for your consideration.

Cordially,

*Kathryn A. Ballsun*

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KAB/bd

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