

12/01/86

Fourth Supplement to Memorandum 86-202

Subject: Study L-1025 - Creditor Claims (Comments of Beverly Hills Bar Association)

Attached to this supplement is a letter from the Legislative Committee of the Probate, Trust & Estate Planning Section of the Beverly Hills Bar Association commenting on the tentative recommendation relating to creditor claims. At the meeting we will orally review the issues raised in the letter in connection with the portions of the tentative recommendation that they deal with.

Respectfully submitted,

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November 25, 1986

VIA FEDERAL EXPRESS

John H. DeMouilly, Esq.
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303-4739

Attn: Nathaniel Sterling, Asst. Executive Secretary

Re: Study L-1025
Creditor Claims and Payment of Debts

Dear Mr. DeMouilly:

I am writing on behalf of the Legislative Committee of the Probate, Trust & Estate Planning Section of the Beverly Hills Bar Association.

We have examined the July 1986 Tentative Recommendation (7/25/86 draft), and have the comments and suggestions detailed on the attached COMMENTS ON SELECTED SECTIONS.

At least two members of our Legislative Committee, including the undersigned, are planning to attend the Commission meeting on Thursday and Friday, December 4th and 5th at the Holiday Inn in Burbank.

Sincerely,



PHYLLIS CARDOZA

PC:pk

cc: Ralph V. Palmieri, Esq., Chair, Legislative Committee
Kenneth G. Petrulis, Esq., Member, Legislative Committee
Linda L. Wight-Mazur, Esq., Member, Legislative Committee

Enc.

CALIFORNIA LAW REVISION COMMISSION
Study L-1025
ESTATE AND TRUST CODE
PART 4. CREDITOR CLAIMS

COMMENTS ON SELECTED SECTIONS
BY BEVERLY HILLS BAR ASSOCIATION
PROBATE, TRUST & ESTATE PLANNING SECTION, LEGISLATIVE COMMITTEE

General note re usage of the terms "filed" and "made": The new code revisions introduced the concept of the "making of a claim". The term "make" or "made" implies the coming into existence of a claim when it is filed. This, however, conflicts with new §9000, which defines a claim as being in existence whether it is filed or not. Further, it is not clear from the definition of claim, set forth in Section 9150, that there is any difference between the term "made" and "filed" as it was intended to be used in the revised code. The term "claim" by definition means creating or causing to come into existence. This implies that a claim does not exist before it is "made". There are no such problems with the term "filed". We therefore suggest that the use of the term "made" in the code be suppressed and the term "filed" or "filing" be appropriately substituted.

We have attempted to do so wherever "made" appears; if we have missed some, we respectfully request that the omission be rectified.

DELETED LANGUAGE IS CROSSED OUT, AND ADDED LANGUAGE UNDERLINED.

CHAPTER 1. GENERAL PROVISIONS

§9000. "Claim" defined

(a) "Claim" means a demand for payment or performance of ~~for~~ any of the following, whether due, not due, or contingent, and whether liquidated or unliquidated.

(1) Liability Obligation of the decedent whether arising in contract, tort, or otherwise.

~~(2) -- Liability for taxes incurred before the decedent's death, other than property taxes, special assessments, assessments, gift taxes, and estate taxes.~~

~~(3)~~(2) Liability of the estate for funeral expenses of the decedent.

(b) "Claim" does not include:

(1) A dispute regarding title of a decedent to specific property alleged to be included in the decedent's estate.

(2) A demand for payment of any tax other than one arising under a statute listed in §9251(b).

BHBA Comments to §9000

As to Subparagraph (a), a creditor may not be seeking payment, but rather specific performance of an agreement. In addition, we felt the added language, moved from §9002(a), is more of a definition than a requirement.

We have moved (a)(2) to (b)(2) and suggested changed language as a clarification that certain taxes don't require the filing of a claim (e.g. U. S. Government obligations) but that certain taxes do require that a claim be filed?

We also suggest a cross-reference to §9002(b) regarding a barred claim.

§9002. Claim requirements

9002. Except as otherwise provided by statute:

(a) All claims~~, whether due, not due, or contingent, and whether liquidated or unliquidated,~~ shall be made filed in the manner and within the time prescribed in ~~this part, §§9150 et seq.~~

(b) A claim that is not made filed as prescribed in this part is barred.

(c) No holder of a claim shall maintain an action on the claim unless it is first made- filed as prescribed in this part.

BHBA Comments

See the general note on page 1 of these comments.

Subparagraph (c): The proposed addition clarifies the antecedent of the term "first made".

CHAPTER 2. NOTICE TO CREDITORS

§9050. Notice required

9050. (a) If the personal representative has actual knowledge of a creditor of the decedent before expiration of the time prescribed in Section 9051, the personal representative shall serve notice of administration of the estate of the decedent on the creditor, together with the form prescribed in §9052, subject to Section 9054. ~~As used in this section, "creditor" means a person who has demanded payment by the decedent or from the estate.~~

(b) Actual knowledge is presumed from receipt by the personal representative or his/her attorney of a written instrument demanding payment of a debt or performance of an obligation. In any other case, the creditor shall prove by clear and convincing evidence that the personal representative or attorney therefor had actual knowledge of said creditor. Actual knowledge is a subjective perception by the personal representative or the attorney therefor of the name and address of a claimant or creditor.

(c) As used in this section, "creditor" means a person who has demanded payment from -- or performance of an obligation by -- the decedent or the estate.

~~(b)~~(d) Service of the notice shall be in addition to publication or posting of the notice of hearing of the petition to administer the decedent's estate pursuant to Chapter 2 (commencing with Section 8100) of Part 2.

BHBA Comments re §9050

Regarding Subparagraph (a):

If claimants are to receive actual notice, they should be given in the notice that is mailed to them all the information necessary to file a valid claim. Thus, a claim form (described in §9052) should be provided along with the mailed notice, which is why we suggest the added language.

The last sentence should be moved to new Subparagraph (c) because there is another definition (actual notice) with its own subparagraph.

Regarding new Subparagraph (b)

All the members of our Subcommittee felt strongly that "actual notice" had to be defined in clear terms, and we spent several hours on this new language.

Regarding new Subparagraph (c)

The added phrase comes from the new language in §9000(a).

In the minutes of the 7-17-86 relating to §9000, the staff was asked to make sure the definition for "creditor" used in this §9050 works for the various uses of "creditor" in the statute.

§9052. Form of notice

9052. The notice shall be in substantially the following form:

NOTICE OF ADMINISTRATION OF
ESTATE OF _____

To creditors of _____, deceased:

Letters ~~have been~~ were issued to _____ dated on _____, 19__, in Estate No. _____ by the Superior Court of California, County of _____, for the administration of the estate of the above decedent.

You must ~~file~~ serve a copy of your claim ~~with the court~~ using the attached form upon the attorney of record or the personal representative of the estate within the later of four months from the date of issuance of the letters (set forth above) or 30 days from the date of mailing or delivery (set forth below) of this notice, as provided in Section 9100 of the California Estate and Trust Code.

The original claim form, with the proof of service filled out, must be filed with the court at the above address.

PROOF OF SERVICE

I served a copy of the above notice on _____ (person) by one of the following means (check appropriate space):

____ personally delivering the copy to the person served at:

1. ____ (date) 2. ____ (time) 3. _____ (address)

____ placing the copy in the United States mail, in a sealed envelope with postage fully prepaid at:

1. ____ (date) 2. ____ (time) 3. _____ (mailing address)

I ~~deleare~~ declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

____ (date) _____ (type or print name) _____ (signature)

BHBA Comments to §9052

Again, if claimants are to receive actual notice, they should be given in the notice that is mailed to them all the information necessary for a valid claim. Thus, we reiterated our desire, expressed in the July 7, 1986 draft of this tentative recommendation, that the personal representative or his/her attorney be the first to know about the claim within the claim period, for purposes of the orderly administration of the estate.

On the other hand, we retained the language requiring that the claim be filed with the court, so that the creditor would have a way to be sure the claim is not overlooked by the court even if the estate representative or attorney claims to have not received a copy.

In this way, the new language in our redraft of §9150 is followed in the notice that creditors receive.

In the last paragraph of the proof of service on the notice, the word "declare" was misspelled.

§9053. Immunity of personal representative and attorney

9053. If the personal representative or attorney ~~reasonably~~ believes notice to a particular creditor is or may be required by this chapter and gives notice based on that belief, neither the personal representative nor the attorney is liable for giving the notice whether or not required by this chapter.

BHBA Comments

We suggest the word "reasonable" should be removed from the first line because even if the belief is unreasonable, the frivolous claimant should be responsible for costs.

§9100. Claim Period

9100. (a) A creditor shall ~~make~~ file a claim within the later of the following times:
[etc.]

BHBA Comments

See the general note on page 1 of these comments.

§9103 Late claims

9103. (a) A claim may be made filed at any time within one year after the time prescribed in Section 9100 and before an order for final distribution has been made if it appears to the satisfaction of the court that any of the following conditions is satisfied:

(1) The claimant was out of the state during the entire period prescribed in Section 9100 and did not receive notice. This paragraph does not apply to a business claimant who does business in the state.

(2) [etc.]

BHBA Comments

Subparagraph (a). See the general note on page 1 of these comments.

Subparagraph (a)(1). Some of our members feel that the term "claimant who does business in the state" is unclear and that the standard or test for doing business in the state should be stated. Perhaps a search should be made of the definitions in other codes (e.g. Revenue and Taxation, consumer protection laws, etc.) for due process considerations. In addition, would the business claimant include a person who has a business deal?

Also, as respects that out-of-state business claimant, when is it considered to be out of state: At the date the debt was incurred, the date of death, or the date the claim was presented?

There should be added to end of the Comment a clause which states:
and business claimants who do not do business in the state.

§9104 Amendment or revision of claim

9104. If a claim is made filed within the time prescribed in Section 9100, the creditor may thereafter make an amendment or revision of the claim, but a creditor may not make an amendment or revision after the earlier of the time the court makes an order for final distribution of the estate or one year after letters are first issued to a general personal representative.

BHBA Comments

Subparagraph (a). See the general note on page 1 of these comments.

There should be some clarification of what is considered to be an amendment: More money? A different cause of action?

CHAPTER 4. MAKING FILING OF CLAIMS

S9150. How claim is made filed

~~{a}--A-claim-is-made-by-filing-the-claim-in-the-office-of-the clerk.--The-clerk-shall-notify-the-attorney-of-record-or,-if-none,-the personal-representative,-if-a-claim-is-made.~~

(a) The original claim shall be filed in the office of the clerk in the county and district of the Superior Court where administration is pending. The claim shall include a completed proof of service showing service of a copy of the claim personally or by mail upon the attorney for the personal representative, or if none, on the personal representative.

(b) A claim may be made filed by the claimant or a person in behalf of the claimant.

(c) The Judicial Council may prescribe a form for the claim, and use of said form is deemed to satisfy the requirements of this section. The claim form shall inform the claimant that the claim must be be filed with the clerk and served on the personal representative. It shall include a form for return of proof of service, including a statement under penalty of perjury that the person making the claim has served a copy of the claim on the personal representative.

BHBA Comments to §9150

See the general note on page 1 of these comments.

We strongly urge that the above procedure be followed [that a copy of the claim be served on the representative and the original with proof of service filed with the Court], for the following reasons:

- a. How would the Clerk notify the attorney or representative of the provisions of the claim without mailing an actual copy of the claim? No provision is made for filing the claim in duplicate, as is now done. Would the attorney or representative have to go to the Court file each time notice from the Clerk was received to examine the file again? This provision complicates estate administration, which is surely not the intention of the Commission.
- b. The Clerks are overloaded now with mailing out only some duplicates of claims, so that claims are often received by the attorney or representative long after the claims period expires. If the Clerks had to mail out notifications of all claims, they would probably go on strike!
- c. Mailing a copy of the claim directly to the representative or attorney would thus give the best and earliest notice of the claimant's demand, while filing the original with the Court would give the best protection to the claimant.

We added language about the Judicial Council claim form to be used, noting that in the 7-7-86 draft recommendation, there was a former §9153, which read:

"§ 9153. Form of claim

"9153. (a) Any claim form adopted by the Judicial Council shall inform the claimant that the claim must be filed with the clerk and served on the personal representative, and shall include a form for return of proof of service.

"(b) A claim shall include a statement under penalty of perjury that the person making the claim has served a copy of the claim on the personal representative."

The minutes of the July 17-18 meeting state that "This section [9153] should be conformed to the changes in Section 9150." Since the Commission has eliminated that §9153 in the draft of 7-25-86, we have inserted it here, slightly modified.

§9152 Claim based on written instrument

9152. (a) If a claim is based on a written instrument, either the original or a copy of the original with all endorsements shall be attached to the claim. If a copy is attached, the original instrument shall be exhibited to the personal representative or court on demand unless it is lost or destroyed, in which case its loss or destruction shall be ~~stated in the claim~~ established by the claim.

(b) If the claim or part of the claim is secured by a mortgage, deed of trust, or other lien that is recorded in the office of the recorder of the county in which the property subject to the lien is situated, it is sufficient to describe the mortgage, deed of trust, or lien and refer to the date or volume and page of its record.

BHBA Comments

Regarding subparagraph (a), we anticipate procedural problems if the claimant doesn't know at the time of the claim where the original is located; there appears to be no harm done if it is not stated at the time of the claim.

Regarding subparagraph (b), query: Is it the implication that secured claims must be filed? And if not filed, is the language intending to change the law to bar secured claims?

In the cross-references, the section number for "Enforcement of security interest" was the number under Claims in Civil Actions. Apparently this section is to be later drafted as part of Chapter 9.

§9153 Waiver of formal defects

9153. Notwithstanding any other provision of this part, if a creditor demands payment within the time prescribed in Section 9100, ~~and the amount demanded does not exceed \$500,~~ the personal representative may waive formal defects and elect to treat the demand as a claim by paying the amount demanded within the time prescribed in Section 9100. This provision may be used if:

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

BHBA Comments to §9153

Historically, present Probate Code §929 has acted as a "waiver of formal defects" in allowing appropriate non-contested claims to be paid by a solvent estate without the presentation or filing of a formal claim, subject to the approval of the court at any time before final distribution. We applaud the effort to codify this provision in the creditors claims area of the code. We have two additional suggestions:

a. Most of the language of present Probate Code Section 929 would be quite appropriate here; all that would be needed in the Estate and Trust Code provision which will take the place of §929 would be something like the following:

"If it appears that debts of the decedent have been paid without verified claims having been filed under §9153, the court, in settling the account, shall allow the sums so paid."

b. The \$500 limitation is unrealistic, or perhaps unnecessary.
(i) In practice, much larger debts have been paid without claims, to no detriment to interested parties. Examples are funeral bills in the thousands of dollars, large credit card statements, large doctor and hospital bills after insurance and Medicare, etc.

(ii) Query: Why must there be a top limit? No limitation presently exists, except that implicit in the risk that the personal representative takes in paying the claim without court approval. We believe this limitation has worked well in practice.

(iii) Further, the setting of a \$500 (or any dollar) limit would imply that claims paid under that amount are not subject to court approval, while under the present system, all such amounts paid are subject to ultimate court approval.

CHAPTER 5. CLAIMS BY SURVIVING SPOUSE

§§9200, 9201 and 9202 re claims by surviving spouses

BHBA Comments

There should be a way in which this entire Chapter 5 of Part 4, comprised of §§ 9200, 9201 and 9202, could be cross-referenced to Chapter 3 of Part 9 (Allocation of Debts Between Estate and Surviving Spouse).

§9200. Claim by surviving spouse for payment of debt of decedent

§9200. (a) The surviving spouse may make file a claim for payment of a debt of the deceased spouse to the extent the surviving spouse is personally liable for the debt pursuant to Section 13550.

(b) The claim shall include all of the following: [etc.]

BHBA Comments

See the general note on page 1 of these comments.

§9201. Claim by surviving spouse for payment of debt of surviving spouse

§9201. (a) The surviving spouse may ~~make~~ file a claim for payment of a debt of the surviving spouse for which property administered in the estate is liable.

(b) The claim shall include all of the following:

(1) A statement whether the debt remains unpaid or has been paid by the surviving spouse.

(2) An inventory and appraisal of the separate property of the surviving spouse and any community and quasi-community property not administered in the estate, and a statement of the amount of the liens and encumbrances upon the property, as of the date of death of the deceased spouse. The statement may identify any property that is exempt from enforcement of a money judgment.

BHBA Comments

Regarding Subparagraph (a): See the general note on page 1 of these comments.

Regarding Subparagraph (b)(2): The State Bar Team 3 letter dated 7-16-86, which was attached to the minutes of the July 17-18 meeting, asks if the inventory and appraisal of the separate property of the surviving spouse, etc., is to be done by a Probate Referee, similar to the Inventory in decedent's estates. We agree with the decision at the July 17-18 meeting (see minutes) to include this clarification. Better yet, if it is decided by the Commission that the Probate Referee should do the appraisal, it should be part of the code section.

§9202. Treatment of claim of surviving spouse

9202. (a) A claim of the surviving spouse made filed pursuant to this article shall be allowed in the proportion allocated to the estate pursuant to Chapter 3 (commencing with Section 11440) of Part 9.

(b) The claim may be discharged by any of the following means:

(1) Payment to the surviving spouse

(2) Payment to the creditors of the surviving spouse or deceased spouse as identified in the claim.

(3) A credit allowed the spouse in the order allocating debts made pursuant to Chapter 3(commencing with Section 11440) of part 9.

BHBA Comments

Paragraph (a): See the general note on page 1 of these comments.

CHAPTER 6. CLAIMS BY PUBLIC ENTITIES

§9252. Limitation on application of chapter

9252. This chapter does not apply to liability for the restitution of amounts illegally acquired through the means of a fraudulent, false, or incorrect ~~claim~~ application or representation, or a forged or unauthorized endorsement.

BHBA Comments

The word "claim" is a term of art which is defined in this part at §9000. It may avoid confusion to substitute some alternative word, where use of the term of art is not intended.

§9254. Claim by Director of Health Services

BHBA Comments

Re subparagraph (c), 3rd sentence, perhaps there should be a cross reference to the definition of the Pooled Money Investment Fund. Is it described in some other Code?

CHAPTER 7. ALLOWANCE AND REJECTION OF CLAIMS

§9300. Procedure by personal representative

9300. (a) Upon notification that a claim has been made filed, the personal representative shall allow or reject the claim in whole or in part.

(b) The allowance or rejection shall be in writing. ~~The personal representative shall file the allowance or rejection with the clerk and serve a copy on the claimant.~~

(c) The Judicial Council may prescribe an allowance or rejection form. It shall include a form for return of proof of service with a statement under penalty of perjury that the person making the claim has served a copy of the claim on the attorney of record or the personal representative. Use of said form is deemed to satisfy the requirements of this section.

(d) The personal representative shall serve a copy on the claimant, and file the allowance or rejection with the clerk.

~~(e)~~ (e) The allowance or rejection shall contain the following information:

- (1) Name of claimant.
- (2) Total amount of claim.
- (3) Date of issuance of letters.
- (4) Date of death
- (5) Estimated value of estate
- (6) Amount allowed or rejected by personal representative
- (7) Whether personal representative is authorized to act under the Independent Administration of Estates Act.
- (8) A statement that the claimant has three months in which to act on a rejected claim.
- (9) Whether the personal representative is a creditor [in which case the claim must be presented to the court, pursuant to §9302]
- (10) The date a copy of the claim was mailed or delivered to the personal representative.
- (11) The date the claim was filed with the court.

BHBA Comments re §9300

Paragraph (a): See the general note on page 1 of these comments.

Paragraphs (b) through (e): We suggest the above additions, movement of sentences, and modifications for clarity of procedure.

Subparagraph (e)(9) is needed so the clerk will know to present it to the court, not just put it in the file. This idea came from the letter of Judge Harlan K. Veal of the San Mateo County Superior Court, cited in a Note to §9301 of the 3-19-86 draft of this tentative recommendation, wherein he asked that routine claims not be sent to the judge, and only claims by the personal representative, attorney, or sitting judge be sent to the probate judge.

Subparagraphs (e)(10) and (11) will show if the claim was served or filed on time.

§9304. Allowed and approved claims

9304. (a) The validity of an allowed or approved claim may be contested by any interest person at any time before settlement of the account of the personal representative in which it is first reported as an allowed or approved claim. This section does not apply to a claim established by a judgment.

(b) [See BHBA Comments, below]

BHBA Comments

No procedure is given for how to contest a claim, other than current §927, which allows exceptions to the account for "...allowed claims not passed upon on the settlement of any further account and not reduced to judgment...." We suggest a reference either at Subparagraph (2) or in the cross-references, where it could be listed as "Exceptions to Account §[927]." Parenthetically, we note that in Commissioner Stodden's West's California Code Forms, Probate, the Comment to Form 1 for §927 has a cross-reference to present §713 on this subject, which cross-reference reads:

"Any claim, except one established by a judgment against the executor, which has been allowed by the executor and approved by the judge may be contested until the settlement of any account in which it has been reported as an allowed claim. Section 713."

§ 9307. Action on rejected claim

9307. (a) A rejected claim is barred unless the claimant brings an action on the claim or the matter is referred to a referee or to arbitration within the following times, excluding the time during which there is a vacancy in the office of the personal representative:

(1) If the claim is due at the date of service of the notice of rejection, three months after the date of service.

(2) If the claim is not due at the date of service of the notice of rejection, three months after the claim becomes due.

(b) An action on the claim shall be brought in the same district of the superior court in the county in which the proceeding for administration of the decedent's estate is pending.

BHBA Comments

Paragraph (b): It should be clear in counties with more than one superior court location (e.g., Los Angeles, with 11 districts) that the action should be brought in the particular district where the administration is proceeding.

ADDITIONAL BHBA COMMENTS REGARDING PART 4

The minutes for the July 17-18, 1986 meeting reflect some changes and discussion regarding Study L-1037, Estate Management (Memo 86-55). In those draft sections can be found the following sections referring to creditors' claims:

- 9830 - Authority to compromise claims
- 9831 - Compromise before end of claims period
- 9834 - Claim of estate against personal representative
- 9835 - Wrongful death and personal injury claims
- 9386 - Court's authority re compromise
- 9837 - Petition for court authorization
- 9880 - Prohibition against claim by relatives of personal representative

We suggest there be cross-references in the appropriate sections of part 4, Creditors Claims, and of Part 9, Payment of Debts, which refer to the above and any other pertinent sections.

Or are Section s9380ff the only place where compromises of claims, wrongful death, and personal injury claims are mentioned?

Also, §§9620-21 re summary determination of disputes might be better positioned with, or cross-reference to, the above §§9830ff and Creditors Claims/Payment of Debts (or are they all in the same area of the new Estate and Trust Code?).

CALIFORNIA LAW REVISION COMMISSION
Study L-1025
ESTATE AND TRUST CODE
PART 9. PAYMENT OF DEBTS

COMMENTS ON SELECTED SECTIONS
BY BEVERLY HILLS BAR ASSOCIATION
PROBATE, TRUST & ESTATE PLANNING SECTION, LEGISLATIVE COMMITTEE

CHAPTER 1. DEFINITIONS

§ 11402. Wage claim

11402. "Wage claim" means a claim for wages, ~~to the extent of~~
to a maximum of two thousand dollars (\$2,000), of each employee of the
decedent for work done or personal service rendered within 90 days
before the death of the decedent.

BHBA Comment

We agree with the increase of the amount from \$900 to \$2,000, and
find the substituted language adds to clarity.

§ 11422. Payment of debts on court order

BHBA Comment

While the LRC Comment refers to payment without prior court
approval under Sections 9153 (waiver of formal defects) and [929] (to
be drafted), we are mindful that some practitioners use unannotated
codes in their daily practice. The unannotated codes do not contain
the LRC comments. Thus, we think it prudent to add Sections 9153 and
[929] to the cross-references, where they will appear in the
unannotated version of the new Code.

§ 11423. Interest

11423. (a) Interest accrues on a debt from the date the court orders approves payment of the debt until the date the debt is paid. Interest accrues at the legal rate on judgments.

(b) Notwithstanding subdivision (a), in the case of a debt based on a written contract, interest accrues at the rate and in accordance with the terms of the contract, but in no event shall the rate be greater than the legal rate on judgments. The personal representative may, by order of the court, pay all or part of the interest accumulated and unpaid at any time when there are sufficient funds, whether the debt is then due or not.

BHBA Comments

1. We generally feel that creditors should be protected, whatever their interest. However, there are periods, such as those at the beginning of administration, when it is impossible for the estate to act because the availability of assets to pay claims and the amount of claims are not yet known. We suggest, therefore, that consideration be given to the relative rights of various types of creditors, including those with interests set by contract, at either high or low rates, and those creditors without any interest rate set by contract who will be affected because their debt bears no interest until the court orders an approval. Some of us feel that the present rule, as stated in Probate Code §733, has worked well and equitably, and see no need for a revision. The present section protects the estate and treats all creditors equally.

2. Present law provides that interest shall accrue from the date a claim is approved by the court. In this respect, all claims are treated the same. All will accrue interest. The change recommended by the LRC would delay the accrual of interest on many claims until the date a claim is ordered paid by the court. This is usually much later than the date of approval. But query: What effect would "approval" by the personal representative under the Independent Administration of Estates Act have on this beginning date?

3. Present law, "733 of the Probate Code, limits the rate of interest on claims to the legal rate. We believe this is desirable for two reasons. First, the approval of a claim by the court gives the debtor security that the claim will be paid. Second, the period of probate administration is a condition usually not contemplated by the parties, and will often result in a delay of payment of a debt. Payment of a rate higher than the legal rate of interest not only unfairly favors some creditors over others, but may work a hardship on the estate when administration of the estate extends over a long period.

§ 11425. Disputed and contingent debts

BHBA Comments

As stated in our Comment to §11422, we think it prudent to add the references to Sections 11426 (payment of debt not yet due) and 11427 (trust for installment or contingent debt) to the cross-references, where they will appear in the unannotated version of the new Code.

Or better yet, §11425 could be moved to after §§11426 (Payment of debt not due) and 11427 (Trust for installment or contingent debt), so that the option of paying disputed amounts into the court can be perceived as a last resort (saving the courts the additional administrative headache).

§11428. Deposit with-county-treasurer for unknown claimant

BHBA Comments

We believe this new title to be more descriptive. One of our members seems to remember this was the title in the draft of 2-15-85, when the section was numbered 8608.

§ 11429. Omitted creditor

11429. (a) When the accounts of the personal representative have been settled and an order made for the payment of debts and distribution of the estate, a creditor whose debt was not included in the order for payment has no right to require creditors who have been paid or distributees to contribute to the payment of the debt.

(b) Nothing in this section precludes recovery by a creditor whose debt was not included in the order for payment against the personal representative on the bond or otherwise.

BHBA Comments

In the LRC 2-15-85 draft of this section (Study L-1026), which was then numbered §8609, Subdivision (b) read as follows:

"(b) If the personal representative failed to give notice to creditors as prescribed by law, the creditor may recover on the bond of the personal representative for the amount for which the claim would properly have been established."

In its letter to the Commission dated May 7, 1985, the Los Angeles County Bar Association correctly pointed out that:

"Section 8609:

"Subpart (b) of this section permits a creditor to recover on the bond of the personal representative if he has failed to give notice to creditors as prescribed by law. Presently, Letters will not issue unless proof has been made that notice to creditors has been given. This subpart should be removed."

Now that actual notice is to be served upon potential claimants, perhaps this language of previous §8609(b) should be reinserted in this new §11429. The idea would be to make it clear the creditor has the remedy of going against the representative's bond if the creditor can demonstrate that it should have received notice but did not.

Likewise, there should probably be a cross-reference here to §§9050ff, and one at §9050 to this §11429....

CHAPTER 3. ALLOCATION OF DEBTS BETWEEN ESTATE AND SURVIVING SPOUSE

§ 11446. Funeral expenses and last illness expenses

11446. Notwithstanding any other statute, funeral expenses and expenses of last illness shall be charged against the estate of a deceased spouse and shall not be allocated to, or charged against the community share of, the surviving spouse, whether or not the surviving spouse is financially able to pay the expenses and whether or not the surviving spouse is financially able to pay the expenses and whether or not the surviving spouse or any other person is also liable for the expenses.

BHBA Comments

Query: What is the relationship of the rights of these creditors to the rights of the surviving spouse? Cf. Civil Code §5120.140 regarding personal liability for debts incurred for necessities of life. Does §11446 override that Civil Code section?

ADDITIONAL BHBA COMMENTS REGARDING PART 9

Is there a way that CHAPTER 3, ALLOCATION OF DEBTS BETWEEN ESTATE AND SURVIVING SPOUSE (§§11440-46), of this PART 9 could be cross-referenced to CHAPTER 5 of PART 4, CLAIMS BY SURVIVING SPOUSE (§§9200-02)?