

Second Supplement to Memorandum 88-8

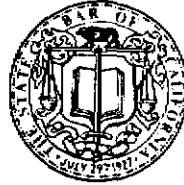
Subject: Study L-2009 - AB 2841 (1988 Probate Legislation--State Bar
Comments)

Attached to this memorandum is the first of a series of reports from State Bar Study Team 1 concerning AB 2841. We will distribute the remaining reports when they are received.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

**ESTATE PLANNING, TRUST AND
PROBATE LAW SECTION
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February 23, 1988

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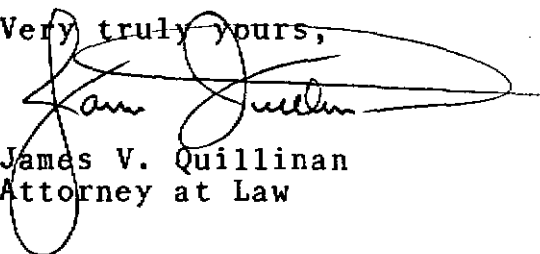
Mr. John H. DeMouilly
Executive Director
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303

Re: LRC Memo 88-9 and AB 2841 (Partial)

Dear John:

I have enclosed a copy of Study Team 1's technical report on Memo 88-9 and the first of a series of reports on AB 2841. AB 2841 has been divided up for review among the various team members who reviewed the bill in its memo form. I will be sending you these reports on AB 2841 as they come in to me. The reports represent the opinions of the team only. The Executive Committee has not reviewed the reports. The reports are to assist in the technical and substantive review of those sections involved.

Very truly yours,


James V. Quillinan
Attorney at Law

JVQ/h1

Encls.

cc: Chuck Collier Jim Opel Valerie Merritt
 Keith Bilter Jim Devine
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R E P O R T

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THE EXECUTIVE COMMITTEE IN GENERAL

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

DATE: FEBRUARY 19, 1988

SUBJECT: AB 2841 as Introduced on January 26, 1988;
Pages 111 through 127

This report is prepared pursuant to the memorandum from Jim V. Quillinan dated February 10, 1988 re AB 2841. The pages of the bill assigned to Study Team No. 1 have been divided among the members of the team, each of whom will report separately. You should expect a report on pages 1 through 15 and 24 through 33 from Charles Collier, on pages 36 through 52 from Sterling Ross, on pages 55 through 69 from Michael Vollmer, on pages 138 through 151 from Richard Kinyon and on pages 153 through 157 from Lynn Hart. This report covers 111 through 127.

Typographical Mistakes.

1. The word "case" on page 115 at line 30 should be "cash."
2. The word "wheter" on page 118, line 33 should be "whether."

3. The word "the" on page 121 at line 8 is misspelled with the number "8" substituted for the letter "t."

4. On page 123, line 31, the word "and" and the letter "t" of the word "the" have been omitted. This is Probate Code Section 9001.

Questions In My Mind.

1. Subsection (b) of Section 8902 on page 116 beginning at line 15 states that the probate referee shall appraise all property other than that appraised by the personal representative. To me this statement seems to be in conflict with a possible appraisal of an independent expert which is provided for in Sections 8900 and 8904. Should this section not be modified to provide that the referee shall appraise all property other than that appraised by the personal representative or by an independent expert under Section 8904?

2. Is the reference to Section 921 in Section 8804 on page 112 at line 15 correct? The only Section 921 that I could find did not make sense to me.

3. Subsection (1)(b) of 8850 at the top of page 113 states that if security for the payment of money is real property the inventory shall include a reference to the place in the records where the security interest is recorded. If a document has been recorded, not only the place of recording, but the date of recording is readily apparent on its face. I would recommend that the section be modified to include not only the place but the date of the recording as such

information can generally be readily available and would assist the person seeking to find the recording.


4. The sections of the bill beginning at page 123 at line 28 through page 127 at line 4 pertain to creditor's claims which were not a topic of study assigned to Study Team No. 1. I believe they were assigned to Study Team No. 3. As a result, I am not as familiar with the proposed legislation as I might otherwise have been. However, I would like to propose the following questions for consideration:

- A. The proposed changes to Section 9103 beginning on page 123 at line 26 seem to be substantial and seem to remove the concept of the out-of-state creditor. They permit a creditor to file the claim after the expiration of time for filing if neither the creditor nor the attorney had actual knowledge of the administration of the estate within 15 days before the expiration of such time and the claim either relates to a proceeding pending against the decedent at the time of death or, if no proceeding is pending, to a cause of action that does not arise out of the creditor's conduct of a trade, business, or profession in this state. I am not sure what the staff and Commission are intending to accomplish by these proposed changes, but I would feel more comfortable if it could be reviewed if it could be reviewed by a member of Study Team No. 3.
- B. I note that Section 9257 of the Probate Code is repealed and I do not understand the reason why

it was repealed. Also, Section 9253 has been amended and I do not understand the reason for the proposed amendment. Again, I would feel more comfortable if a member of Study Team No. 3 would review this material.

Respectfully submitted,

STUDY TEAM NO. 1


By: William V. Schmidt

WVS/ds