

Third Supplement to Memorandum 87-1

Subject: Study L-1027 - Estate and Trust Code (Accounts--further
comments of State Bar Team 4)

Attached to this supplementary memorandum is a copy of a letter from State Bar Team 4 addressing points raised in the letter of the Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association (Second Supplement to Memorandum 87-1), relating to accounts. At the meeting we will orally review the issues raised in both letters in connection with the portions of the draft to which they relate.

Respectfully submitted,

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FEDERAL EXPRESS

March 10, 1987

James Quillinan, Esq.
444 Castro Street, #900
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Re: Second Supplement to Memorandum 87-1, Accounts

Dear Jim:

On March 7, 1987, Team 4 (Harley Spitler, William Hoisington, James Willett and I) discussed the Second Supplement to Memorandum 87-1, Accounts. Team 4's comments about the above-referenced Memorandum are as follows:

This report will address the issues raised by the Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association ("LACBA Executive Committee") in its February 9, 1987 letter to the Law Revision Commission.

1. Section 10901(a)(2). The LACBA Executive Committee questioned how certain items that could be characterized as both principal and income (e.g., an accrued dividend as of the date of death) were to be reported under Section 10901(a)(2).

This is valid issue, and one to which Team 4 has no ready response. However, Team 4 suggests that one approach would be to make an adjustment in the final item required on an account, namely in property remaining on hand. Team 4 believes that additional consideration by the Commission of this issue is warranted.

2. Section 10953. The LACBA Executive Committee suggests that it would be preferable "to require the personal representative to submit documents supporting his account for inspection and audit upon order of the Court on its own motion or pursuant to a petition filed by an interested person."

Team 4 believes that a less formal approach is appropriate.

In its January 12, 1987 letter to the Commission, Team 4 suggested that Section 10902 be restated as follows:

Upon request by an interested person, the personal representative shall produce those documents supporting the account that have been specified in the request.

Team 4 urges the Commission to adopt Team 4's proposal.

3. Section 10952. The LACBA Executive Committee asks "why limit the requirement of an account, particularly when it is that of a resigning personal representation or one who has been removed or whose authority has terminated, to situations when it is ordered by the Court upon petition of a successor personal representative?"

Team 4 believes that in many instances a formal accounting may not be necessary; for this reason, Team 4 suggests that the requirement of an account should be limited. In its January 12, 1987 letter to the Commission (page 3), Team 4 suggested that the Court have discretion to order an account. A copy of Team 4's January 12, 1987 letter is attached for your convenience.

4. Section 10953. The LACBA Executive Committee states that "the legal representative may have no more information available to him than the attorney would have, yet it appears that the legal representative would be required to file a verified accounting and there is no assurance that he would be compensated out of the estate. We see no reason for the dichotomy of treatment."

Team 4 agrees with the position of the LACBA Executive Committee and urges the Commission to revise Section 10953 in view of the above comments.

5. Section 11004 (formerly Section 929). The LACBA Executive Committee is concerned that "an executor may pay a debt for which no claim has been filed that would otherwise be barred by the expiration of the claims filing period."

Team 4 agrees that the section requires clarification. However, Team 4 believes that although the claims period may have expired, the claim should be allowed. (Please refer to Team 4's January 12, 1987 letter).

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6. Section 11005. The LACBA Executive Committee states that it sees "no reason to reopen an accounting that has been settled by the Court and that would be otherwise final, but for the disability of the beneficiary."

Team 4 believes that existing law should not be changed. If finality is desired for an interim accounting, then a Guardian Ad Litem can be appointed to represent a beneficiary under disability.

7. Regarding Mr. Marder's statement. The Executive Committee of the Estate Planning, Trust and Probate Law Section believes that a personal representative should not be surcharged for a successful contestant's attorneys' fees and costs. One consideration is that the Executive Committee feels that banks and other institutions would refuse to serve if a surcharge were to be imposed.

If Team 4 may be of further assistance, please do not hesitate to contact us.

Cordially,

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