

First Supplement to Memorandum 87-44

Subject: Study L-636 - No Contest Clause

Attached is a letter from the Beverly Hills Bar Association Probate and Estate Planning Legislative Committee concerning the effect of a no contest clause. The Committee takes the position that the majority rule should be adopted in California in place of the minority rule now in effect in California.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

1st Supp Memo 87-44

Exhibit 1

LAW OFFICES

BOHAN & PETRULIS

SUITE 303

9201 WILSHIRE BOULEVARD

BEVERLY HILLS, CALIFORNIA 90210

(213) 550-1050

KENNETH G. PETRULIS
ANTHONY BOHANSUITE 340
320 SUPERIOR AVENUE
NEWPORT BEACH, CALIFORNIA 92663
(714) 645-5053

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California Law Revision Commission
4000 Middlefield Road, No. D2
Palo Alto, CA 94303-4739Re: Memorandum 87-44 - Study L-636
No Contest Clause

Commissioners:

The Beverly Hills Bar Association Probate and Estate Planning Legislative Committee has reviewed the above Memorandum and submits the following comments.

The majority rule discussed in the Memorandum is favored by our committee, because it would encourage the disclosure of all relevant facts to the Court in situations where there is a reasonable doubt as to the validity of the Will. Such a provision is of particular benefit to those who have substantial interests under a Will, which they risk forfeiting by making a Will contest. The provision, on the other hand, does not increase the possibility of contests by those excluded from the Will, since they have nothing to lose in the first place.

With respect to the proposed section regarding declaratory relief, we question whether the existence of such a section would result in the proliferation of such petitions for declaratory relief, whenever an application for relief, such as family allowance, objections to accounting, etc., is requested. For example, would the standards of practice require that, before one files any objection to an account, the objector should file first file a petition for declaratory relief.

The potential proliferation of such petitions may pose problems for the Court's workload that outweigh whatever present problem exists. It is likely that only in rare instances do most of these procedures ever become characterized as indirect Will contests. In most situations, the attorneys who prepare the pleadings are well aware that they are indirectly challenging the Will.

Yours very truly,


KENNETH G. PETRULIS
KGP/arcc: Beverly Hills Bar Association
Probate & Estate Planning Legislative Committee;
Ralph Palmieri