#L-2009

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Second Supplement to Memorandum 88-31

Subject: Study L-2009 - AB 2841 (1988 Probate Legislation--notice to known creditors)

The Commission's 1987 legislation included provisions requiring actual notice to known creditors. The new statutory scheme is set out in Exhibit 1, and becomes operative July 1, 1988. AB 2841 makes a conforming change in one of the new notice provisions. See Probate Code Section 9050.

The United States Supreme Court has now come down with the expected opinion that the United States Constitution requires that actual notice must be given to known or reasonably ascertainable creditors. See Exhibit 2, Tulsa Professional Collection Services v. Pope (No. 86-1961, April 19, 1988). The "reasonably ascertainable" requirement means that the personal representative need not make an impracticable and extended search but must make a reasonably diligent effort to uncover the identities of creditors.

The court's use of the "reasonably ascertainable" standard makes it unlikely that the Commission's new statute will be held to satisfy constitutional requirements. The new statute appears to violate the standard by stating expressly that the personal representative need not make a reasonable search for creditors. Section 9053(c).

The Tulsa case refers to the new California statute in support of the proposition that, "Indeed, a few States already provide for actual notice in connection with short nonclaim statutes." But the court does not indicate that the California statute would satisfy all constitutional requirements.

When the Commission first addressed this issue early in 1985, the staff recommended adoption of a "known or reasonably ascertainable" standard. The State Bar persuaded the Commission that there are significant differences between probate law and other fields of law where due process is required, and that the "reasonably ascertainable" standard should not apply in probate. The Commission structured the new statute on this basis.

Although the California statute appears on the surface to fall short of the constitutional standard, arguments can be made that the statute may nonetheless withstand constitutional challenge. For example, the California statute has a four month claim period as opposed to the two month period in the Tulsa case, and there are other differences such as in the late claim provisions. In the staff's opinion, these differences are not constitutionally significant and it would be imprudent to rely on the possibility that the California statute will be upheld.

If the California statute is unconstitutional, what is the remedy of an omitted creditor? The Supreme Court in the Tulsa case simply states that the statutory procedure is unconstitutional and remands the case "for further proceedings not inconsistent with this opinion." Under the California statute an omitted creditor is not entitled to contribution from creditors or distributees, but may recover against the personal representative personally or on the bond. Section 11429. Where does this leave California personal representatives?

The situation is not too bad with respect to probate proceedings commenced on or after July 1, 1988, when the Commission's new statute becomes operative. It will be clear to practitioners that actual notice must be given to known creditors, and it will probably be a rare situation where there is a reasonably ascertainable creditor who is not also a known creditor. In fact, the new scheme could probably easily be modified to satisfy the constitutional requirement simply by referring to creditors ascertainable by a reasonable inspection of the decedent's records in the ordinary course of administration. The Commission considered a standard like this along the way to the new statutory scheme.

But what about proceedings commenced before July 1, 1988, including proceedings commenced before the court opinion in the Tulsa case, and even proceedings concluded before the Tulsa opinion? The court does not indicate whether the decision applies retroactively. Assuming it does apply retroactively, are there any limits on potential personal representative liability to omitted but known or reasonably ascertainable creditors? Presumably the ordinary nonprobate statutes of limitation applicable to such creditors would apply to cut off stale

claims. More recent claims would continue to be viable and probably could be asserted against the personal representative or bond, if any (and in turn against counsel to the personal representative).

What is a personal representative today to do? Suppose the estate is ready to distribute. Should the personal representative stop, give notice, wait four more months, pay any new claims, and then distribute? Or should the personal representative go ahead and distribute, but extract indemnification agreements from beneficiaries? Is it wise to do any of this without statutory authority, or will it subject the personal representative to further claims by beneficiaries?

The staff believes the Commission needs to review this situation expeditiously but carefully. We can easily modify our statute to adopt the United States Supreme Court standard which requires that actual notice must be given to "known or reasonably ascertainable" creditors. But how do we deal with the consequences of failure to comply with that standard in past and pending proceedings? Should we aim for corrective legislation next session, or are the problems so critical that the Commission should seek to include an immediate statutory response in one of its bills this session? We do not want to enact a poorly thought-out measure this session and then have the problem of seeking to correct it retroactively next session. The Commission needs to hear from the practicing probate bar on these issues.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

EXHIBIT 1

CHAPTER 2. NOTICE TO CREDITORS

Section

Chapter 2 was added by Stats.1987, c. 923, § 93, operative July 1, 1988.

Applicable in proceedings commenced on or after July 1, 1988, see § 9004. For provisions governing creditor claims applicable to proceedings commenced before July 1, 1988, see §§ 700 to 738.

§ 9050. Knowledge of creditor of decedent; notice of administration

(a) If, within four months after the date letters are first issued to a general personal representative, the personal representative has knowledge of a creditor of the decedent, the personal representative shall give notice of administration of the estate to the creditor, subject to Section 9054. The notice shall be given as provided in Section 1215. For the purpose of this subdivision, a personal representative has knowledge of a creditor of the decedent if the personal representative is aware that the creditor has demanded payment from the decedent or the estate.

(b) The giving of notice under this chapter is in addition to the publication or posting of the notice under Section 333.

(Added by Stats.1987, c. 923, § 93, operative July 1, 1988.)

Operative July 1, 1988

Applicable in proceedings commenced on or after July 1, 1988, see § 9004. For provisions governing creditor claims applicable to proceedings commenced before July 1, 1988, see §§ 700 to 738.

Law Revision Commission Comment
1987 Addition

Section 9050 is new. It is designed to satisfy due process requirements by ensuring reasonable notice to creditors within the practicalities of administration of the estate of a decedent. Notice may be given either by mail or personal delivery. See Sections 1215–1216.

The personal representative is not required to make a search for possible creditors under this section. Section 9053(c). The personal representative is required only to notify creditors who are actually known to the personal representative either because information comes to the attention of the personal representative in the course of administration or because the creditor has demanded payment during administration. Information received by the personal representative may be written or oral, but actual, as opposed to constructive, knowledge is required before a duty to give notice is imposed on the personal representative. The personal representative is protected by statute from a good faith failure to give notice. Section 9053(b). However, the personal representative may not willfully ignore information that would likely impart knowledge of a creditor. For example, the personal representative may not refuse to inspect a file of the decedent marked "unpaid bills" of which the personal representative is aware. Inferences and presumptions may be available to demonstrate the personal representative's knowledge.

The personal representative is not required to notify persons who are potentially creditors because of possible liability of the decedent, but only creditors who have made their claims known. In a case where there is doubt whether notice to a particular person is required under this standard, the personal representative should give notice. The personal representative is protected from liability in this event. Section 9053(a).

The purpose of the notice is to alert creditors to the need to file a formal claim. For this reason, the personal representative need not give notice to a creditor who has already filed a formal claim or to a creditor whose demand for payment the personal representative elects to allow as a claim notwithstanding the creditor's failure to comply with formal claim requirements. Section 9054 (when notice not required).

The new notice provisions referred to in Section 9050 do not apply to a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. In such a case, the applicable law in effect before July 1, 1988, continues to apply to the giving of the notice. Section 1200(d). [19 Cal.L.Rev.Comm. Reports —— (1988)].

§ 9051. Time of notice

(a) Except as provided in subdivision (b), the notice shall be given within four months after the date letters are first issued to a general personal representative.

(b) If the personal representative first has knowledge of a creditor less than 30 days before expiration of the time provided in subdivision (a), the notice shall be given within 30 days after the personal representative first has knowledge of the creditor.

(Added by Stats.1987, c. 923, § 93, operative July 1, 1988.)

Operative July 1, 1988

Applicable in proceedings commenced on or after July 1, 1988, see § 9004. For provisions governing creditor claims applicable to proceedings commenced before July 1, 1988, see §§ 700 to 738.

Law Revision Commission Comment
1987 Addition

Failure of the personal representative to give notice within the time required by Section 9051 does not preclude a creditor from filing a claim within the time provided in Section 9100 (claim period). [19 Cal.L.Rev.Comm. Reports 317 (1988)].

§ 9052. Form of notice

The notice shall be in substantially the following form:

NOTICE OF ADMINISTRATION OF ESTATE OF _____, DECEDENT

Notice to creditors:

Administration of the estate of _____ (deceased) has been commenced by _____ (personal representative) in Estate No. _____ in the Superior Court of California, County of _____. 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. A claim form may be obtained from the court clerk. For your protection, you are encouraged to file your claim by certified mail, with return receipt requested.

_____ _____

(Date of mailing this notice) (Name and address of personal representative or attorney)

(Added by Stats.1987, c. 923, § 98, operative July 1, 1988.)

Operative July 1, 1988

Applicable in proceedings commenced on or after July 1, 1988, see § 9004. For provisions governing creditor claims applicable to proceedings commenced before July 1, 1988, see §§ 700 to 738.

Law Revision Commission Comment
1987 Addition

Section 9052 prescribes the form of notice given to creditors. The Judicial Council may adopt an optional form. [19 Cal.L.Rev.Comm. Reports 318 (1988)].

§ 9053. Liability of personal representative or attorney; duty to search for creditors

(a) If the personal representative or attorney for the personal representative in good faith believes that notice to a particular creditor is or may be required by this chapter and gives notice based on that belief, the personal representative or attorney is not liable to any person for giving the notice, whether or not required by this chapter.

(b) If the personal representative or attorney for the personal representative in good faith fails to give notice required by this chapter, the personal representative or attorney is not liable to any person for the failure. Liability, if any, for the failure in such a case is on the estate.

(c) Nothing in this chapter imposes a duty on the personal representative or attorney for the personal representative to make a search for creditors of the decedent.

(Added by Stats.1987, c. 923, § 98, operative July 1, 1988.)

Operative July 1, 1988

Applicable in proceedings commenced on or after July 1, 1988, see § 9004. For provisions governing creditor claims applicable to proceedings commenced before July 1, 1988, see §§ 700 to 738.

Law Revision Commission Comment
1987 Addition

Subdivision (a) of Section 9053 is intended to encourage full and adequate notice in cases where it is a close question whether a personal representative has actual knowledge of a creditor within the meaning of Section 9050. If, for example, the personal representative believes that notice may be required and if the notice given generates claims or litigation that would not otherwise have arisen, Section 9053 immunizes the personal representative from liability even though notice turns out not to have been legally required.

Subdivision (b) protects the personal representative or attorney against inadvertent and other good faith failures to give a required notice to a creditor. For example, where a creditor's bill is accidentally lost so that failure to give the creditor notice is purely inadvertent, subdivision (b) provides an immunity from liability for the personal representative or attorney. The remedy, if any, of a creditor who suffers loss as a result of such a failure is against the estate and not against the personal representative or attorney.

Subdivision (c) implements the principle that the personal representative need not make a special search for creditors, but must only notify those who come to the attention of the personal representative during the course of administration. Section 9050 (notice required). However, subdivision (c) does not authorize the personal representative willfully to ignore information that would likely impart knowledge of a creditor. Evidentiary inferences and presumptions may be available to prove knowledge of the personal representative in a disputed case. [19 Cal.L.Rev.Comm. Reports 319 (1988)].

§ 9054. Conditions under which notice not required

Notwithstanding Section 9050, the personal representative need not give notice to a creditor even though the personal representative has knowledge of the creditor if any of the following conditions is satisfied:

(a) The creditor has filed a claim as provided in this part.

(b) The creditor has demanded payment and the personal representative elects to treat the demand as a claim under Section 9154.

(Added by Stats.1987, c. 923, § 93, operative July 1, 1988.)

Operative July 1, 1988

Applicable in proceedings commenced on or after July 1, 1988, see § 9004. For provisions governing creditor claims applicable to proceedings commenced before July 1, 1988, see §§ 700 to 738.

Law Revision Commission Comment
1987 Addition

Section 9054 eliminates the need for notice to a creditor who has filed a satisfactory claim in the administration proceeding. The personal representative may waive formal defects in a demand for payment made during the four month claim period and accept the demand as a statutory claim, thereby avoiding the need for additional notice to the creditor. Section 9154 (waiver of formal defects). [19 Cal.L.Rev.Comm. Reports 320 (1988)].

PROBATE AND TRUSTS

Cite as 88 Daily Journal D.A.R. 4870

SUPREME COURT OF THE UNITED STATES

Syllabus

TULSA PROFESSIONAL COLLECTION SERVICES, INC. *v.* POPE, EXECUTRIX OF THE ESTATE OF POPE

APPEAL FROM THE SUPREME COURT OF OKLAHOMA

No. 86-1961. Argued March 2, 1988—Decided April 19, 1988

Under the nonclaim provision of Oklahoma's probate code, creditors' claims against an estate are generally barred unless they are presented to the executor or executrix within two months of the publication of notice of the commencement of probate proceedings. Appellee executrix published the required notice in compliance with the terms of the nonclaim statute and a probate court order, but appellant, the assignee of a hospital's claim for expenses connected with the decedent's final illness, failed to file a timely claim. For this reason, the probate court denied appellant's application for payment, and both the State Court of Appeals and Supreme Court affirmed, rejecting appellant's contention that, in failing to require more than publication notice, the nonclaim statute violated due process. That contention was based upon *Mullane* v. *Central Hanover Bank and Trust Co.*, 339 U. S. 306, which held that state action that adversely affects property interests must be accompanied by such notice as is reasonable under the particular circumstances, balancing the State's interest and the due process interests of individuals, and *Mennonite Board of Missions* v. *Adams*, 462 U. S. 791, which generally requires actual notice to an affected party whose name and address are "reasonably ascertainable."

Held: If appellant's identity as a creditor was known or "reasonably ascertainable" by appellee (a fact which cannot be determined from the present record), the Due Process Clause of the Fourteenth Amendment, as interpreted by *Mullane* and *Mennonite*, requires that appellant be given notice by mail or such other means as is certain to ensure actual notice. Appellant's claim is properly considered a property interest protected by the Clause. Moreover, the nonclaim statute is not simply a self-executing statute of limitations. *Texaco, Inc.* v. *Short*, 454 U. S. 516, distinguished. Rather, the probate court's intimate involvement throughout the probate proceedings—particularly the court's activation of the statute's time bar by the appointment of an executor or executrix—is so pervasive and substantial that it must be considered state action. Nor can there be any doubt that the statute may "adversely affect" protected property interests, since untimely claims such as appellant's are completely extinguished. On balance, satisfying creditors' substantial, practical need for actual notice in the probate setting is not so cumbersome or impracticable as to unduly burden the State's undeniably legitimate interest in the expeditious resolution of the proceedings, since mail service (which is already routinely provided at several points in the probate process) is inexpensive, efficient, and reasonably calculated to provide actual notice, and since publication notice will suffice for creditors whose identities are not ascertainable by reasonably diligent efforts or whose claims are merely conjectural. Pp. 6-13.

733 P. 2d 390, reversed and remanded.

O'CONNOR, J., delivered the opinion of the Court, in which BRENNAN, WHITE, MARSHALL, STEVENS, SCALIA, and KENNEDY, JJ., joined. BLACKMUN, J., concurred in the result. REHNQUIST, C. J., filed a dissenting opinion.

SUPREME COURT OF THE UNITED STATES

No. 86-1961

TULSA PROFESSIONAL COLLECTION SERVICES, INC., APPELLANT *v.* JOANNE POPE, EXECUTRIX

OF THE ESTATE OF H. EVERETT POPE, JR., DECEASED

ON APPEAL FROM THE SUPREME COURT OF OKLAHOMA

[April 19, 1988]

JUSTICE O'CONNOR delivered the opinion of the Court.

This case involves a provision of Oklahoma's probate laws requiring claims "arising upon a contract" generally to be presented to the executor or executrix of the estate within 2 months of the publication of a notice advising creditors of the commencement of probate proceedings. Okla. Stat., Tit. 58, § 333 (1981). The question presented is whether this provision of notice solely by publication satisfies the Due Process Clause.

I

Oklahoma's probate code requires creditors to file claims against an estate within a specified time period, and generally bars untimely claims. *Ibid.* Such "nonclaim statutes" are almost universally included in state probate codes. See Uniform Probate Code § 3–801, 8 U. L. A. 351 (1983); Falender, Notice to Creditors in Estate Proceedings: What Process Is Due?, 63 N. C. L. Rev. 659, 667–668 (1985). Giving creditors a limited time in which to file claims against the estate serves the State's interest in facilitating the administration and expeditious closing of estates. See, *e. g.*, *State ex rel. Central State Griffin Memorial Hospital v. Reed*, 493 P. 2d 815, 818 (Okla. 1972). Nonclaim statutes come in two basic forms. Some provide a relatively short time period, generally 2 to 6 months, that begins to run after the commencement of probate proceedings. Others call for a longer period, generally 1 to 5 years, that runs from the decedent's death. See Falender, *supra*, at 664–672. Most States include both types of nonclaim statutes in their probate codes, typically providing that if probate proceedings are not commenced and the shorter period therefore never is triggered, then claims nonetheless may be barred by the longer period. See, *e. g.*, Ark. Code Ann. § 28–50–101(a), (d) (1987) (3 months if probate proceedings commenced; 5 years if not); Idaho Code § 15–3–803(a)(1)(2) (1979) (4 months; 3 years); Mo. Rev. Stat. § 473.360(1), (3) (1986) (6 months; 3 years). Most States also provide that creditors are to be notified of the requirement to file claims imposed by the nonclaim statutes solely by publication. See Uniform Probate Code § 3–801, 8 U. L. A. 351 (1983); Falender, *supra*, at 660, n. 7 (collecting statutes). Indeed, in most jurisdictions it is the publication of notice that triggers the nonclaim statute. The Uniform Probate Code, for example, provides that creditors have 4 months from publication in which to file claims. Uniform Probate Code § 3–801, 8 U. L. A. 351 (1983). See also, *e. g.*, Ariz. Rev. Stat. Ann. § 14–3801 (1975); Fla. Stat. § 733.701 (1987); Utah Code Ann. § 75–3–801 (1978).

The specific nonclaim statute at issue in this case, Okla. Stat., Tit. 58, § 333 (1981), provides for only a short time period and is best considered in the context of Oklahoma probate proceedings as a whole. Under Oklahoma's probate code, any party interested in the estate may initiate probate proceedings by petitioning the court to have the will proved. § 22. The court is then required to set a hearing date on the petition, § 25, and to mail notice of the hearing "to all heirs, legatees and devisees, at their places of residence," §§ 25, 26. If no person appears at the hearing to contest the will, the court may admit the will to probate on the testimony of one of the subscribing witnesses to the will. § 30. After the will is admitted to probate, the court must order appointment of an executor or executrix, issuing letters testamentary to the named executor or executrix if that person appears, is competent and qualified, and no objections are made. § 101.

Immediately after appointment, the executor or executrix is required to "give notice to the creditors of the deceased." § 331. Proof of compliance with this requirement must be filed with the court. § 332. This notice is to advise creditors that they must present their claims to the executor or executrix within 2 months of the date of the first publication. As for the method of notice, the statute requires only publication: "[S]uch notice must be published in some newspaper in [the] county once each week for two (2) consecutive weeks." § 331. A creditor's failure to file a claim within the 2-month period generally bars it forever. § 333. The nonclaim statute does provide certain exceptions, however. If the creditor is out of State, then a claim "may be presented at any time before a decree of distribution is entered." § 333. Mortgages and debts not yet due are also excepted from the 2-month time limit.

This shorter type of nonclaim statute is the only one included in Oklahoma's probate code. Delays in commencement of probate proceedings are dealt with not through some independent, longer period running from the decedent's death, see, *e. g.*, Ark. Code Ann. § 28–50–101(d) (1987), but by shortening the notice period once proceedings have started. Section 331 provides that if the decedent has been dead for more than 5 years, then creditors have only 1 month after notice is published in which to file their claims. A similar 1-month period applies if the decedent was intestate. § 331.

II

H. Everett Pope, Jr. was admitted to St. John Medical Center, a hospital in Tulsa, Oklahoma, in November 1978. On April 2, 1979, while still at the hospital, he died testate. His wife, appellee JoAnne Pope, initiated probate proceedings in the District Court of Tulsa County in accordance with the statutory scheme outlined above. The court entered an order setting a hearing. Record 8. After the hearing the court entered an order admitting the will to probate and, following the designation in the will, *id.*, at 2, named appellee as the executrix of the estate. *Id.*, at 12. Letters testamentary were issued, *id.*, at 13, and the court ordered appellee to fulfill her statutory obligation by directing that she "immediately give notice to creditors." *Id.*, at 14. Appellee published notice in the Tulsa Daily Legal News for 2 consecutive weeks beginning July 17, 1979. The notice advised creditors that they must file any claim they had against the estate within 2 months of the first publication of the notice. *Id.*, at 16.

Appellant Tulsa Professional Collection Services, Inc., is a subsidiary of St. John Medical Center and the assignee of a claim for expenses connected with the decedent's long stay at that hospital. Neither appellant, nor its parent company, filed a claim with appellee within the 2-month time period following publication of notice. In October 1983, however, ap-

pellant filed an Application for Order Compelling Payment of Expenses of Last Illness. *Id.*, at 28. In making this application, appellant relied on Okla. Stat., Tit. 58, § 594 (1981), which indicates that an executrix "must pay . . . the expenses of the last sickness." Appellant argued that this specific statutory command made compliance with the 2-month deadline for filing claims unnecessary. The District Court of Tulsa County rejected this contention, ruling that even claims pursuant to § 594 fell within the general requirements of the nonclaim statute. Accordingly, the court denied appellant's application. App. 3.

The District Court's reading of § 594's relationship to the nonclaim statute was affirmed by the Oklahoma Court of Appeals. App. 7. Appellant then sought rehearing, arguing for the first time that the nopclaim statute's notice provisions violated due process. In a supplemental opinion on rehearing the Court of Appeals rejected the due process claim on the merits. *Id.*, at 15.

Appellant next sought review in the Supreme Court of Oklahoma. That court granted certiorari and, after review of both the § 594 and due process issues, affirmed the Court of Appeals' judgment. With respect to the federal issue, the court relied on *Estate of Busch* v. *Ferrell-Duncan Clinic, Inc.*, 700 S. W. 2d 86, 88–89 (Mo. 1985), to reject appellant's contention that our decisions in *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U. S. 306 (1950), and *Mennonite Board of Missions* v. *Adams*, 462 U. S. 791 (1983), required more than publication notice. 733 P. 2d 396 (1987). The Supreme Court reasoned that the function of notice in probate proceedings was not to "'make a creditor a party to the proceeding'" but merely to "'notif[y] him that he may become one if he wishes.'" *Id.*, at 400 (quoting *Estate of Busch*, 700 S. W. 2d, at 88). In addition, the court distinguished probate proceedings because they do not directly adjudicate the creditor's claims. 733 P. 2d, at 400–401. Finally, the court agreed with *Estate of Busch* that nonclaim statutes were self-executing statutes of limitations, because they "ac[t] to cut off potential claims against the decedent's estate by the passage of time," and accordingly do not require actual notice. 733 P. 2d, at 401. See also *Gibbs* v. *Estate of Dolan*, 146 Ill. App. 3d 208, 496 N. E. 2d 1126 (1986) (rejecting due process challenge to nonclaim statute); *Gano Farms, Inc.* v. *Estate of Kleweno*, 2 Kan. App. 2d 506, 582 P. 2d 742 (1978) (same); *Chalaby* v. *Driskell*, 237 Ore. 245, 390 P. 2d 632 (1964) (same); *William B. Tanner Co.* v. *Estate of Fessler*, 100 Wis. 2d 487, 302 N. W. 2d 414 (1981) (same); *New York Merchandise Co.* v. *Stout*, 48 Wash. 2d 825, 264 P. 2d 868 (1953) (same). This conclusion conflicted with that reached by the Nevada Supreme Court in *Continental Insurance Co.* v. *Moseley*, 100 Nev. 337, 683 P. 2d 20 (1984), after our decision remanding the case for reconsideration in light of *Mennonite*, *supra*. 463 U. S. 1202 (1983). In *Moseley*, the Nevada Supreme Court held that in this context due process required "more than service by publication." *Id.*, at 338, 683 P. 2d, at 21. We noted probable jurisdiction, 484 U. S. —— (1987), and now reverse and remand.

III

Mullane v. *Central Hanover Bank & Trust Co.*, *supra*, at 314, established that state action affecting property must generally be accompanied by notification of that action: "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." In the years since *Mullane* the Court has adhered to these principles, balancing the "interest of the State" and "the individual interest sought to be protected by the Fourteenth Amendment." *Ibid.* The focus is on the reasonableness of the balance, and, as *Mullane* itself made clear, whether a particular method of notice is reasonable depends on the particular circumstances.

The Court's most recent decision in this area is *Mennonite*, *supra*, which involved the sale of real property for delinquent taxes. State law provided for tax sales in certain circumstances and for a 2-year period following any such sale during which the owner or any lienholder could redeem the property. After expiration of the redemption period, the tax sale purchaser could apply for a deed. The property owner received actual notice of the tax sale and the redemption period. All other interested parties were given notice by publication. 462 U. S., at 792–794. In *Mennonite*, a mortgagee of property that had been sold and on which the redemption period had run complained that the State's failure to provide it with actual notice of these proceedings violated due process. The Court agreed, holding that "actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of *any* party, whether unlettered or well versed in commercial practice, if its name and address are reasonably ascertainable." *Id.*, at 800 (emphasis in original). Because the tax sale had "immediately and drastically diminishe[d] the value of [the mortgagee's] interest," *id.*, at 798, and because the mortgagee could have been identified through "reasonably diligent efforts," *id.*, at 798, n. 4, the Court concluded that due process required that the mortgagee be given actual notice.

Applying these principles to the case at hand leads to a similar result. Appellant's interest is an unsecured claim, a cause of action against the estate for an unpaid bill. Little doubt remains that such an intangible interest is property protected by the Fourteenth Amendment. As we wrote in *Logan* v. *Zimmerman Brush Co.*, 455 U. S. 422, 428 (1982), this question "was affirmatively settled by the *Mullane* case itself, where the Court held that a cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause." In *Logan*, the Court held that a cause of action under Illinois' Fair Employment Practices Act was a protected property interest, and referred to the numerous other types of claims that the Court had previously recognized as deserving due process protections. See *id.*, at 429–431, and nn. 4–5. Appellant's claim, therefore, is properly considered a protected property interest.

The Fourteenth Amendment protects this interest, however, only from a deprivation by state action. Private use of state sanctioned private remedies or procedures does not rise to the level of state action. See, *e. g.*, *Flagg Bros., Inc.* v. *Brooks*, 436 U. S. 149 (1978). Nor is the State's involvement in the mere running of a general statute of limitation generally sufficient to implicate due process. See *Texaco, Inc.* v. *Short*, 454 U. S. 516 (1982). See also *Flagg Bros.*,

Inc. v. *Brooks*, *supra*, at 166. But when private parties make use of state procedures with the overt, significant assistance of state officials, state action may be found. See, *e. g.*, *Lugar* v. *Edmondson Oil Co.*, 457 U. S. 922 (1982); *Sniadach* v. *Family Finance Corp.*, 395 U. S. 337 (1969). The question here is whether the State's involvement with the nonclaim statute is substantial enough to implicate the Due Process Clause.

Appellee argues that it is not, contending that Oklahoma's nonclaim statute is a self-executing statute of limitations. Relying on this characterization, appellee then points to *Short*, *supra*. Appellee's reading of *Short* is correct — due process does not require that potential plaintiffs be given notice of the impending expiration of a period of limitations — but in our view, appellee's premise is not. Oklahoma's nonclaim statute is not a self-executing statute of limitations.

It is true that nonclaim statutes generally possess some attributes of statutes of limitations. They provide a specific time period within which particular types of claims must be filed and they bar claims presented after expiration of that deadline. Many of the state court decisions upholding nonclaim statutes against due process challenges have relied upon these features and concluded that they are properly viewed as statutes of limitations. See, *e. g.*, *Estate of Busch* v. *Ferrell-Duncan Clinic, Inc.*, 700 S. W. 2d, at 89; *William B. Tanner Co.* v. *Estate of Fessler*, 100 Wis. 2d 437, 302 N. W. 2d 414 (1981).

As we noted in *Short*, however, it is the "self-executing feature" of a statute of limitations that makes *Mullane* and *Mennonite* inapposite. See 454 U. S., at 533, 536. The State's interest in a self-executing statute of limitations is in providing repose for potential defendants and in avoiding stale claims. The State has no role to play beyond enactment of the limitations period. While this enactment obviously is state action, the State's limited involvement in the running of the time period generally falls short of constituting the type of state action required to implicate the protections of the Due Process Clause.

Here, in contrast, there is significant state action. The probate court is intimately involved throughout, and without that involvement the time bar is never activated. The nonclaim statute becomes operative only after probate proceedings have been commenced in state court. The court must appoint the executor or executrix before notice, which triggers the time bar, can be given. Only after this court appointment is made does the statute provide for any notice: § 331 directs the executor or executrix to publish notice "immediately" after appointment. Indeed, in this case, the District Court reinforced the statutory command with an order expressly requiring appellee to "immediately give notice to creditors." The form of the order indicates that such orders are routine. Record 14. Finally, copies of the notice and an affidavit of publication must be filed with the court. § 332. It is only after all of these actions take place that the time period begins to run, and in every one of these actions, the court is intimately involved. This involvement is so pervasive and substantial that it must be considered state action subject to the restrictions of the Fourteenth Amendment.

Where the legal proceedings themselves trigger the time bar, even if those proceedings do not necessarily resolve the claim or its merits, the time bar lacks the self-executing feature that *Short* indicated was necessary to remove any due process problem. Rather, in such circumstances, due process is directly implicated and actual notice generally is required. Cf. *Mennonite*, 462 U. S., at 793–794 (tax sale proceedings trigger 2-year redemption period); *Logan* v. *Zimmerman Brush Co.*, *supra*, at 433, 437 (claim barred if no hearing held 120 days after action commenced); *City of New York* v. *New York, N. H. & H. R. Co.*, 344 U. S. 293, 294 (1953) (bankruptcy proceedings trigger specific time period in which creditors' claims must be filed). Our conclusion that the Oklahoma nonclaim statute is not a self-executing statute of limitations makes it unnecessary to consider appellant's argument that a 2-month period is somehow unconstitutionally short. See Tr. of Oral Arg. 22 (advocating constitutional requirement that the States provide at least 1 year). We also have no occasion to consider the proper characterization of nonclaim statutes that run from the date of death, and which generally provide for longer time periods, ranging from 1 to 5 years. See Falender, 63 N. C. L. Rev., at 667–669. In sum, the substantial involvement of the probate court throughout the process leaves little doubt that the running of Oklahoma's nonclaim statute is accompanied by sufficient government action to implicate the Due Process Clause.

Nor can there be any doubt that the nonclaim statute may "adversely affect" a protected property interest. In appellant's case, such an adverse affect is all too clear. The entire purpose and effect of the nonclaim statute is to regulate the timeliness of such claims and to forever bar untimely claims, and by virtue of the statute, the probate proceedings themselves have completely extinguished appellant's claim. Thus, it is irrelevant that the notice seeks only to advise creditors that they may become parties rather than that they are parties, for if they do not participate in the probate proceedings, the nonclaim statute terminates their property interests. It is not necessary for a proceeding to directly adjudicate the merits of a claim in order to "adversely affect" that interest. In *Mennonite* itself, the tax sale proceedings did not address the merits of the mortgagee's claim. Indeed, the tax sale did not even completely extinguish that claim, it merely "diminishe[d] the value" of the interest. 462 U. S., at 798. Yet the Court held that due process required that the mortgagee be given actual notice of the tax sale. See also *Memphis Light, Gas & Water Division* v. *Craft*, 436 U. S. 1 (1978) (termination of utility service); *Schroeder* v. *City of New York*, 371 U. S. 208 (1962) (condemnation proceeding); *City of New York* v. *New York, N. H. & H. R. Co.*, *supra* (bankruptcy code's requirement of "reasonable notice" requires actual notice of deadline for filing claims).

In assessing the propriety of actual notice in this context consideration should be given to the practicalities of the situation and the effect that requiring actual notice may have on important state interests. *Mennonite*, *supra*, at 798–799; *Mullane*, 339 U. S., at 313–314. As the Court noted in *Mullane*, "[c]hance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper." *Id.*, at 315. Creditors, who have a strong interest in maintaining the integrity of their relationship with their debtors, are particularly unlikely to benefit from publication notice. As a class, creditors may

not be aware of a debtor's death or of the institution of probate proceedings. Moreover, the executor or executrix will often be, as is the case here, a party with a beneficial interest in the estate. This could diminish an executor's or executrix's inclination to call attention to the potential expiration of a creditor's claim. There is thus a substantial practical need for actual notice in this setting.

At the same time, the State undeniably has a legitimate interest in the expeditious resolution of probate proceedings. Death transforms the decedent's legal relationships and a State could reasonably conclude that swift settlement of estates is so important that it calls for very short time deadlines for filing claims. As noted, the almost uniform practice is to establish such short deadlines, and to provide only publication notice. See, *e. g.*, Ariz. Rev. Stat. Ann. § 14–3801 (1975); Ark. Code Ann. § 28–50–101(a) (1987); Fla. Stat. § 733.701 (1987); Idaho Code § 15–3–803(a) (1979); Mo. Stat. § 473.360(1) (1986); Utah Code Ann. § 75–3–801 (1978). See also Uniform Probate Code § 3–801, 8 U. L. A. 351 (1983); Falender, *supra*, at 660, n. 7 (collecting statutes). Providing actual notice to known or reasonably ascertainable creditors, however, is not inconsistent with the goals reflected in nonclaim statutes. Actual notice need not be inefficient or burdensome. We have repeatedly recognized that mail service is an inexpensive and efficient mechanism that is reasonably calculated to provide actual notice. See, *e. g.*, *Mennonite*, *supra*, at 799, 800; *Greene* v. *Lindsey*, 456 U. S. 444, 455 (1982); *Mullane*, *supra*, at 319. In addition, *Mullane* disavowed any intent to require "impracticable and extended searches . . . in the name of due process." 339 U. S., at 317–318. As the Court indicated in *Mennonite*, all that the executor or executrix need do is make "reasonably diligent efforts," 462 U. S., at 798, n. 4, to uncover the identities of creditors. For creditors who are not "reasonably ascertainable," publication notice can suffice. Nor is everyone who may conceivably have a claim properly considered a creditor entitled to actual notice. Here, as in *Mullane*, it is reasonable to dispense with actual notice to those with mere "conjectural" claims. 339 U. S., at 317.

On balance then, a requirement of actual notice to known or reasonably ascertainable creditors is not so cumbersome as to unduly hinder the dispatch with which probate proceedings are conducted. Notice by mail is already routinely provided at several points in the probate process. In Oklahoma, for example, § 26 requires that "heirs, legatees, and devisees" be mailed notice of the initial hearing on the will. Accord Uniform Probate Code § 3–403, 8 U. L. A. 351 (1983). Indeed, a few States already provide for actual notice in connection with short nonclaim statutes. See, *e. g.*, Calif. Prob. Code Ann. §§ 9050, 9100 (Supp. 1988); Nev. Rev. Stat. §§ 147.010, 155.010, 155.020 (1987); W. Va. Code §§ 44–2–2, 44–2–4 (1982). We do not believe that requiring adherence to such a standard will be so burdensome or impracticable as to warrant reliance on publication notice alone.

In analogous situations we have rejected similar arguments that a pressing need to proceed expeditiously justifies less than actual notice. For example, while we have recognized that in the bankruptcy context there is a need for prompt administration of claims, *United Savings Assn. of Texas* v. *Timbers of Inwood Forest Assoc., Ltd.*, 484 U. S. ——, —— (1988), we also have required actual notice in bankruptcy proceedings. *Bank of Marin* v. *England*, 385 U. S. 99 (1966); *City of New York* v. *New York, N. H. & H. R. Co.*, *supra*. See also *Mullane* v. *Central Hanover Bank & Trust Co.*, *supra*, at 318–319 (trust proceedings). Probate proceedings are not so different in kind that a different result is required here.

Whether appellant's identity as a creditor was known or reasonably ascertainable by appellee cannot be answered on this record. Neither the Oklahoma Supreme Court nor the Court of Appeals nor the District Court considered the question. Appellee of course was aware that her husband endured a long stay at St. John Medical Center, but it is not clear that this awareness translates into a knowledge of appellant's claim. We therefore must remand the case for further proceedings to determine whether "reasonably diligent efforts," *Mennonite*, *supra*, at 798, n. 4, would have identified appellant and uncovered its claim. If appellant's identity was known or "reasonably ascertainable," then termination of appellant's claim without actual notice violated due process.

IV

We hold that Oklahoma's nonclaim statute is not a self-executing statute of limitations. Rather, the statute operates in connection with Oklahoma's probate proceedings to "adversely affect" appellant's property interest. Thus, if appellant's identity as a creditor was known or "reasonably ascertainable," then the Due Process Clause requires that appellant be given "[n]otice by mail or other means as certain to ensure actual notice." *Mennonite*, *supra*, at 800. Accordingly, the judgment of the Oklahoma Supreme Court is reversed and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE BLACKMUN concurs in the result.

SUPREME COURT OF THE UNITED STATES

No. 86–1961

TULSA PROFESSIONAL COLLECTION SERVICES, INC., APPELLANT v. JOANNE POPE, EXECUTRIX OF THE ESTATE OF H. EVERETT POPE, JR., DECEASED

ON APPEAL FROM THE SUPREME COURT OF OKLAHOMA

[April 19, 1988]

CHIEF JUSTICE REHNQUIST, dissenting.

In *Texaco, Inc.* v. *Short*, 454 U. S. 516 (1982), the Court upheld against challenge under the Due Process Clause an Indiana statute providing that severed mineral interests which had not been used for a period of 20 years lapsed and reverted to the surface owner unless the mineral owner filed a statement of claim in the appropriate county office. In the present case Oklahoma has enacted a statute providing that a contractual claim against a decedent's estate is barred if not presented as a claim within two months of the publication of notice advising creditors of the commencement of probate proceedings. The Court holds the Oklahoma statute unconstitutional.