

Memorandum 85-36

Subject: Study L-1050 - Probate Code (Accountings)

Exhibit 1 of this memorandum contains a redraft of the existing provisions relating to accountings in probate. Exhibit 2 contains conforming revisions and Exhibit 3 shows the disposition of existing law. This memorandum raises a few policy questions in connection with the redraft.

§ 8502. Alternative contents of account

A law review Comment, Craig, California Probate Accounting Procedures, 39 So. Cal. L. Rev. 316 (1966), makes the argument that many of the requirements of the existing probate account are unnecessary. The information gained from the detailed accounting does not justify the cost of obtaining the information, does not protect persons who have an interest in the estate, and encourages unsound bookkeeping and accounting practices.

The basic point of the Comment is that the necessity to report the details of each item of receipt and disbursement is counterproductive. The detailed listing makes it difficult to see what is going on in the estate, and a more standard and accessible type of balance sheet would be preferable.

The Comment would permit the personal representative the option to use either the present detailed accounting or an alternate double-entry type bookkeeping system. This scheme is set out in Section 8502. The Comment argues that this scheme

encourages the use of sound bookkeeping practices since the personal representative will not have to duplicate all of the book entries in his report to the court. Time and expense are saved since the personal representative does not have to report the details of each item of receipt and disbursement. The interests of the beneficiaries and creditors are protected, since, by requiring a breakdown of each summary item into its component parts, the respective parties are advised as to the handling of the estate by the personal representative. If the interested parties feel that more information is needed, they may request the personal representative to permit them to inspect and audit the books of account.

§ 8522. Contest of account

In a contest of an account an interested person may except to settlement of any allowed claims. In such a situation, Section 928 provides that either the contestant or claimant may have a jury trial on issues of fact presented by the contest. The staff draft omits the jury trial provision, consistent with the staff's general position that jury trials in this area are unnecessary impositions on the parties, the courts, and the persons forced to serve as jurors, as well as an unwarranted expense.

In any case, if the Commission decides to retain jury trial for contested claims, Commissioner Stodden has suggested that existing language should be changed to make it very clear that there is no right to a jury trial as to the settlement of an account, only as to the validity of an allowed claim.

Vouchers

Existing Section 925 requires the personal representative to keep "vouchers" for all payments made. The personal representative may file the vouchers with the court, and must file them if so ordered by the court upon petition of an interested person. The law also includes extensive provisions on retention in and withdrawal from the file of the vouchers, and allowance of disbursements made without a voucher. See Section 930.

The State Bar notes, and the Los Angeles County Bar agrees, that this procedure is generally not used. Generally, vouchers are no longer filed with the court. Payments made by the personal representative are subject to scrutiny upon settlement of an account absent the voucher procedure. The staff has omitted the voucher procedure from the draft.

Respectfully submitted,

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Assistant Executive Secretary

EXHIBIT 1

PART 7. ACCOUNTING

CHAPTER 1. GENERAL PROVISIONS

§ 8500. Duty to account

8500. Every personal representative is chargeable in his or her accounts with all of the estate of the decedent that comes into his or her possession and with all the income, issues, and profits of the estate.

Comment. Section 8500 continues the substance of the first portion of the first sentence of former Section 920.

§ 8501. Contents of account

8501. An account shall be verified and shall show all of the following:

(a) The amount of money received and expended by the personal representative.

(b) The claims made against the estate, giving the name of each claimant, the nature of the claim, when it became due or will become due, whether it was allowed or rejected by the personal representative, or not yet acted upon.

(c) All other matters necessary to show the condition of the estate.

Comment. Section 8501 continues the substance of a portion of former Section 921.

§ 8502. Alternative contents of account

8502. (a) Instead of the matters an account is required to show pursuant to Section 8501, the account may, in the discretion of the personal representative, consist of the following:

(1) A summary statement showing:

(A) The assets per the inventory, including subsequently discovered assets.

(B) The amount of receipts, excluding capital items.

- (C) Gains on sales, or other disposition of assets.
- (D) The amount of disbursements.
- (E) Losses on sales, or other disposition of assets.
- (F) The amount of property remaining.

(2) Schedules supporting the items of the statement.

(b) Upon court order, or upon request by an interested person, the personal representative shall submit the books of an account made pursuant to this section for inspection and audit by the court or the interested person.

Comment. Section 8502 is new. It provides an optional manner of accounting, based upon concepts developed in Craig, California Probate Accounting Procedures, 39 So. Cal. L. Rev. 316 (1966). In an accounting under this section, each schedule should contain a breakdown of the summary item into its component parts. For instance, the summary item of receipts might be broken down into the totals of interest income, dividend income, royalties received, and miscellaneous receipts. The exact breakdown would vary, depending on the nature of the estate. It would be unnecessary to show more than the total amount of each component part making up the total under each summary item.

CHAPTER 2. WHEN ACCOUNT REQUIRED

§ 8510. Court ordered account

8510. The personal representative shall file an account [and report] [of the administration] whenever ordered by the court, [upon its own motion or] upon petition of an interested person.

[An account shall not be ordered pursuant to this section before one year after the date of issuance of letters.]

Comment. Section 8510 continues the substance of portions of the first sentences of former Sections 921 and 922.

Defined terms:

Interested person § 48

Cross References:

Actions at chambers § 7123

Queries. This section combines portions of existing Sections 921 and 922, which raises a number of questions: Is there a difference between a court "requiring" and "ordering" and accounting? What is included in a "report" as opposed to an account? Is there a difference between an "application" and a "petition" by a person interested in the estate? Does a court ever require an accounting on its own motion? Why does existing Section 921 allow an accounting any time but 922 only after a year?

§ 8511. Final account

8511. The personal representative shall file a final account [and pay a settlement of the administration] whenever the personal representative has sufficient funds for the payment of all demands against the estate and the estate is in a proper condition to be closed.

Comment. Section 8511 continues the substance of the second sentence of former Section 922.

§ 8512. Account after authority terminated

8512. A personal representative who resigns, is removed from office, or whose authority is otherwise terminated, shall file an account when ordered by the court upon petition of a successor personal representative.

Comment. Section 8512 continues the substance of former Section 923.

§ 8513. Account where personal representative dies or becomes incompetent

8513. (a) As used in this section, "legal representative" means the personal representative of a deceased personal representative or the conservator of the estate of an incompetent personal representative.

(b) If the personal representative dies or becomes incompetent, the accounts may be filed by the legal representative. Upon petition of the successor of the deceased or incompetent personal representative, the court shall compel the legal representative to file an account of the administration of the personal representative, and must settle the account as in other cases.

(c) If the personal representative dies or becomes incompetent and there is no legal representative appointed, or the personal representative absconds, the court may compel the attorney for the absconding, deceased, or incompetent personal representative or attorney of record in the estate proceeding to file an account of the administration of the absconding, deceased or incompetent personal representative to the extent that the attorney has information or records available for the purpose. The account of the attorney need not be verified. A fee shall be allowed to the attorney by the court for this extraordinary service.

Comment. Section 8513 continues the substance of former Section 932. The court referred to in this section is the court in which the estate of the original decedent is being administered. See Section 30 ("court" define).

§ 8515. Waiver of accounting

8515. (a) The personal representative is not required to file an account when all persons entitled to distribution of the estate have executed and filed one of the following:

(1) A written waiver of accounting.

(2) A written acknowledgment that the person has received the share of the estate to which the person is entitled.

(b) The waiver or acknowledgment under subdivision (a) shall be executed by the following persons:

(1) If the distributee is adult and competent, by the distributee.

(2) If the distributee is a minor, by a person authorized to receive money or property belonging to the minor. If the waiver is executed by a guardian of the estate of the minor, the waiver may be executed without the need to obtain approval of the court in which the guardianship proceeding is pending.

(3) If the distributee is a conservatee, by the conservator of the estate of the distributee. The waiver may be executed without the need to obtain approval of the court in which the conservatorship proceeding is pending.

(4) If the distributee is a trust, by the trustee, but only if the named trustee's consent to act has been filed with the court.

(5) If the distributee is an estate, by the personal representative.

(c) Notwithstanding waiver of the account, the personal representative shall file a report at the time the account would otherwise have been required showing the amount of fees or commission paid or payable to the personal representative and to the attorney and setting forth the basis for determining the amount.

(d) If any beneficiaries of the estate are unascertained, an accounting cannot be waived.

Comment. Section 8515 continues the substance of former Section 933.

CHAPTER 3. SETTLEMENT OF ACCOUNT

§ 8520. Setting account for settlement

8520. When an account is filed, the clerk shall set the account for settlement by the court.

Comment. Section 8520 continues the substance of the first sentence of former Section 926.

§ 8521. Notice of hearing

8521. (a) At least 10 days before the hearing of the account, the personal representative shall serve notice of the hearing upon all of the following persons:

- (1) Devisees whose interest in the estate is affected by the account.
- (2) Heirs of the decedent in an intestate estate.
- (3) The State of California, if any portion of the estate is to escheat to it.

[(4) Persons who have filed a request for special notice pursuant to Section [1202].]

(b) If the account is for a final settlement, [and a petition for final distribution of the estate is filed with the account,] the notice of hearing shall so state.

Comment. Subdivision (a) of Section 8521 continues the substance of the third sentence of former Section 926. Subdivision (b) continues the substance of the first portion of the second sentence.

Note. Whether subdivision (a)(4) should duplicate Section 1200.5(a)(11), and the difference in the manner of notice between the two provisions, is under review.

CROSS-REFERENCES

Definition

Devisee § 34

§ 8522. Contest of account

8522. (a) Any interested person may appear and contest the account.

(b) The contest shall include written exceptions to the account. All matters may be contested for cause shown, including but not limited to:

- (1) The validity of an allowed and approved claim not passed upon on the settlement of any former account and not reduced to judgment.

[(2) Exception to the values of assets shown on the inventories and appraisements filed in the proceedings.]

(c) If, upon hearing a contest of the account, the court determines the contest was made without reasonable cause and good faith, the court may order that the fees of the personal representative and attorney and any costs incurred for defending the accounting be made a charge against the person contesting the account.

Comment. Section 8522 continues the substance of the first, second, and fourth sentences of former Section 927.

§ 8523. Hearing on account

8523. (a) Upon the hearing, the personal representative may be examined on oath touching the account and the property and effects of the decedent, and the disposition of the property and effects.

(b) The court may appoint one or more referees to examine the account and make a report on the account, subject to confirmation. The court may allow a reasonable compensation to the referees to be paid out of the estate.

(c) The court may make such orders as the court deems necessary to effectuate the provisions of this section.

Comment. Section 8523 continues the substance of the third and fifth sentences of former Section 927.

§ 8524. Settlement of claim not properly made or allowed

8524. If upon an account it appears that a debt has been paid without a claim having been made and established in the manner prescribed by statute, the court in settling the account shall allow the amount paid if all of the following are proven:

- (a) The debt was justly due.
- (b) The debt was paid in good faith.
- (c) The amount paid was the true amount of the indebtedness over and above all payments or set-offs.
- (d) The estate is solvent.

Comment. Section 8524 continues the substance of former Section 929.

§ 8525. Effect of order settling account

8525. (a) Except as provided in subdivision (a), the order settling [and allowing] an account, [when it becomes final,] is conclusive against all interested persons.

[(b) A person under legal disability has the right, at any time before final distribution, to move for cause to reopen and examine the account or to proceed by action against the personal representative or the sureties on the bond. In any such action the order settling the account is prima facie evidence of the correctness of the account.]

Comment. Section 8525 continues the substance of former Section 931.

Note. Whether subdivision (b) is desirable is under review.

CHAPTER 4. COMPELLING ACCOUNTING

§ 8530. Sanction for failure to account

8530. Subject to the provisions of this chapter, if the personal representative does not file a required account, the court shall compel the accounting by punishment for contempt.

Comment. Section 8530 continues the substance of the third sentence of former Section 922.

§ 8531. Citation

8531. (a) A citation shall be issued, served, and returned, requiring the personal representative who does not file a required account to appear and show cause why the personal representative should not be punished for contempt.

(b) If the personal representative absconds, or hides so that a citation cannot be personally served, the personal representative shall be removed from office.

Comment. Subdivision (a) of Section 8531 continues the substance of the last sentence of former Section 922. Subdivision (b) continues the substance of a portion of former Section 924.

§ 8532. Punishment for contempt

8532. If the personal representative does not appear and file the required account, after having been duly cited, the personal representative may be punished for contempt or removed from office, or both, in the discretion of the court.

Comment. Section 8532 continues the substance of the last sentence of former Section 921. See also Section 7385 (removal from office for contempt).

EXHIBIT 2

§ 7150. Service

7150. If any notice under this division is required to be served, the notice shall be delivered personally or mailed.

Comment. Section 7150 generalizes provisions found in former Sections 926, _____. For the manner of mailing, see Section 7152.

Note. Whether the Code should simply incorporate Code of Civil Procedure service provisions is under study.

§ 7152. Mailing

7152. If any notice under this division is required or permitted to be mailed, the notice shall be addressed to the person to whom the notice is given at the person's last known mailing address, first class postage prepaid or, in the case of a person residing outside the jurisdiction of the United States, airmail prepaid, and deposited in a post office, subpost office, substation, mailbox, mail chute, or other like facility in this state regularly maintained by the United States postal service.

Comment. Section 7152 generalizes provisions found in former Sections 328, 441, and 926.

Probate Code § 926 (repealed)

Comment. The substance of the first sentence of former Section 926 is continued in Section 8520 (setting account for settlement). The substance of the second sentence is continued in Sections 8521(b) (notice of hearing) and _____ (distribution after final account) [to be drafted]. The substance of the third sentence is continued in Sections 8521 (notice of hearing) and 34 ("devisee" defined). The substance of the last sentence is continued in Sections 7150 (service) and 7152 (mailing).

Probate Code § 927 (repealed)

Comment. The substance of the first and second sentences of former Section 927 is continued in Section 8522 (contest of account). The substance of the third sentence is continued in Section 8523(a) (hearing on account). The substance of the fourth sentence is continued in Section 8522(b)(1) (contest of account). The substance of the fifth and sixth sentences is continued in Section 8523(b)-(c) (hearing on account). The last sentence is not continued because it is no longer necessary.

Probate Code § 928 (repealed)

Comment. Section 928 is not continued. See Section 7145 (trial by jury).

Probate Code § 929 (repealed)

Comment. The substance of former Section 929 is continued in Section 8524 (settlement of claim not properly made or allowed).

Probate Code § 930 (repealed)

Comment. Former Section 930 is not continued. The voucher procedure was generally not used.

Probate Code § 931 (repealed)

Comment. The substance of former Section 931 is continued in Section 8525 (effect of order settling account).

Probate Code § 932 (repealed)

Comment. The substance of former Section 932 is continued in Section 8513 (account where personal representative dies or becomes incompetent).

Probate Code § 933 (repealed)

Comment. The substance of former Section 933 is continued in Section 8515 (waiver of accounting).

EXHIBIT 3

Probate Code § 920 (repealed)

Comment. The substance of the first portion of the first sentence of former Section 920 is continued in Section 8500 (duty to account). [The remainder of Section 920 will be disposed of in connection with the powers and duties of personal representatives.]

Probate Code § 920.3 (repealed)

Comment. [Section 920.3 will be disposed of in connection with the powers and duties of personal representatives.]

Probate Code § 920.5 (repealed)

Comment. [Section 920.5 will be disposed of in connection with the powers and duties of personal representatives.]

Probate Code § 921 (repealed)

Comment. The substance of the first sentence of former Section 921 is continued in Sections 8510 (court ordered account), 7123 (actions at chambers), and 8501 (contents of account). The substance of the last sentence is continued in Section 8532 (punishment for contempt).

Probate Code § 922 (repealed)

Comment. The substance of the first sentence of former Section 922 is continued in Sections 8510 (court ordered account) and 8501 (contents of account). The substance of the second sentence is continued in Section 8511 (final account). The substance of the third sentence is continued in Section 8530 (sanction for failure to account). The substance of the last sentence is continued in Section 8531(a) (citation).

Probate Code § 923 (repealed)

Comment. The substance of former Section 923 is continued in Section 8512 (account after authority terminated).

Probate Code § 924 (repealed)

Comment. The substance of former Section 924 is continued in Section 8531(b) (citation).

Probate Code § 925 (repealed)

Comment. Former Section 925 is not continued. The voucher procedure was generally not used.