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Memorandum 86-79

Subject: Study L - Estate and Trust Code (Comments of Los Angeles County Bar Association on Items on September agenda)

Attached to this memorandum is a letter from the Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association relating to the following items on the September 1986 Commission meeting agenda:

Agenda Item	Subject
6.	Study L-1040 - Public Guardians and Administrators
7.	Study L - Terminology Used in Comments
8.	Study L-1038 - Abatement
9.	Study L-1035 - Estates of Missing Persons
10.	Study L-1046 - Nonresident Decedent

We will take up the relevant portion of the letter as each matter is discussed at the meeting.

In addition to the above items, the letter also addresses matters no longer included on the final agenda for the meeting. We will take up the points made in the letter at a later time when the particular item is being considered by the Commission.

Respectfully submitted,

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August 25, 1986

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Re: Meeting Scheduled for September 4-5, 1986

Dear Sirs:

On behalf of the Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association, we submit the following comments on matters listed on the tentative agenda for the meeting scheduled for September 4-5, 1986.

Study L-1040 - Estate and Trust Code (Public Guardians and Public Administrators) Memorandum 86-54:

Proposed Sections 2900 and 2901 make the creation of the office of public guardian permissive with each county's Board of Supervisors. Harry P. Drabkin, Deputy County Counsel for Stanislaus County, in his comments to the Commission notes that all counties in California now have offices of public guardians, and he states that such office should now be mandatory rather than permissive. Given the difficulties which would exist if there were no public guardian--especially given that the system is in place today--we agree with Mr. Drabkin.

Regarding proposed Section 2905, Mr. Drabkin has observed that there are inconsistent practices among the counties regarding succession of individuals to the office of public guardian. He proposes adding the following language to the end of Section 2905: "The clerk shall issue new Letters of Guardianship or Conservatorship upon request of the successor public guardian." This seems like a wise idea.

Proposed Section 2907 addresses the situation where county funds have been advanced on behalf of any particular guardianship or conservatorship estate. That proposed Section provides that such advances are permitted, but that the county shall be reimbursed for such advances out of estate funds. Mr. Drabkin has proposed that this be revised to provide that the reimbursement be made "to the extent possible." We suggest the

addition of the following alternative language at the end of subdivision (a) of proposed Section 2907: "To the extent that the funds and property of the estate are insufficient therefor, such expenses shall become a county charge without reimbursement."

Under proposed Section 2920, the public guardian is permitted--but not required--to take "prompt possession or control" of property of potential public wards or conservatees if the property is liable to loss, injury, waste or misappropriation. Thereafter, the public guardian is entitled to "a reasonable fee" for services rendered in taking possession of the property and protecting it. Under existing law, the fee for such services is to range from a minimum of $25.00 to a maximum of $500.00. While this is admittedly an arbitrary range for fees, the proposed statute provides no incentive to the public guardian to do a cost/benefit analysis before proceeding with taking possession of the property. Even if they would provide only the minimal level of services absolutely necessary, there should be an incentive to be prudent and cost-effective.

Under proposed Section 2921, the public guardian is required to apply for appointment as guardian or conservator in certain cases where the court has so ordered this action after notice to the public guardian and after making a determination that the appointment is necessary. Howard Serbin, Deputy County Counsel for Orange County, has submitted comments to the Commission opposing this provision, claiming that it interferes with the balance of powers between the judiciary and the executive branch. It appears that his real concern, however, is that this may mean that too much additional responsibility will be placed on public guardians. In light of the required finding of the necessity of an appointment and the fact that notice is given to the public guardian, we support the proposed statute as presently drafted.

Proposed Section 2923 requires the public guardian to procure Letters of Guardianship or Conservatorship in the same manner and by the same proceedings as they are issued to other persons. Mr. Drabkin would change the word "procure" in the proposed statute to "shall be issued," apparently believing the word "procure" means "apply for." The word "procures" means "obtain" and the current wording is fine.

Proposed Section 2942 permits the filing of an inventory without an appraisal under certain circumstances. The San Francisco public guardian has proposed that Section 2942 be made applicable to all guardians and conservators, not just to the public guardian. This suggestion makes sense with regard to subdivision (a)(3), which has a limited application. However, we

question whether all non-cash assets of all estates should go unappraised, simply because there will be no sales. While the public guardian may see very few cases of wealthy persons, if such a statute is made generally applicable, the situation may arise often in other contexts. Knowing the extent of an individual's wealth may change a conservator's opinion about the appropriate level of care and comfort to be provided to that individual.

Proposed Section 2943 is a bit confusing. Subdivision (a) permits--but does not require--the public guardian to pay "in full or in part" unpaid expenses of the guardianship or conservatorship upon the ward's or conservatee's death from the estate assets. Why shouldn't full payment be required, especially in light of subdivision (b) of the proposed statute, which permits the public guardian to petition for liquidation of the decedent's estate where the remaining assets do not exceed $5,000.00 in value? We believe this section needs work, but first the Commission must decide whether the liquidation of assets provision should be strengthened or the payment provision should be strengthened.

Proposed Section 2944 concerns a public guardian's claim against the estate of a ward or conservatee for certain expenses. Subdivision (c) allows the public guardian to collect reimbursement for the estate's pro rata share of the public guardian's official bond. That Section specifies that the amount shall be $25.00 plus one-fourth of 1% of the value of the estate in excess of $4,000.00. (Note that this would seem to mandate the appraisal of every estate, whether or not sales would take place.) A similar provision regarding reimbursement of public administrators appears as subdivision (c) of proposed Section 7641. While we believe that the concept of this provision makes sense, the prescribed charge is very much in excess of the premiums normally charged by commercial bonding companies. While it would be a nightmare trying to determing each estate's actual pro rata share of the premium on the public guardian's or public administrator's bond, there should be an amount set which more accurately reflects the bond premium market.

Article 2 of Chapter 7 of Part 1 of Division 7 purports to be concerned with "taking possession or control of property subject to loss, injury, waste, or misappropriation." Misappropriation is newly added in the statute. Nevertheless, Section 7620 and subdivision (a)(3) of Section 7623, as proposed, omit the words "or misappropriation" after the word "waste." It appears that this is simply an oversight that should be corrected.

Proposed Section 7623 permits a public administrator to make a written statement that he or she is taking possession or control of property because it is subject to loss, injury, waste, or misappropriation, which written statement may be presented to financial institutions in order to obtain information, gain access to a safe deposit box or receive property that is liable to loss, injury, waste or misappropriation. By receipt of such a written statement, the financial institution is discharged from liability for providing the information, granting access to the safe deposit box or delivering the property. Nothing in the proposed statute requires that the written statement be under penalty of perjury. We believe that such a provision should be added to the statute.

Proposed Section 7645 provides, in subdivision (a), that the authority of a public administrator continues after the termination of his or her tenure in office as to open estates where he or she has been appointed as personal representative. Subdivision (b) of that Section provides an exception where the public administrator is compensated by salary rather than by fees. Mr. Drabkin has proposed that an additional sentence should be added to subdivision (b) requiring that Letters be issued by the clerk upon the request of the successor public administrator. We support this concept.

Proposed Section 7680 deals with the summary disposition of small estates. Subdivision (a)(1) of that Section allows the public administrator to proceed with summary disposition without court administration where the value of the estate does not exceed $10,000.00. Mr. Drabkin observes that in some such cases, the court has already become involved by ordering the public administrator to take charge of the estate. He suggests that in such cases the summary disposition be permitted, but that a final account be filed. This requirement may be a bit burdensome, and some procedure should be devised providing for discharge without accounting, e.g., some sort of statutory waiver of accounting, still requiring the administrator to notify the court by report that summary disposition is taking place.

Proposed Section 7683, subdivision (b), provides for the disposition of estates where there are no known beneficiaries. Paragraph (1) of subdivision (b) provides that estates with a value of less than $10,000.00 are to be deposited with the County Treasurer for use in the general fund in such cases. Paragraph 2 of subdivision (b) provides that estates not exceeding the amount prescribed in Section 13100 (the new affidavit procedure for collection or transfer of personal property), be distributed to the State of California pursuant to court order. This seems to say that the crumbs can go to the counties, but that the whole loaves are to go to the state. Mayor Dianne Feinstein of San Francisco has written a letter to the Commission

pointing out that the counties provide a multitude of services to the elderly indigent, often as required by state law, with less and less funding for the services coming from the state. We believe that her point is well taken.

Study L - Terminology used in Comments to Indicate How New Section Compares to Existing Law Memorandum 85-113 and First Supplement:

Section 2 would explain in writing the intent of the terminology used in the revised Probate Code. As the changes in many of the Code Sections have ranged from minor editing to a complete rewriting, this Section is essential so that the precedential value of prior case law is not lost. We are in general agreement with this proposed Code Section.

Study L - 1038 - Estate and Trust Code (Abatement) Memorandum 86-59 and First and Second Supplements:

We prefer the version of Section 6191 set forth in the Second Supplement to the version in the original memorandum. We believe that Section 6193 should contain the language suggested by Professor Halbach. We also believe that this Section is an important Section.

While we understand the concern of the State Bar with the word "preferred" in Sections 6191 and 6194, we feel that some language must be used in order to express the intention now expressed by the word "preferred". We would suggest that a definition be provided for "preferred" rather than the possible omission of it from the Sections where it appears.

We favor the addition of Section 6195 as set forth in the First Supplement and the suggested language to modify the beginning of Section 6192.

With regard to the major issues of policy, we believe that the grouping of general and specific devises together is appropriate. Not only do we find that most lay people do not understand the distinctions between general and specific devises, we have also found that to be true of a large number of attorneys. That being so, planning is not usually done to differentiate them or to set out alternative abatement schemes to those in the statute.

We also favor the preferences for spouse or kindred, so long as the court has the ability to vary that. We have encountered situations where the residue has been exhausted by the decedent making a death-bed transfer to kindred. In those situations it may not be appropriate to have abatement favor the kindred. It is for this reason that we feel strongly that the

court should retain the ability to carry out the testator's overall estate plan and not prefer the kindred if the situation is appropriate.

Study L - 1035 - Estate and Trust Code (Administration of Estates of Missing Persons Presumed Dead) Memorandum 86-57:

We are in general agreement with the changes proposed and have only the following comment:

Section 12408 deals with the recovery of property by a missing person upon reappearance. Subpart (a)(2) provides that the missing person may recover from the distributees any property of the missing person's estate that is in their possession, or the value of the distributions received by them, to the extent that any recovery from distributees is equitable in view of all of the circumstances, but any action is forever barred five years after the time the distribution was made. The comments, in part, address the situation where a distributee has recovered property of the missing person and what the rights of the lender would be. We question whether subpart (a)(2) is sufficiently specific. We suggest that this subpart read

> "The missing person may recover from distributees any property, or interest therein, of the missing person's estate that is in their possession,***"

The underlined addition to this subpart would clarify that where a distributee has transferred an interest in the property (e.g. by encumbering the property with a trust deed) that the reappearing missing person would be entitled to receive only the interest in the property that is held by the distributee.

Study L - 1039 - Estate and Trust Code (Distribution of Interest and Income) Memorandum 86-60 and First Supplement:

We believe that the definitions given in Section 6180 should be expanded. This would satisfy the concerns expressed by the Beverly Hills Bar Association, the concerns expressed in Memorandum 86-59 regarding abatement, and provide a uniform scheme which would be clear to all affected persons. A clear set of definitions which would apply to both abatement provisions and to distribution of interest and income would help tremendously in the understanding and proper interpretation of the statutes.

The Commission is to be commended on new Section 6183 which is vastly superior in its clarity of language to existing Section 664. The existing statute has been confusing to many

practitioners. Furthermore the information omitted from this statute has led to a series of court cases requiring interpretation. Section (b), however, should be revised so that all expenses are borne by the specific devisee. We would like to point out that not only does the case law under existing Sections 661 and 664 require that the income from a specific devise follow the specific devise, but there is also case law requiring that the expenses of specifically devised property be paid by the specific devisee. See Estate of Reichel, 28 Cal.App. 3d 156; 103 Cal.Rptr. 836. This happens to make a great deal of sense in the context of most estate plans and should be continued. The most common specific devise which does not generate sufficient income to pay its expenses is the personal residence of the decedent. Since normally the specific devisee has the ability to either allow the estate to rent the property (thereby generating income) or to live there (thereby getting the benefit of the use of the property), it is only fair that the specific devisee should bear the expenses. As a convenience to estate administration, perhaps the personal representative could be authorized to advance such expenses for a period of up to one year from the date of death of decedent, in order to protect and preserve the property, without any issue of surcharge of the representative for advancing the expenses during that period.

We have serious problems with Section 6186. We believe that Section 661 of the existing Probate Code has been interpreted consistently to require an income interest of a testamentary trust to accrue from the date of death. In the case of pecuniary devises to a marital deduction trust, such a provision is essential in order to preserve the marital deduction. We agree with the Beverly Hills Bar comments that Section 6186 as presently drafted is inconsistent with Section 6187. We believe that the inconsistency should be resolved in favor of commencing the income interest from the date of death. We also believe that most practitioners do provide that in their marital deduction pecuniary bequests and that it is good practice to do so. If the statutory law is to make a choice, it should come down on the side of good practice.

Study L - 1046 - Estate and Trust Code (Nonresident Decedent) Memorandum 86-61:

Section 12530. This section permits preliminary and final distribution of a nonresident decedent's California property to a foreign personal representative provided petition therefor is made in the manner and pursuant to the procedure prescribed in the Estate and Trust Code governing petitions for distribution. This section appears to be limited to petitions for distribution to the decedent's foreign personal representative. Since this section requires compliance with the statutory

procedures for petitions for distribution and since a nonresident decedent's Will that has been to probate under Section 12522 has the same force and effect as the Will of a California domicilary that has been admitted to probate, why should this section not permit distribution to the beneficiaries under the nonresident decedent's Will?

If the California laws of intestate succession would require a distribution of an intestate decedent's California property to beneficiaries who are different from the beneficiaries under the laws of intestate succession of the decedent's domicile, which law should govern the distribution of the decedent's property, California law or the law of the decedent's domicile? By permitting distribution of the nonresident decedent's California property to the nonresident decedent's foreign personal representative, Section 12530 avoids the question, but leaves it unanswered. Should the issue be addressed by some provision in the revised Estate and Trust Code?

Section 12531. This section provides that, where it is necessary for preliminary or partial distribution of the decedent's estate to sell the decedent's real property in California, the court may order the sale and the distribution of the proceeds to the decedent's foreign personal representative. The sale must be made in the same manner as other sales of real property of a decedent. This section continues California Probate Code Section 1040. Unlike proposed Section 12571(a), proposed Section 12531 does not make clear that sales of real property pursuant to the Independent Administration of Estates Act are contemplated in this section. We question whether this section is redundant, since the distributions and sales covered by this section must comply with the general provisions of the Estate and Trust Code governing distributions and sales. We believe it would be better that proposed Section 12531 be deleted and that the general provisions of 12530 and 12571 governing the sale of a decedent's real property and distribution of the proceeds to the decedent's foreign personal representative apply.

Sections 12550-12553. These sections provide a summary procedure for collection of a nonresident decedent's California personal property and removing it to a foreign jurisdiction. Upon publication of notice of an intention to do so and delivery of an affidavit and supporting documents to the holder of a nonresident decedent's property in California, Section 12551 permits removal of the decedent's California personal property to a foreign country as well as removal to another state of the United States. Publication is required pursuant to Government Code Section 6063, which removes the difference in publication requirements under Probate Code Sections 1043 and 1043(a). The period within which objection may be made to the removal is

extended from three months from the first publication of notice as provided in Probate Code Section 1043 to four months as provided in proposed Section 12551(a)(3)(A). The shorter 30-day objection period for funds on deposit at financial institutions found in Probate Code Section 1043(a) is continued in proposed Section 12551(a)(3)(B). The question arises, if California creditors in general have four months within which to file their claims against the decedent's estate, why the claims filing period should be shortened in the case of funds on deposit at financial institutions?

Proposed section 12552(b)(2) requires the foreign personal representative to present to the person holding the decedent's California personal property not only an authenticated copy of letters issued to the foreign personal representative but also an affidavit that the foreign personal representative was validly appointed by a court of competent jurisdiction in the foreign jurisdiction. We believe the affidavit of the foreign personal representative in this case is an unnecessary requirement since an authenticated copy of the presumed, properly issued letters of the foreign personal representative in all events must be presented to the holder of the property. We believe it would be better to require that the copy of the letters issued to the foreign personal representative in all events be authenticated within 60 days of presentation to the person holding the property.

Under Probate Code Section 1043(1), the foreign personal representative in his affidavit must aver "to the best of his knowledge and belief" that there is no other personal representative, that there is no petition for the appointment of a personal representative pending, that no ancillary proceedings will be brought and that there are no unpaid California creditors of the decedent or his estate who have not consented to the removal. We agree with the removal of the reference to creditors in proposed Section 12552(b)(3). In addition, proposed Section 12552(b)(3) removes the limitation of the affidavit to the personal representative's "knowledge and belief". If a change from the present limitation of Probate Code Section 1043(1) is intended, we question whether or not this removal places an unnecessary burden upon the personal representative which may be impossible for him to meet. For example, how can the foreign personal representative state categorically that "no ancillary administration will be commenced," as proposed Section 12552(b)(3) requires?

Section 12560-12564. This section permits distribution of a nonresident decedent's California real property based upon the final decree of distribution issued by a court in a foreign jurisdiction when the value of the decedent's gross estate in

California does not exceed $60,000.00. This provision permits the law of a foreign jurisdiction to govern the disposition of a decedent's California real property, notwithstanding the possibility that the disposition of the property under the intestate laws of the foreign jurisdiction may be different from the disposition of the decedent's property under the intestate laws of California. Furthermore, it is unclear from these provisions whether a beneficiary's objection based upon the differences between the intestate laws of California and the intestate laws of the decedent's state of domicile is a valid objection to the distribution under this Section. We refer to our comment to proposed Section 12530.

We believe that the requirement of proposed Section 12561(b)(5) that the foreign personal representative file an authenticated copy of the inventory and appraisement of the decedent's property in the foreign jurisdiction is an unnecessary requirement. First, all Section 12560 requires is that the decedent's gross estate in California not exceed $60,000.00. Second, the decedent's California real property is not likely to be listed in the inventory and appraisement of the decedent's property in the domiciliary jurisdiction because the domiciliary court's presumed lack of jurisdiction over the administration of the California property. A better requirement would be the filing of an inventory and appraisement showing the decedent's California real and personal property does not exceed $60,000.00.

The hearing on the petition may not be held before 30 days after the publication of the notice of the petition. That appears to shorten the claims filing period of California creditors to less than four months after the first publication of notice. Since the decedent's California real property was probably not subject to the jurisdiction of the probate court of the state of the decedent's domicile, the effect of the shortened hearing time of proposed Section 12563 is to shorten the exposure to creditors of the decedent's California real estate.

Section 12570-12572. These sections permit a decedent's personal representative, who files in the Superior Court of the county where the nonresident decedent's property is located authenticated copies of his order of appointment, bond and Will of the decedent, to sell the decedent's California real property without the need for ancillary administration and to remove the proceeds to the foregin jurisdiction. Regarding the removal of the sales proceeds to a foreign jurisdiction, we refer to our comments concerning Section 12550. In addition, proposed Section 12572 permits the foreign personal representative to maintain legal actions in this state. Because of the requirement of proposed Section 12570(c) that a decedent's Will be filed with the court, proposed Section 12570-12572 will not be available to

nonresident decedents who die intestate. We believe this is an unintended distinction. We believe proposed Section 12570(c) should be amended to require filing of "an authenticated copy of the decedent's Will, if any, that has been admitted to probate in the foreign jurisdiction."

Section 12590-12592. Proposed Section 12590 states that the foreign personal representative submits to personal jurisdiction of the California courts (1) by filing a petition for ancillary administration, (2) by receiving distribution of the decedent's property or collecting the decedent's personal property by summary procedure (however, in these instances, jurisdiction is limited to the value of the property collected or received), (3) by filing an authenticated copy of the order of appointment under proposed Section 12570 and (4) by doing any act in this state as a personal representative that would give the courts of this state jurisdiction over the foreign personal representative as an individual. The staff comment questions whether the word "personally" adds anything to the provision and states that the term seems to imply that the foreign personal representative may be subject to California jurisdiction on unrelated matters. However, we point out that proposed Section 12590 in the opening paragraph limits jurisdiction to "any proceeding related to the estate." Therefore, there appears to be no reason to delete "personally."

Proposed Section 12591 states that the foreign personal representative is subject to the jurisdiction of the California courts to the same extent that the nonresident decedent was subject to jurisdiction at the time of death. The comment states that this is consistent with the provisions of Section 410.10 of the California Code of Civil Procedure and current case law. A question arises whether or not this provision should also be limited to "any proceeding relating to the estate?"

Proposed Section 12592 gives full faith and credit to an adjudication in favor of or against any foreign personal representative; provided, however, that full faith and credit will be given to an adjudication made in ancillary proceedings in another jurisdiction only if the local personal representative had reasonable notice of the proceedings in the other jurisdiction and had an opportunity to defend.

Section 1913 of the California Code of Civil Procedure. California Code of Civil Procedure Section 1913 is amended to conform to proposed Sections 12500-12592 of the Estate and Trust Code by removing the limitation on an executor's or administrator's authority to act to the jurisdiction of appointment.

Study L - 1025 - Estate and Trust Code (Creditor Claims - Pending Actions Involving Decedent) Memorandum 86-65 and Minutes:

We believe that new Section 9050 strikes an appropriate balance between the constitutional requirements of due process and the practical concerns of estate administration.

An absolutely minor matter is that there is a typographical error in the declaration under penalty of perjury at the end of Section 9052.

As we pointed out in our comments when this matter was in an earlier draft, the current law's provision of allowing a claim to be filed either directly with the court or presented to the personal representative has serious problems. As we pointed out at that time, one of the serious problems is that claims filed with the court are often never transmitted to the personal representative. It is an unfortunate fact of life that the personnel who normally receive such a claim in the filing office of a court clerk's office make mistakes in judgment. The heading of the claim is often filled out with the name of the attorney submitting the claim. It has not been uncommon in the past for the court personnel to send the extra copy of the claim back to the attorney submitting the claim rather than on to the attorney for the personal representative. Proposed Section 9150 would allow that kind of common mistake to be perpetuated. It is uncommon that the filing clerks will pull the actual file in order to ascertain the correct name of the attorney of record in order to notify them. That being so, we think it puts an undue burden on court personnel which is incapable of complying with it.

We recognize that the existing law also has had the problem of the claim being filed with the personal representative and no copy ever being presented to the court either from oversight or from deliberate concealment. Recognizing both of those problems in the existing law, the Beverly Hills Bar Association proposed a solution which would solve both problems and be simple and workable. That solution would be to have the claim mailed to the personal representative and/or his or her attorney with proof of mailing to be filed with the claim at the courthouse. In that situation, there is nothing for the court personnel to do other than to file the document in the file, the same as they file any other document. That does not present any undue burden or extra costs in the court system. It also reduces the ability of the personal representative to say, "I never got it." There is an affidavit under penalty of perjury that the document has been mailed to the personal representative. Under those circumstances it shifts the burden of proof to the personal representative to prove it was not received. The proposal of the Beverly Hills Bar Association is vastly superior to the existing law and to the

provision in Section 9150 set forth in the tentative recommendation.

It is our understanding from our representative who was at the last meeting and from the minutes that the concern was raised that it is difficult for members of the lay public to perform service by mail. We feel that that is less of a burden than the burdens on the courts of the proposed provision. We feel that if the instructions for the claim form were made sufficiently clear by the Judicial Council, it should not be difficult for the claimant to mail out a copy of the claim to the personal representative and to fill out the proof of service form. Under current law, claimants frequently mail such documents to the personal representative without any difficulty whatsoever. It should be further pointed out that since the advent of the Independent Administrations of Estates Act, the overwhelming majority of claims are filed by funeral homes, mortuaries, hospitals, and other claimants who have benefit of counsel. They are certainly familiar with personal service provisions.

Furthermore, individuals have shown themselves able to perform service by personal service or service by mail for purposes of the small claims court and other situations where individuals are frequently acting in pro per. There is no reason why they can not perform the same services in the situation of claims. Furthermore, the person with the most at stake in the issue is the claimant. The claimant has the highest incentive to make sure that the claim is properly filed because the claimant is interested in being paid. Any "burden" should be placed on the person with the highest incentive to perform the job correctly. We feel strongly that it is wrong to place that burden on a low level employee of the court clerk rather than on the claimant. We strongly recommend that Section 9150 be changed.

Generally the claims provisions are very much improved. We are a little bit concerned that the successor provision to current Probate Code Section 929 has not been drafted. As a practical matter, that Section is an integral part of the way personal representatives and their counsel decide on the payment of debts with or without claims.

In that regard, we would assume that a debt as defined in Section 11401 includes an amount paid under current Probate Code Section 929.

Very truly yours,

Valerie J. Merritt

Valerie J. Merritt
Co-chair of New Legislation
Committee

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