

First Supplement to Memorandum 91-37

Subject: Study L-3010 - Trustees' Fees (California Bankers Association Proposal)

Notice of Increase in Trustee's Fee

We have received three letters commenting on the proposals in Memorandum 91-37. One letter was favorable, two were opposed.

The Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association supports the proposals set out in Memorandum 91-37. (See letter from Carol A. Reichstetter in Exhibit 1.)

Kenneth M. Klug writes in opposition to the revisions originally proposed by CBA. (See Exhibit 2, directed toward an earlier memorandum.) Concerning the CBA suggestion to limit the definition of fees covered by the notice rules, Mr. Klug invokes the "Stop Tinkering Rule." He also suggests that the law should not be changed unless CBA can identify items that it believes should not be included in the definition. Relevant to the subject of Memorandum 91-37, Mr. Klug argues that remainder beneficiaries should be entitled to notice of fee increases and he would not adopt the accounting standard.

Team 1 of the Executive Committee of the State Bar Estate Planning, Trust and Probate Law Section opposes revising the fee increase notice standard. (See page 4 of the report attached to Memorandum 91-42.) Team 1 believes that remainder beneficiaries are entitled to notice. The team is also concerned with notice under trusts that do not require an accounting to beneficiaries, as in the case of certain trusts created before July 1, 1987.

The proposal to seek amendment of Section 15686 was conditioned on acceptance by bar association representatives. This was appropriate in light of the recent origins of the trustees' fees statute and the involvement of the bar and bank representatives in the drafting of that statute. In view of the opposition, it is not appropriate to pursue the amendment at this legislative session.

The problem identified by CBA remains, however. The Commission

should consider whether it wants the staff to continue to work on this issue. We could prepare a draft tentative recommendation along the lines suggested in Memorandum 91-37 which could be circulated for comment this year. Proposed legislation could be prepared for the 1992 legislative session.

Notices Involving Future Interests

State Bar Team 1 (Memorandum 91-42, p. 4) supports the proposed technical amendment to broaden the application of Section 15804(a) concerning notice given beneficiaries of future interests. (See draft set out on pages 4-5 of Memorandum 91-37.) This amendment is a technical issue, severable from the trustees' fees issue, and could be included in an appropriate bill in the next legislative session. It does not appear that we will be making any additional amendments in this session.

Respectfully submitted,

Stan Ulrich
Staff Counsel

THOMAS, SNELL, JAMISON, RUSSELL AND ASPERGER
A PROFESSIONAL CORPORATION
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APR 29 1991

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April 26, 1991

Mr. Stan Ulrich
Staff Counsel
California Law Revision Commission
4000 Middlefield Road
Palo Alto, CA 94303-4739

Re: Memorandum 91-29, Trustee's Fee

Dear Stan:

The CBA proposal to change "includes, but is not limited to," to "means" in Probate Code Section 15686(a) appears to be covered by the "Stop Tinkering Rule." Unless the CBA can identify the specific items which should not be included in the term "trustee's fees," I think the existing language is appropriate.

The second change proposed by CBA is to alter the persons who would be entitled to notice of a fee increase. Under the Principal and Income Act, trustee's fees are chargeable one-half to income and one-half to principal. Probate Code Section 16312(d). While we can all appreciate the administrative problem the banks will have concerning mailing notices to non-current beneficiaries, the fact remains that remaindermen do have an interest in principal and should be apprised whenever their interest is affected. Certainly, if the trustee were to petition the court for approval of the fee, the remainder beneficiaries would receive notice. Limiting notice to only income beneficiaries effectively removes an entire class of persons from the protection of the statute. I endorse your suggestion that a more appropriate class for notice is the class of persons whose consent is required for a trustee's resignation under Section 15640(c).

Mr. Stan Ulrich
April 26, 1991
Page 2

The last portion of CBA's proposed change is to provide that the notice be given to a conservator or an attorney in fact. It isn't clear from the drafting whether the notice to be given to the conservator or attorney in fact is instead of the notice to be given to the beneficiary, or in addition to that to be given to the beneficiary. I favor the second construction, because it is more likely to ensure that an appropriate person will receive and comprehend the nature of the notice. With that in mind, I suggest adding the following sentence to Section 15686(b):

If a beneficiary has a conservator, or has designated to the trustee an attorney in fact to receive such notice, such notice shall also be sent to the conservator or attorney in fact.

Very truly yours,



Kenneth M. Klug

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May 8, 1991

Nathaniel Sterling
Assistant Executive Secretary
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Re: Study L-3010 (Trustees Fees)

Dear Mr. Sterling:

The Executive Committee of the Probate and Trust Law Section of the Los Angeles county Bar Association has reviewed Memorandum 91-37. While we agree with Mr. Goldring that the area of trustees fees as discussed in Memorandum 91-29 is controversial and thus not appropriate for inclusion in the Commission's urgency bill, we nonetheless support the position taken by the California Bankers Association in regard to notice of increase in trustees fees and the staff's recommendations regarding notice involving future interests.

In particular, we agree that Probate Code Section 15686(b) should be amended to provide that notice be given to beneficiaries entitled to an account under Section 16062 and to beneficiaries actually given the last preceding account, rather than requiring notice to beneficiaries "whose interest may be affected by the increased fee". We further agree that Probate Code Section 15804(a)(1) should be revised as proposed.

Thank you for your consideration of these comments. I expect to attend the June meeting and will be glad to answer any questions that may arise.

Very truly yours,



Carol A. Reichstetter

cc: Members of the Executive Committee

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