

Memorandum 86-99

Subject: Study L-1055 - L-1055 -- General Provisions Relating to Notice

Attached is a draft of the general statutory provisions relating to notice. These provisions generally govern notice after the initial notice has been given when a proceeding to administer a decedent's estate has been commenced. (The notice to be given when an estate proceeding is commenced is the subject of a separate recommendation.)

At the meeting, we plan to review the attached draft section by section. Notes are found under some of the sections pointing out matters of particular significance. Nevertheless, each section should be reviewed with care.

The most significant change recommended by the staff is to increase the 10-day mailed notice of hearing to 15 days. This will make the notice period for decedent estate administration the same as the notice period for guardianship and conservatorship. The present 10-day notice allows insufficient time for a person receiving the notice to investigate and take appropriate action concerning the matter noticed for hearing. Increasing the period to 15 days would not burden or delay estate administration because the staff understands that hearings are not actually held within 15 days of the filing of the petition that is to be heard. In any case, the draft statute gives the court authority to shorten the 15-day notice period if necessary.

The staff believes that a uniform rule as to the period of notice is essential. If the 15-day period is adopted, we will review all the periods of notice with a view to substituting the 15-day period in place of the present 10 and 20 day periods.

The general provisions relating to notice will apply to the entire Probate Code (except guardianship and conservatorship and trusts, both of which have their own special notice provisions). We plan to repeal the existing general notice provisions (§§ 1200-1210). This will require that we examine the entire Probate Code and substitute references to the appropriate provision of the new notice statute in place of the references to the repealed statute. If this approach were

not taken, we would have two notice statutes, the existing statute governing notice under provisions of Division 3 that have not been revised and the new statute governing notice under the revised provisions of the Probate Code.

After the meeting, the staff will prepare a preliminary portion explaining the draft statute as revised by the Commission. We hope to approve the recommendation for printing and submission to the Legislature at our January meeting. The staff will attempt to review each section of the Probate Code and determine the needed revisions so that these revisions can also be approved by the Commission at the January meeting. This will be a substantial undertaking, but it is important that we include the general notice provisions in the legislation recommended for enactment in 1987.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

DIVISION 3. ADMINISTRATION OF ESTATES OF DECEDENTS

[Existing Chapter 22 (§§ 1200-1242) to be repealed and
new Chapter 22 -- outline set out below -- to be enacted]

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Staff Draft

DIVISION 3. ADMINISTRATION OF ESTATES OF DECEDENTS

[Existing Chapter 22 (§§ 1200-1242) to be repealed and
new Chapter 22 — set out below — enacted]

CHAPTER 22. NOTICES

Article 1. General Notice Provisions

§ 1200. Application of chapter

1200. (a) Except as provided in subdivisions (b) and (c), this chapter governs notice required or permitted under this code.

(b) This chapter does not apply to proceedings under Division 4 (commencing with Section 1400) (guardianship and conservatorship) or Division 9 (commencing with Section 15000) (Trust Law), except that Sections 1201, 1202, 1204, 1205, 1207, 1235, 1240, 1241, and 1242 apply to proceedings under any of the divisions of this code.

(c) This chapter does not apply to notice under a particular provision to the extent that the particular provision is inconsistent with this chapter.

Comment. Section 1200 is new and prescribes the scope of the provisions relating to notice in this chapter.

Subdivision (b) supersedes subdivisions (d) and (e) of former Section 1200.5 [as amended by 1986 Cal. Stat. ch. 820]. Notice under the guardianship and conservatorship provisions and under the Trust Law is governed by special provisions. See Sections 1460-1469 (guardianship and conservatorship) and 17100-17107 (trusts).

Subdivision (c) makes clear that this chapter does not apply to the extent that a particular notice provision is inconsistent with this chapter. See, e.g., Section 328 (petition for probate of will).

§ 1201. Notice not required to be given to oneself or persons joining
in petition

1201. If a person is required to give notice of hearing, the person required to give the notice need not give the notice to himself or herself, or to any other person who joins in the petition.

Comment. The part of Section 1201 relating to giving notice to oneself is drawn from other provisions in the Probate Code. See, e.g., Sections 851, 980(d), 1000, 1020. The part relating to giving notice to another person who joins in a petition is drawn from subdivision (b) of former Section 1200.5 (notice to coexecutor or coadministrator not petitioning). See also Section 1208 (notice where personal representative and trustee are same person).

CROSS-REFERENCES

Definitions

Person § 56

§ 1202. Additional notice on court order

1202. Where the court determines that the notice otherwise required is insufficient in the particular circumstances, the court may require that further or additional notice, including a longer period of notice, be given.

Comment. Section 1202 restates former Section 1204 without substantive change, using language drawn from subdivision (b) of Section 1462 (guardianship and conservatorship).

Note. Section 1202 will supersede a provision of Section 842.1.

§ 1203. Order shortening time

1203. Except for the notices required by Sections 328, 333, and 441, the court may for good cause shorten the time for giving a notice.

Comment. Section 1203 is drawn from Sections 1462(a) (guardianship and conservatorship) and 17106 (trust law) and generalizes a provision formerly found in various sections of the Probate Code. See, e.g., the provisions formerly found in Sections [1004,

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CROSS-REFERENCES

Applicability of section § 1200

Order dispensing with mailed notice § 1221(e)

§ 1204. Waiver of notice

1204. A person, including a guardian ad litem, guardian, conservator, trustee, or other fiduciary, may waive notice of a proceeding by a writing signed by the person or the person's attorney and filed in the proceeding.

Comment. Section 1204 is drawn from Section 1-402 of the Uniform Probate Code (1982). As to the power of a guardian or conservator to

waive any process, notice, or order to show cause on behalf of the ward or conservatee, see also Section 1289 [Memorandum 86-100].

CROSS-REFERENCES

Definitions

Person § 56

§ 1205. Notice of continued or postponed hearing

1205. If a hearing is continued or postponed, no further notice of the continued or postponed hearing is required unless ordered by the court.

Comment. Section 1205 is drawn from part of former Section 1205. As to the court's authority to continue or postpone a hearing, see Section 1286 [Memorandum 86-100].

§ 1206. Notice to known heirs or devisees

1206. Where notice is required to be given to known heirs or devisees, notice shall be given to the following persons:

(a) If the estate is an intestate estate, to the heirs named in the petition for letters of administration and to any additional heirs who become known to the person giving the notice prior to the giving of the notice.

(b) If the estate is a testate estate, to the devisees named in the petition for probate of the will and to any additional devisees who become known to the person giving the notice prior to the giving of the notice.

Comment. Section 1206 is new and is designed to make clear the meaning of "known heirs or devisees" as used in various provisions of the Probate Code. The section codifies existing practice as to the giving of notice.

Section 1206 governs who must be given notice when the statute requires that notice be given to known heirs or devisees. The court may require additional notice. See Section 1202. The time and manner of notice are governed by the provision that incorporates this section or by the general provision (subdivision (b) of Section 1220) that requires notice by mail under Section 1221 if no other method is specified in the provision requiring the hearing.

CROSS-REFERENCES

Application of section § 1200

Definitions

Devisee § 34

Heirs § 44

Person § 56

Will § 88

Note. Section 1206 provides a meaning for the phrase "known heirs or devisees." The staff believes that the meaning given the phrase in Section 1206 reflects current practice. The staff plans to substitute this phrase for a variety of phrases used in various statutes we are recommending for enactment in 1987. The phrases used in the other statutes appear to have been intended to require notice to the persons described in Section 1206. We will prepare a memorandum for a future meeting indicating those provisions where a substitution of the phrase "known heirs or devisees" is proposed to be made for some other phrase.

§ 1207. Exceptions to notice requirement involving parent-child relationship

1207. (a) Subject to subdivision (b), where notice is required to be given to a decedent's beneficiaries, devisees, or heirs, notice need not be given to a person who, because of a possible parent-child relationship between a stepchild and a stepparent or between a foster child and a foster parent, may be (1) an heir of the decedent or (2) a member of a class to which a devise is made.

(b) Subdivision (a) does not apply where the person required to give the notice has actual knowledge of facts that a person would reasonably believe give rise under Section 6408 to the parent-child relationship between the stepchild and the stepparent or between the foster child and the foster parent.

Comment. Section 1207 restates former Section 1201 without substantive change. A stepchild or foster child who is not required to be given notice because of Section 1207 may request special notice under Article 6 (commencing with Section 1250).

CROSS-REFERENCES

Definitions

Beneficiary § 24
Child § 26
Devisee § 34
Heirs § 44
Parent § 54

§ 1208. Notice to trust beneficiaries where personal representative and trustee are same person

1208. (a) Except as provided in subdivision (b), if notice is required to be given to a trust or trustee, notice to trust beneficiaries is not required.

(b) Subject to subdivision (c) of this section and to paragraphs (1), (2), and (3) of subdivision (a) of Section 15804, notice shall be given to the trust beneficiaries if the personal representative and the trustee, or the person named as trustee, are the same person.

(c) Notice to trust beneficiaries is not required under subdivision (b) where the trust has more than one trustee and notice is given to a cotrustee who is not a personal representative.

Comment. Section 1208 is new. Subdivision (a) recognizes the general rule that notice is given to the trustee and not to the beneficiaries of the trust where notice is required to be given to devisees and a trust or trustee is a devisee. See Section 34 (trust beneficiaries are not devisees). Subdivision (b) provides an exception to the general rule. The exception recognizes that notice given by the personal representative to himself or herself as trustee would be meaningless and that, in some cases, the issue involved may present a conflict of interest between the interests of the personal representative and the interests of the trust beneficiaries.

CROSS-REFERENCES

Application of section § 1200

Definitions

Personal representative § 58

Trust § 82

Trustee § 84

Note. The Commission has approved the principle reflected in this section. However, the Commission has not reviewed a draft of a provision to codify that principle. Section 1208 should be reviewed with care.

§ 1209. Notice to State of California

1209. (a) Where notice is required to be given to the State of California, the notice shall be given to the Attorney General.

(b) Where notice is required to be given to the Attorney General, the notice shall be served personally or by mail addressed to the Attorney General at the office of the Attorney General at Sacramento, California.

Comment. Subdivision (a) of Section 1209 is new. This section applies, for example, in a case where notice is required to be given to devisees under a will and the state is a devisee. In this case, the Attorney General is the proper recipient of the notice.

Subdivision (b) generalizes a provision of the second paragraph of Section 328.

CROSS-REFERENCES

Application of section § 1200

Mailing, manner of § 1222

Personal service, manner of § 1235

Article 2. Mailing of Notice

§ 1220. Application of article

1220. Notice shall be given as provided in this article in the following cases:

(a) Where notice is required to be given for the period and in the manner provided by Section 1221.

(b) Where notice is required and no other time or method is prescribed by law or by the court or judge.

Comment. Section 1220 supersedes subdivision (a) of former Section 1200.5. The listing of the petitions found in subdivision (a) of former Section 1200.5 has been omitted as unnecessary; the specific provision that relates to the particular petition has been revised to include a specific requirement in that provision that notice of the hearing be given for the period and in the manner provided by Section 1221.

CROSS-REFERENCES

Additional notice § 1202

Application of chapter § 1200

Continued or postponed hearing § 1205

Persons joining in petition, notice not required § 1201

Shortening time § 1203

Waiver of notice § 1204

§ 1221. Giving notice by mail

1221. (a) At least 15 days before the time set for the hearing, the petitioner or the person filing the report, account, or other paper shall cause notice of the time and place of the hearing to be mailed to all of the following:

(1) The personal representative.

(2) The copersonal representatives, if any.

(3) All persons who have given notice of appearance in the estate proceeding, in person or by attorney, as heir, devisee, or creditor, or as otherwise interested. If the person appeared by attorney, the notice shall be mailed to the attorney.

(b) The notice shall be addressed to the person required to be given notice at his or her office or place of residence, if known, or, if neither address is known, to the person at the county seat where the proceedings are pending.

(c) Nothing in this section excuses compliance with the requirements for notice to a person who has requested special notice pursuant to Article 6 (commencing with Section 1250).

(d) The court for good cause may dispense with the notice otherwise required to be given to a person under subdivision (a).

Comment. Section 1221 supersedes subdivision (b) of former Section 1200.5 [as amended by 1986 Cal. Stat. ch 820, § 33.5].

Subdivision (a) continues a portion of subdivision (b) of former Section 1200.5 but lengthens the time for mailing the notice from 10 to 15 days before the time set for the hearing. In addition, the requirement of subdivision (b) of former Section 1200.5 that notice be given to all persons who have requested notice is omitted from subdivision (a) of Section 1221 as unnecessary; subdivision (c) of Section 1221 makes clear that notice must be given to persons who have requested special notice. See Section 1253 (notice required to be given to person requesting special notice). This is consistent with the approach taken in Section 1460 (guardianship and conservatorship).

Subdivision (b) of Section 1221 continues a portion of subdivision (b) of former Section 1200.5 without substantive change. Subdivisions (c) and (d) are new provisions drawn from Section 1460 (guardianship and conservatorship).

The person required to give notice by mail as provided in this section can satisfy that requirement by personal delivery of the notice to the person required to be given the notice. See Section 1223. As to shortening the time of notice, see Section 1203. The court may order additional notice. See Section 1202.

CROSS-REFERENCES

Additional notice § 1202

Continued or postponed hearing § 1205

Definitions

Devisee § 34

Heirs § 44

Interested person § 48

Person § 56

Personal representative § 58

Manner of mailing § 1222

Personal delivery in lieu of mailing § 1223

Persons joining in petition, notice not required § 1201

Proof of mailing § 1261

Shortening time § 1203

Special notice § 1253

Waiver of notice § 1204

When mailing complete § 1222

Note. Draft Section 9782 (estate management) should be revised or deleted to conform with draft Section 1221 and others. Subdivision (d) supersedes provisions found in Section 1004 and other sections.

Note. Section 1221 makes an important change in existing law. It lengthens the time for mailing notice of hearing from 10 to 15 days before the time set for the hearing. The staff is of the belief that a

10-day notice allows insufficient time for the person receiving the notice to contact his or her attorney and for the attorney to investigate and take appropriate action concerning the matter noticed for hearing. The notice period under the guardianship and conservatorship law is 15 days rather than 10 days. Section 1203 of the draft statute allows for a court order shortening the 15-day notice period if necessary.

If the notice period is changed from 10 to 15 days, conforming changes should be made in other provisions that provide for a 10-day notice of hearing. The staff believes that a uniform rule as to the period of notice is important and we recommend that a uniform 15-day rule be adopted.

§ 1222. Manner of mailing; when mailing completed

1222. Unless otherwise expressly provided:

(a) If a notice or other paper is required or permitted to be mailed to a person, it shall be sent by:

(1) First class mail if the person's address is within the United States.

(2) Airmail if the person's address is not within the United States.

(b) The mailing is complete when the notice or other paper is deposited in the mail, postage prepaid, addressed to the person to whom it is mailed.

Comment. Section 1222 is new and is drawn in part from Section 1465 (guardianship and conservatorship).

CROSS-REFERENCES

Definitions

Person § 56

§ 1223. Personal delivery instead of mailing

1223. If a notice or other paper is required or permitted to be mailed (whether by first-class, airmail, certified, or registered mail), it may be delivered personally to the person to whom it is required or permitted to be mailed. Personal delivery as provided in this section satisfies the provision that requires or permits the notice or other paper to be mailed.

Comment. Section 1223 is new and is drawn from Section 1466 (guardianship and conservatorship).

CROSS-REFERENCES

Definitions

Person § 56

Article 3. Posting of Notice

§ 1230. Manner of posting notice

1230. Where notice of hearing is required to be posted in the manner provided by this section:

(a) At least 15 days before the time set for the hearing, the clerk shall cause a notice of the time and place of the hearing to be posted at the courthouse of the county where the proceedings are pending. If court is held at a place other than the county seat, the notice may be posted either at the courthouse of the county where the proceedings are pending or at the building where the court is held.

(b) The posted notice of hearing shall state all of the following:

(1) The name of the estate.

(2) The name of the petitioner.

(3) The nature of the petition, referring to the petition for further particulars.

(4) The time and place of the hearing of the petition.

Comment. Section 1230 restates subdivision (a) of former Section 1200 and former Section 1210 with the following significant revisions:

(1) Former Section 1200 listed the petitions to which the posting requirement applied. This list is not continued in Section 1230. Instead, a reference to Section 1230 is included in each provision that provides for notice by posting. See Sections [insert references to sections to which Section 1230 applies].

(2) Former Section 1200 required posting at least 10 days before the hearing. Section 1230 requires posting at least 15 days before the hearing. The 15-day posting requirement conforms to the requirement that notice be mailed 15 days before the hearing. See Section 1221.

(3) The portion of former Section 1200 requiring the clerk to set the petition for hearing by the court has been omitted as unnecessary. See Section 1285 (clerk to set petitions for hearing).

Note. Existing law requires that notice be posted in the following cases:

(1) A petition for the sale of stock or bonds.

(2) A petition for confirmation of a sale of real property.

(3) A petition to grant an option to purchase real property.

(4) A petition for leave to enter into an agreement to sell or give an option to purchase a mining claim or real property worked as a mine.

(5) A petition for leave to lease or to exchange property.

(6) A petition for leave to institute an action for the partition of property.

The provisions covering these petitions are included in the provisions to be submitted in 1987 relating to estate management. The estate management provisions drafted for submission in 1987 will be revised to make reference to posting as required by Section 1230 where posting is required. Those provisions now refer to Section 1200.

Under the revised estate management provisions, the petition concerning mining claims or real property worked as a mine is eliminated, and the posting requirement will not apply to the hearing on a petition for leave to bring an action for the partition of property. The revised estate management provisions continue what appears to be the existing law concerning commencement of partition actions: A partition action may be commenced without prior court authorization. Under the revised estate management provisions, if court authorization is sought for a partition action, no posting will be required.

Article 4. Personal Service

§ 1235. Manner of personal service

1235. Personal service of a paper or citation shall be made in the same manner as a summons is served under Chapter 4 (commencing with Section 413.10) of Title 5 of the Code of Civil Procedure.

Comment. Section 1235 replaces provisions scattered through the Probate Code providing for personal service of a paper or citation. See, e.g., Sections 328, 370, 382, 451, 521, 613, 758, 851.5, 921-922, 1101. Service by mail in the manner authorized in Section 415.30 of the Code of Civil Procedure is complete on the date a written acknowledgment of receipt is executed. See Section 1236.

§ 1236. Service by mail as provided in Code of Civil Procedure

1236. If service is made by mail pursuant to this code in the manner authorized in Section 415.30 of the Code of Civil Procedure, the service is complete on the date a written acknowledgment of receipt is executed.

Comment. Section 1236 is drawn from Section 1467 (guardianship and conservatorship). For provisions providing for service by mail in the manner authorized by Section 415.30 of the Code of Civil Procedure, see, e.g., Section 1235 (manner of personal service) and Sections []

Article 5. Citations

§ 1240. Issuance of citation

1240. A citation may be issued by the clerk on the application of any party, without a court order, except in cases where an order is expressly required by law.

Comment. Section 1240 restates the first sentence of former Section 1207 without substantive change.

§ 1241. Contents of citation

1241. The citation shall be directed to the person to be cited, signed by the court clerk, and issued under the seal of the court. The citation shall contain the title of the proceeding, a brief statement of the nature of the proceeding, and a direction that the person cited appear at a time and place specified.

Comment. Section 1241 restates the second sentence of former Section 1206 without substantive change.

CROSS-REFERENCES

Definitions

Person § 56

§ 1242. Service of citation

1242. The citation shall be personally served on the person cited in the manner provided by Section 1235. Except as otherwise provided by statute, the citation shall be served at least five days before its return day.

Comment. Section 1242 restates the second sentence of former Section 1207 without substantive change.

CROSS-REFERENCES

Definitions

Person § 56

Personal service, manner of § 1235

Note. Should the five-day period be increased to 15 days?

Article 6. Request for Special Notice

§ 1250. Request for special notice

1250. (a) At any time after the issuance of letters, any person interested in the estate, whether as devisee, heir, creditor,

beneficiary under a trust, or as otherwise interested, may, in person or by attorney, file with the court clerk, a written request for special notice.

(b) The request for special notice shall be so entitled and shall set forth the name of the person and the address to which notices shall be sent.

(c) The request may request special notice of all of the following matters by referring generally to "the matters described in subdivision (c) of Section 1250 of the Probate Code":

(1) Any petition filed in the estate proceeding for which notice of hearing is required.

(2) Inventory and appraisal of the estate, including any supplemental inventory and appraisal.

(3) An objection to the appraisal made by the personal representative or probate referee.

(4) An account of a personal representative.

(5) A report of status of administration.

(d) The request may request special notice of fewer than all of the matters described in subdivision (c), in which case the request shall state specifically each of the matters of which special notice is requested.

(e) A copy of the request shall be personally served on the personal representative or on the attorney for the personal representative.

(f) The original of the request, when filed with the clerk, shall be accompanied by a written admission or proof of service.

Comment. Section 1250 replaces parts of former Sections 1202 and 1202.5.

Section 1250 abandons the approach of the former law which purported to list the petitions of which special notice might be requested. Instead, subdivision (c) of Section 1260 permits the person requesting special notice to request notice of the matters described in subdivision (c), which includes all petitions of which notice of hearing is required and specified additional matters. Subdivision (d) continues the option available under former Section 1202 which permitted the person requesting special notice to describe specifically those matters of which special notice is requested if the person did not wish to receive special notice of all matters.

Section 1250 corrects a serious defect in former Section 1202. Former Section 1202 provided for special notice of only those petitions mentioned in former Section 1200. But in 1980, provisions in former

Section 1200 applying to notice by mail were split out of that section and put into newly-enacted former Section 1200.5. See 1980 Cal. Stat. ch. 955. Conforming revisions were made to some, but not all, of the other Probate Code sections that referred to the notice by mail provisions of former Section 1200. Former Section 1202 was not amended to reflect the fact that after the 1980 revision service by mail of notice of most petitions was made under former Section 1200.5, rather than under former Section 1200. As a result, former Section 1202 (which provided for special notice of only those petitions mentioned in Section 1200) did not on its face require special notice of the petitions mentioned in former Section 1200.5 but not mentioned in former Section 1200. Therefore, by its terms, former Section 1202 provided for special notice only by posting, and only for petitions that were still mentioned in former Section 1200. Since the provisions governing mailing of notice of hearing (see new Section 1220) no longer contain a list of petitions, Section 1250 adopts the approach that a person requesting special notice will be given notice of the filing of any petition that requires a hearing unless the person requests notice only of specific matters listed in the request for special notice.

Subdivision (a) omits as unnecessary the specific reference to the State Controller that was found in former Section 1202. Where the State Controller has an interest in the estate, the State Controller would be included within the persons who can request special notice as a person "otherwise interested." As to the right of a federal agency to request special notice, see Section 1288 [Memorandum 86-100].

Section 1250 also makes clear that the request for special notice must be personally served upon the personal representative or his or her attorney. As to the manner of personal service, see Section 1235. As to proof of service, see Section 1264.

CROSS-REFERENCES

Definitions

Devisee § 34
Heirs § 44
Interested person § 48
Letters § 52
Person § 56
Personal representative § 58
Trust beneficiary § 24
Personal service § 1235
Proof of service § 1264

Note. Under existing law, special notice may be requested "of the filing of any or all of the petitions or accounts mentioned in Section 1200." Thereafter, the person is entitled to notice as provided in Section 1200. This scheme is seriously defective. As stated in § 6.51 of 1 California Decedent Estate Practice (Cal. Cont. Ed. Bar 1986):

Probate Code §1202 was not amended to reflect the fact that notice of most petitions and accounts is served by mail under Prob C §1200.5, rather than under Prob C §1200. As a result, Prob C §1202 (which provides for special notice of only those petitions and accounts mentioned in Prob C §1200) does not on its face

require special notice of the petitions and accounts mentioned in Prob C §1200.5 but not mentioned in Prob C §1200. Therefore, by its terms, Prob C §1202 provides for special notice only by posting, and only for petitions still mentioned in Prob C §1200. Counsel should note, however, that local rules of practice or the court on its own motion under Prob C § 1204 may require notice by mail, and notice of the petitions and accounts listed in Prob C §1200.5. Furthermore, courteous and prudent practice suggest that notice be sent, even if the petition or account is not listed in Prob C §1200.

The draft statute does not continue the existing approach which would require a list of the petitions the hearing of which special notice may be required. Instead, the draft assumes that the person requesting special notice will want either notice of the hearing of all petitions filed in the proceeding or only certain specified petitions (to be listed in the request for special notice). The approach taken by the draft statute greatly simplifies the statute and avoids the need to update the list of petitions each time a new petition is authorized or an existing petition is revised or eliminated. In addition, the approach of the draft statute should simplify probate practice, because as a routine matter notice of hearings on all petitions filed in the proceeding will be given to persons who make a request for special notice of all matters.

Having eliminated the laundry list in the successor of Section 1200.5 (notice by mail of hearing of certain petitions), we do not want to resurrect it in this section, the successor of Section 1202, for requests for special notice of hearing of petitions. We believe that a person who wants less than everything will have a particular matter in mind and will request notice of that matter.

§ 1251. Modification or withdrawal of request for special notice

1251. A request for special notice may be modified or withdrawn in the same manner as provided for the making of the initial request.

Comment. Section 1251 is new and is drawn from part of subdivision (a) of Section 2701 (guardianship and conservatorship law).

§ 1252. New request for special notice

1252. A new request for special notice may be served and filed at any time as provided in the case of an initial request.

Comment. Section 1252 is new and is drawn from subdivision (b) of Section 2701 (guardianship and conservatorship law).

§ 1253. Notice to be given to person requesting special notice

1253. In any case to which a request for special notice applies, the person filing the petition, report, or account, or other paper

shall give written notice of the filing, together with the time and place set for the hearing, by mailing the notice to the person named in the request at the address set forth in the request, or by causing the notice to be personally delivered to the person, at least 15 days before the time set for the hearing. In the case of an inventory and appraisal of the estate, a written notice of the filing of the inventory and appraisal shall be so mailed or personally delivered not later than 15 days after the inventory and appraisal is filed with the court.

Comment. Section 1253 is drawn from Section 2702 (guardianship and conservatorship) and replaces the last sentence of former Section 1202 and the second sentence of former Section 1202.5. The 10-day mailing or delivery requirement of former Section 1202.5(b) is replaced by a 15-day requirement. The 15-day requirement for special notice is consistent with the 15-day requirement of Section 1221 (notice by mail). The 15-day period may be reduced by an order shortening time. See Section 1203. See also Section 1204 (waiver of notice).

CROSS REFERENCES

Definitions

Person § 56

Mailing notice

Completion § 1222

Manner § 1222

Proof of § 1261

Personal delivery, proof of § 1264

Persons joining in petition, notice not required § 1201

Proof of giving notice required § 1260

Shortening time § 1203

Waiver of notice § 1204

Note. Section 1253 replaces the 10-day mailing or delivery requirement of former Section 1202.5(b) by a 15-day requirement. The 15-day requirement for special notice is consistent with the staff recommended 15-day requirement for notice by mail (see Section 1221). The 15-day period may be reduced by an order shortening time. See Section 1203.

Article 7. Proof of Giving of Notice

§ 1260. Proof of giving of notice of hearing required

1260. If notice of a hearing is required, proof of giving notice of the hearing shall be made at or before the hearing to the satisfaction of the court.

Comment. Section 1260 is drawn from subdivision (b) of former Section 1200 and subdivision (c) of former Section 1200.5. Section 1260 supersedes provisions found in various sections of the Probate Code. See, e.g., Sections 333(c), 584.3(d), 852.

Section 1260 adds the requirement that proof of notice be made either at or before the hearing. This is consistent with existing practice. See 1 California Decedent Estate Practice § 6.37 (Cal. Cont. Ed. Bar 1986).

CROSS-REFERENCES

Application of chapter § 1200
Proof of mailing § 7522
Proof of personal service § 7551
Proof of posting § 7541
Proof of publication § 7530
Waiver of notice § 1204

Note. Should the requirement that proof of service be filed in the proceeding be added to the statute? No such requirement is found in the existing statute. The proof may be by testimony at the hearing.

§ 1261. Proof of mailing

1261. Proof of mailing may be made in the manner prescribed in Section 1013a of the Code of Civil Procedure.

Comment. Section 1261 is drawn from subdivision (a)(2) of Section 1468 (guardianship and conservatorship). Section 1261 continues existing practice. See 1 California Decedent Estate Practice § 6.39 (Cal. Cont. Ed. Bar 1986).

§ 1262. Proof of publication

1262. Proof of publication may be made by the affidavit of the publisher or printer, or the foreman or principal clerk of the publisher or printer, showing the time and place of publication.

Comment. Section 1262 is drawn from subdivision (a)(4) of Section 1468 (guardianship and conservatorship). A declaration under penalty of perjury may be used instead of an affidavit. See Code Civ. Proc. § 2015.5; see also Code Civ. Proc. § 2015.6 (affirmation instead of oath).

§ 1263. Proof of posting

1263. Proof of posting may be made by the affidavit of the person who posted the notice.

Comment. Section 1263 is drawn from subdivision (a)(3) of Section 1468 (guardianship and conservatorship). Section 1263 is also drawn from existing practice. See 1 California Decedent Estate Practice

§ 6.46 (Cal. Cont. Ed. Bar 1986). A declaration under penalty of perjury may be used instead of an affidavit. See Code Civ. Proc. § 2015.5; see also Code Civ. Proc. § 2015.6 (affirmation instead of oath).

§ 1264. Proof of personal service by personal delivery

1264. Proof of notice by personal delivery may be made by the affidavit of the person making the delivery showing the time and place of delivery and the name of the person to whom delivery was made.

Comment. Section 1264 is drawn from subdivision (a)(1) of Section 1468 (guardianship and conservatorship). A declaration under penalty of perjury may be used instead of an affidavit. See Code Civ. Proc. § 2015.5; see also Code Civ. Proc. § 2015.6 (affirmation instead of oath).

§ 1265. Proof by testimony at hearing

1265. Proof of notice, however given, may be made by testimonial evidence presented at the hearing.

Comment. Section 1265 is drawn from subdivision (a)(5) of Section 1468 (guardianship and conservatorship).

§ 1266. Conclusiveness of order that notice regularly given or waived

1266. (a) If it appears to the satisfaction of the court that notice has been regularly given or that the party entitled to notice has waived it, the court shall so find in its order.

(b) The finding described in subdivision (a), when the order becomes final, is conclusive on all persons, except that the finding is not conclusive if it is obtained by fraud or conspiracy or by misrepresentation in the proof of giving of notice. For the purposes of this subdivision, misrepresentation includes, but is not limited to, the omission of a material fact.

Comment. Subdivision (a) of Section 1266 restates without substantive change parts of subdivision (b) of former Section 1200 and subdivision (c) of former Section 1200.5. The provision for waiver of notice is drawn from case law. See Estate of Poder, 274 Cal. App. 2d 786, 791-92, 79 Cal. Rptr. 484 (1969); Estate of Pailhe, 114 Cal. App. 2d 658, 662, 251 P.2d 76 (1952); Estate of Palm, 68 Cal. App. 2d 204, 213-14, 156 P.2d 62 (1945); *In re Estate of Pierce*, 28 Cal. App. 2d 8, 11-12, 81 P.2d 1037 (1938). See also Section 1204 (waiver of notice).

Subdivision (b) restates the rule of conclusiveness of the finding by the court concerning the giving of notice, which was found in

subdivision (b) of former Sections 1200 and subdivision (c) of former Section 1200.5, and codifies case-law exceptions to the rule. See, e.g., State v. Broderson, 247 Cal. App. 2d 797, 56 Cal. Rptr. 58 (1967) (finality of decree not protected by notice given because of presence of extrinsic fraud). See also Estate of Clarke, 66 Cal. 2d 142, 424 P.2d 337, 56 Cal. Rptr. 897 (1967); Estate of Reed, 259 Cal. App. 2d 14, 66 Cal. Rptr. 193 (1968). Cf. Bank of America v. Superior Court, 181 Cal. App.3d 705, ____ Cal. Rptr. ____ (1986); Lazzarone v. Bank of America, 181 Cal. App.3d 581, ____ Cal. Rptr. ____ (1986).

CROSS-REFERENCES

Waiver of notice § 1204

Note. The portion of subdivision (b) of Section 1266 which codifies the case-law exceptions is drawn from Section 9612 (order made under estate management provisions).

Article 8. Form For Notice of Hearing

§ 1270. Form for notice of hearing

1270. (a) Subject to subdivision (b), the notices provided to be given in Section 327, 441, and 1221, and in all other cases in which notice is required in this code and no other type of notice is prescribed by law or by the court or judge, shall be in substantially the following form:

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE (CITY AND) COUNTY OF

Estate of _____ No. _____

A.B. _____ Notice of Hearing

Deceased (If to be published, describe purport or character of the
notice to be given)

Notice is hereby given that (name of petitioner and representative capacity, if any) has filed herein a (nature of petition, application, report or account), reference to which is made for further particulars, and that the time and place of hearing the same has been set for (date), at ...m., in the courtroom (of Department No. ..., if any) of this court, at (the courthouse, or state other location of the court), in the City of, California.

Dated

....., Clerk

By....., Deputy Clerk

(b) If the Judicial Council has adopted a form for the giving of the notice, the Judicial Council form may be used.

Comment. Subdivision (a) of Section 1270 continues former Section 1200.1 without substantive change. Subdivision (b) is a new provision that recognizes that the Judicial Council has adopted forms for giving of notice. See NOTICE OF HEARING (Probate) -- Form Approved by the Judicial Council of California DE-120 (Rev. January 1, 1985); NOTICE OF HEARING (Guardianship or Conservatorship) -- Form Approved by the Judicial Council of California Revised Effective January 1, 1981 GC-010(81). In some cases a special form of notice is prescribed and must be used. See, e.g., Section 333 (Notice of Death of _____ and of Petition to Administer Estate No. _____).