

First Supplement to Memorandum 88-1

Subject: Study L - Cleanup Bill for AB 708 (Urgency Bill--filing of creditor claims; statutory form durable power of attorney for health care)

Filing of Creditor Claims

Attached as Exhibit 1 is a letter from Professor Benjamin D. Frantz of McGeorge School of Law, objecting to the newly-enacted requirement that a creditor both file the creditor's claim with the court clerk and send a copy to the personal representative. Existing law permits the creditor either to file the claim with the court clerk or to present the claim to the personal representative.

The reason the Commission obtained enactment of a provision requiring that all claims be filed with the court clerk was the concern that occasionally a claim is presented to the personal representative that somehow never gets reported to the court and is never paid, even though it is a timely and proper claim. Professor Frantz apparently has not encountered this situation, however, since he estimates that not more than one claim in fifty gets filed with the clerk, yet there appears to be no problem. "The present system of permitting creditors to mail their claims directly to the personal representative's attorney has been and is working very well indeed."

Statutory Form Durable Power of Attorney for Health Care

Jack E. Cooper of San Diego has called us to report a typographical error in Civil Code Section 2502, which should read:

2502. Notwithstanding paragraph ~~(2)~~ (3) of subdivision (a) of Section 2432, a statutory form durable power of attorney for health care is valid, and the designated attorney in fact may make health care decisions pursuant to such authority, only if it (1) contains the date of its execution, (2) is signed by the principal, and (3) is signed by two qualified witnesses, each of whom executes, under penalty of perjury, the declaration set out in the first paragraph of the "Statement of Witnesses" in the form set out in Section 2500, and one of whom also executes the declaration under penalty of perjury set out in the second paragraph of the "Statement of Witnesses" in the form set out in Section 2500.

(b) Nothing in this section excuses compliance with the special requirements imposed by subdivisions (c) and (f) of Section 2432.

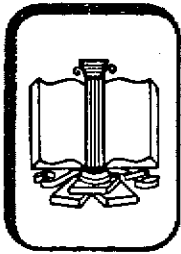
Comment. Section 2502 is amended to correct a section reference.

Section 2432(a)(3) (not Section 2432(a)(2)) contains the general provisions governing witnessing of durable powers of attorney for health care.

The staff would add this amendment to the 1988 cleanup bill.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary



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WRITER'S DIRECT DIAL NUMBER

December 22, 1987

California Law Revision Commission
4000 Middlefield Road, Suite D2
Palo Alto, CA 94303-4739

Attention: Mr. John H. DeMouilly, Executive Secretary

Subject: Part 4 of Division 7 of the Probate Code

Dear Mr. DeMouilly:

Initially, let me complain about the sophisticated prevalence of using the noun "creditor" as an adjective. In New English Lessons, Book Two by Harris & Gilbert (1907-1912) at page 189, there is a discussion of the possessive modifier (Washington's home was called Mt. Vernon). In English Composition by Vivian & Jackson (1961) at page 256 the use of the possessive case is illustrated by "the girl's hat or dog's collar." In The Literate Lawyer (Robert S. Smith, 1986) at page 69, the author illustrates the use of the apostrophe by: "the woman's baby"; the "horse's collar"; or the "soldier's rifle." Since the caption of Part 4 refers to "claims," it would seem that we should pluralize its adjective and refer, preferably, to "creditors' claims." But let me proceed to more serious matters.

I thoroughly approve of section 9050 requiring specific notice to be given to known creditors.

I do object to section 9150 requiring all claims to be filed with the court with copies to be mailed to the personal representative. The present system of permitting creditors to mail their claims directly to the personal representative's attorney has been and is working very well indeed. From my own experience, I would guess that not more than one claim in fifty is filed with the county clerk. Since the copy mailed to the personal representative will be approved by him and the judge and then filed with the clerk, why is it necessary to have two copies filed with the clerk?

With best wishes for the holiday season and the new year, I am

Very truly yours,

Benjamin D Frantz
Professor of Law

BF/sk