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First Supplement to Memorandum 86-29

Subject: Study L-1028 - Estate and Trust Code (Independent Administration)

Attached to Memorandum 86-29 is a draft of the Tentative Recommendation Relating to Independent Administration.

In preparing that draft, the staff overlooked one change in existing law that should be noted in the preliminary portion of the Tentative Recommendation. Accordingly, we plan to add the additional material set out in Exhibit 1 to the preliminary portion of the Tentative Recommendation.

This additional material would be inserted just before the heading "Application to pending proceedings" on page 6 of the preliminary portion of the Tentative Recommendation attached to Memorandum 86-29.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

ADDITION TO PRELIMINARY PORTION OF TENTATIVE RECOMMENDATION

Notice of hearing of petition requesting independent administration authority. If a petition for appointment of a personal representative also requests authority to administer the estate under the Independent Administration of Estates Act, existing law requires that the published notice of hearing on the petition state that the petition requests that _____ be appointed as personal representative to administer the estate of the decedent "under the Independent Administration of Estates Act."¹⁸ For the quoted phrase, the new code substitutes the following:

The petition requests authority to administer the estate under the Independent Administration of Estates Act. This authority would permit the personal representative to act without court supervision that would otherwise be required. The petition will be granted unless good cause is shown why it should not be.

The notice of hearing also is given to the heirs, devisees, and each person named as personal representative who is not petitioning.¹⁹ The additional language to be added to the notice of hearing will give these persons and the persons who read the published notice information concerning the general nature of independent administration authority and the standard used by the court to determine whether that authority should be granted.

18. Prob. Code § 333. See also Petition for Probate (Form Approved by the Judicial Council of California. Revised Effective January 1, 1981).

19. Notice of the hearing must be personally served upon or mailed to these persons. See Est. & Trust Code § _____, superseding Prob. Code § 328.