

Memorandum 87-85

Subject: Study L-1025 - Form of Notice to Creditors

The creditor claim provisions of AB 708 include a form of actual notice to creditors of the necessity to file a claim. The form of notice tells the creditor when the claim must be filed:

You must file your claim with the court and mail or deliver a copy to the personal representative within four months after _____ (the date letters were issued to the personal representative), or 30 days after the date this notice was mailed to you or, in the case of personal delivery, 30 days after the date this notice was delivered to you, whichever is later, as provided in Section 9100 of the California Probate Code.

We have received a letter from Bruce J. Altshuler of Beverly Hills (Exhibit 1) pointing out that a creditor may be confused by this notice as to the last day to file a claim and whether mailing of the notice might arguably extend the 30 day period. He suggests that a better form would be to indicate the creditor's last day to file in the notice and to have a claim form sent to the creditor.

The staff agrees that it would be better to indicate the creditor's last day to file, thus:

You must file your claim with the court and mail or deliver a copy to the personal representative by:

(Here insert the date that is four months after the date letters were issued to the personal representative or, if notice is given within 30 days before expiration of the four month period, the date that is 30 days after the date notice is given, as provided in Section 9100 of the California Probate Code.)

As to the question of whether the notice should include a claim form for use by the creditor, the staff also believes this is a good idea. However, the Commission has previously considered this issue and decided not to require that a claim form be sent because this might tend to encourage unmeritorious claims.

If the form set out above is acceptable to the Commission, we will include it in whatever probate cleanup legislation we introduce early in the 1988 legislative session.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

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August 25, 1987

Mr. Nathaniel Sterling
Assistant Executive Director
California Law Revision Commission
400 Middlefield Road, Suite D-2
Palo Alto, CA 94303

Re: Creditor Claims Against Decedents'
Estates

Dear Mr. Sterling:

I was quite pleased and impressed with the speed in which you responded to my recent letter concerning the new Probate provisions concerning the presentation of claims.

The statute is as well written as it could be with the exception of §9052. If you read it carefully, a creditor will be confused as to his last day to file a claim and as to whether mailing of the notice might arguably extend the 30-day period. A better form would be to indicate the creditor's last day to file in the notice and to have a claim form sent to the creditor.

I still believe that we are opening up a "Pandora's box" for late claims and although the new legislation gives warning to "known" creditors, all of the "unknown" creditors, except those covered by §9103, still have no remedy for lack of notice. Executors are going to be second-guessed as to whether or not they "knew" about a particular creditor.

On the McMurdie matter that I am handling, I reviewed Altschul v. Schweitzer (1986) 182 CA 3d 330, and that was not cited by my opponent. The case would not seem to apply because although he met with the Administrator, no written claim or demand of any kind was ever filed in spite of our requests for him to do so.

I was relieved to note that §9004 only applies to proceedings commenced on or after July 1, 1988. You

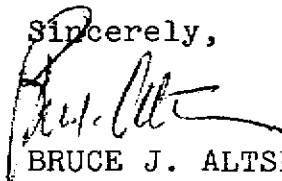
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may wish to define "proceedings." Does the law mean "proceedings" on claims, or the date a probate proceeding is commenced? I think you mean the latter, but that part should be clarified.

Thank you again for the time you took to respond to my letter. As an attorney, I appreciate the efforts of the Commission and believe that your explanatory notes are extremely helpful in analyzing legislative intent.

Sincerely,



BRUCE J. ALTSHULER

BJA/cic

cc: Daniel A. Kirsch, Esq.
Ms. Leslie D. Starks
Mr. Shane McMurdie
Ms. Laura L. Freeland
(w/encls.)