

Memorandum 82-99

Subject: Study L-625 - Probate Law and Procedure (Family Protection)

As last seen by the Commission, both the family allowance provisions (proposed Section 252.010) and the family maintenance provisions (proposed Section 253.010) would have permitted the court to make a support award in favor of a parent of the decedent who was in fact being supported by the decedent. On further consideration, the staff is of the view that it would be better to retain the existing law which restricts eligibility to the decedent's surviving spouse and minor children, and to adult children actually dependent in whole or in part on the decedent for support. With respect to family allowance, this will make the proposed law the same as existing Probate Code Section 680 as just revised at the 1982 session of the Legislature (1982 Cal. Stats. ch. 520). With respect to family maintenance, we know that these provisions are controversial, and perhaps they will be less objectionable if eligibility is thus restricted. Does the Commission approve the staff revision eliminating the decedent's parents from those eligible for family allowance and family maintenance?

The new 1982 legislation also requires more extensive notice whenever a family allowance is sought for an adult child of the decedent who is dependent on the decedent for support but is not physically or mentally incapacitated from earning a living. In such a case, the 1982 legislation requires mailed notice to "all legatees or devisees," and in the case of intestacy to "all known heirs" of the decedent, and to those who have requested special notice or have given notice of appearance. The staff has continued this notice provision in the proposed family allowance provisions (Section 252.020) when the award is sought for a nondisabled adult child. The staff has revised the notice requirements in the family maintenance provisions so that the more extensive notice will be given of every family maintenance petition, regardless of for whom the award is sought. Does the Commission approve the more extensive notice required by the staff revisions?

The notice of a hearing on a petition to set aside a probate homestead is given under existing law (and under proposed Section 251.060)

for the period and in the manner required by Section 1200.5. This requires that notice be mailed to the executor or administrator (if not the petitioner) and to all persons (or their attorneys if they have appeared by attorney) who have requested special notice or have given notice of appearance in the estate proceeding in person or by attorney. Should this notice be expanded to cover "all devisees" and in the case of intestacy, "all known heirs," whether or not they have requested special notice or have given notice of appearance? This expansion would make the notice provision conform to the notice provision applicable to family allowance requested for an adult child who is not physically or mentally incapacitated from earning a living.

Respectfully submitted,

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