

First Supplement to Memorandum 91-24

Subject: Study L-3018 - Litigation Involving Decedents (Transitional Issue)

This supplement presents a revised version of proposed Code of Civil Procedure Section 377.440. The proposed statutory language set out on page 4 of Memorandum 91-24 is incorrect. The corrected language is as follows:

Code Civ. Proc. § 377.440 (added). Application of article

377.440. This article applies to the commencement on or after January 1, 1992, of an action or proceeding against the decedent's personal representative or successor in interest, or to the making of a motion on or after January 1, 1992, to continue a pending action or proceeding against the decedent's personal representative or successor in interest, regardless of whether the decedent died before, on, or after January 1, 1992.

Comment. Section 377.440 makes clear that, as of the operative date, the procedures provided by this article apply to commencing an action, or making a motion to continue an action, against a personal representative or successor in interest regardless of the date of the decedent's death. Thus, for example, if a motion to substitute a successor in interest as a defendant has been made before January 1, 1992, this article would not apply to the case. A motion made after January 1, 1992, would be governed by this article even though the decedent died before that date. See, e.g., Section 377.420 (continuation of pending action against personal representative or successor in interest).

Respectfully submitted,

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