

First Supplement to Memorandum 86-205

Subject: Study L-1003 - Determining Class Membership (Comments of State Bar Team)

Attached hereto is a report from Study Team No. 1 of the State Bar Estate Planning, Trust and Probate Law Section on the *Tentative Recommendation Relating to Determining Class Membership*. This report reemphasizes comments made in Exhibit 23 attached to Memorandum 86-205. In sum, Team 1 would prefer that we retain the limitation of this procedure to situations where title vests "other than by the laws of succession" which appears in Probate Code Section 1190. Otherwise, this procedure will overlap the procedure for determining the right to distribution from an estate provided in Probate Code Section 1080-1082.

The language omitted from Section 1190--"other than by the laws of succession"--does not eliminate the overlap between these procedures. Both Sections 1080 and 1190 may be used to determine matters affecting distribution under wills, too--the right to distribution under the will, in the case of Section 1080, and membership in a class described in a will as "heirs, heirs of the body, issue, or children," in the case of Section 1190. Thus, if the Commission believes that the procedural overlap is a problem, we need a different solution, such as making this procedure unavailable if estate administration proceedings are pending.

The staff does not believe that the overlap presents any real problem, in part because class membership proceeding cannot compete with the entitlement to distribution proceeding. An order determining the right to distribution under Section 1080 is conclusive, whereas an order under Section 1190 is "prima facie evidence of the facts determined thereby, and . . . conclusive in favor of anyone acting thereon in good faith without notice of any conflicting interest" as provided in Section 1192. It appears that the class membership procedure, in its present form, is little used. The staff suspects that if this procedure did not already exist, the Commission would not invent it. Nevertheless, if this procedure is to be continued, it should not be crippled by arbitrary limitations.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

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June 18, 1987


Mr. John H. DeMouilly
Executive Director
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4000 Middlefield Road, Room D-2
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Re: LRC Memos 86-205 & 86-204

Dear John:

I have enclosed copies of Study Team 1's and Study Team 2's technical reports on Memos 86-204 & 86-205. The reports represent the opinions of the team only. The reports have not been reviewed by the Executive Committee. I am sending them to you for your information and comment. They are intended to assist in the technical review of those sections involved.

Very truly yours,


James V. Quillinan
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JVQ/h1

Encls.

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

DATE: JUNE 15, 1987

SUBJECT: LRC MEMORANDUM 86-205 (Determining Class
Membership); New Probate Code §§ 320-325

Study Team No. 1 conducted its study on this memo through correspondence, with reference to its earlier report on these same Sections dated December 31, 1986. We have the following comments only in regard to proposed Section 320.

Section 320: This proposed Section replaces the first part of former Section 1190. We are still concerned in that Section 1190 contains the words "other than by the laws of succession" in the middle of its first sentence. We feel that this concept should somewhere be embodied in new Section 320 to prevent the confusion that may arise in the minds of petitioners and their attorneys. To the best of our knowledge, the reason for these words was that existing Probate Code Section 1080 provided for a procedure to determine heirs who took by the law of succession. If the words quoted above in Section 1190 are eliminated in new

Section 320, then new Section 320 can be used as an alternative procedure to determine heirship in cases of intestate succession.

In its notes, the staff states that the relationship of the Section 320 (Section 1190) procedure to the procedure set out in Probate Code Sections 1080-1082 for determination of heirship in estate proceedings remains a source of confusion. In our minds, at least, there was no confusion because Section 1190 expressly excluded its use to determine heirs who take by intestate succession.

We recognize that the procedure under Section 1080 is tailored to probate proceedings, and the procedure to determine membership in a class (the procedure under Section 1190) is an independent proceeding.

We do not feel strongly in our recommendation. If the language in Section 320 is to remain unchanged, we feel that an explanation between the relationship between the two procedures is appropriate in a comment. We nevertheless wonder if it would not be simpler and easier to retain the concept of the words "other than by the laws of succession" which are presently in Section 1190.

Respectfully submitted,

STUDY TEAM NO. 1

By:


WILLIAM V. SCHMIDT,
Captain