

Memorandum 83-82

Subject: Study L-656 - Bond for Special Administrator

Attached as Exhibit 1 is a letter from Charles A. Collier, Jr., suggesting that there should be statutory authority for all the persons interested in the estate to waive a bond of the special administrator if the will does not require a bond.

Attached as Exhibit 2 is a bill to effectuate this suggestion. Exhibit 3 sets out the text of Section 541 which relates to waiver of bond for an executor or personal representative.

If the Commission believes that this is a desirable proposal, the staff can write a short preliminary explanation of the bill in the form of a recommendation and the bill can be submitted to the 1984 legislative session.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

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WRITER'S DIRECT DIAL NUMBER

August 25, 1983

Mr. John DeMouilly
California Law Revision Commission
4000 Middlefield Road
Room D-2
Palo Alto, California 94306

Re: Bond of Special Administrators

Dear John:

In connection with the Commission's review of the Probate Code you might give consideration to Probate Code §462. This provides that a Special Administrator "must" give bond in such amount as the court determines.

Probate Code §541, which recognizes waiver of bond in a will, or a waiver of bond by all beneficiaries of the estate, does not appear to be applicable to a Special Administrator.

Thus, even if the person named in the will as Executor does not have to furnish a bond as Executor, it would appear that person would have to furnish a bond as Special Administrator pending his appointment as Executor.

It would seem more logical if the person named as Executor is appointed as Special Administrator and the will waives bond, that waiver should apply to the Special Administrator as well as the Executor. Also it would seem that if all those beneficially interested in the estate waive bond for a Special Administrator the court should have the discretion to not require a bond. In short, Section §541 should also apply to a Special Administrator.

I hope these comments will be of assistance to the Commission.

Kindest regards.

Sincerely,



CHARLES A. COLLIER, JR.

CAC:jh

Exhibit 2

An act to amend Section 462 of the Probate Code, relating to special administrators.

The people of the State of California do enact as follows:

SECTION 1. Section 462 of the Probate Code is amended to read:

462. (a) ~~Before~~ Except as provided in subdivision (c), before letters issue to a special administrator, except to a public administrator, he must give the special administrator shall do both of the following:

(1) Give a bond in such sum as the court or judge may direct, with sureties to the satisfaction of the court or judge, conditioned ~~for~~ the faithful performance of his duties; and he must take that the special administrator shall faithfully execute the duties of the trust according to law.

(2) Take the usual oath, and have the same indorsed on ~~his~~ the letters.

(b) ~~Thereupon~~ When the requirements of this section are satisfied, the clerk shall issue special letters of administration to him the special administrator.

(c) Unless the will provides for a requirement of a bond, if a verified petition for special letters of administration alleges that all beneficiaries under the decedent's will, or that all the decedent's heirs if there is no will, have waived the filing of a bond, the court, if the petition so requests, may direct that no bond be filed.

Comment. Subdivision (c) is added to Section 462 to permit the court to dispense with bond of the special administrator where all the persons interested in the estate waive the filing of a bond. Subdivision (c) is comparable to subdivision (b) of Section 541 (bond of person to whom letters testamentary or of administration are directed to issue). The revisions of subdivisions (a) and (b) make no substantive change.

Exhibit 3

§ 541. Bond; execution; sureties; approval; conditions; form; penalty and amount; waiver

541. (a) Except as otherwise provided in this section, every person to whom letters testamentary or of administration are directed to issue (unless the testator has waived such requirement) shall, before receiving them, execute a bond to the State of California, to be approved by a judge of the superior court, conditioned that the executor or administrator shall faithfully execute the duties of the trust according to law. If the bond is to be given by personal sureties, the amount shall be not less than twice the value of the personal property and twice the value of the probable annual income from the real property belonging to the estate, which values shall be ascertained by the court or judge by examining on oath the party applying, and any other persons. If the bond is to be given by an admitted surety insurer, the court in its discretion may fix the amount of the bond at not less than the value of the personal property and the probable value of the annual rents, issues and profits of all of the property belonging to the estate.

(b) Unless the will provides for a requirement of a bond, if a verified petition for letters testamentary or of administration alleges that all beneficiaries under the last will and testament of the decedent, or that all heirs at law of the decedent, have waived the filing of a bond, the court, on the hearing of the petition, if the petition so requests, may direct that no bond be filed.