

First Supplement to Memorandum 86-56

Subject: Study L-1033 - Estate and Trust Code (Determining Class
Membership)

Attached to this supplement is a copy of the report of State Bar Study Team 1 on the draft of provisions relating to determination of class memberships. See Exhibit 1 attached to Memorandum 86-56.

Team 1 approves the approach of the draft, and makes two suggestions for revision. The staff would make the changes proposed by Team 1. Thus, draft Section 323 would be revised to read as follows:

§ 323. Responsive pleading

323. At any time before the hearing, a person interested in the property may file a response to the petition that denies or supports any of the matters included in the petition.

Comment. Section 323 supersedes the first sentence of former Probate Code Section 1192. Section 323 provides for the filing of a response instead of an answer and recognizes that the response may support, as well as deny, any matter in the petition.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

EXHIBIT 1

MEMORANDUM

DATE: JUNE 12, 1986

TO: JAMES V. QUILLINAN
CHARLES COLLIER
JAMES WILLETT
IRV GOLDRING
JAMES DEVINE
JAMES OPEL
LLOYD HOMER
THE EXECUTIVE COMMITTEE IN GENERAL

FROM: WILLIAM V. SCHMIDT, TEAM CAPTAIN
STUDY TEAM NO.1

RE: REPORT OF STUDY TEAM NO. 1 on LRC MEMO 86-56
STUDY L-1033 - Estate and Trust Code (Determining
Class Membership)
New Estate and Trust Code §§320 through 324

A conference call was held on Monday, June 9, 1986, Robert Schlessinger did not participate, but the other three members, Charles Collier, W.S. "Gus" McClanahan, Richard S. Kinyon and William V. Schmidt participated.

We feel that these sections are basically satisfactory. We agree with the change to make this procedure available to determine whether a person is a "member of a class" which is broader than the existing law which referred only to heirs of the body, issue, or the children of any person.

Charles Collier, of our Team, suggested the responsive pleading described in Section 323 be not limited to an answer which contests, opposes or denies, but be broadened to include an answer or a statement of interest which may either deny or support, in whole or in part, of the petition. He points out that a statement of interest is now often used in connection with a petition under present Probate Code Section 1080 and is often used to show support of such a petition. Our Study Team agrees with him. We also feel that the word "response" is a better word than

the word "answer."

Respectfully submitted,

STUDY TEAM NO. 1

By: William V. Schmidt
WILLIAM V. SCHMIDT
Captain