

Fifth Supplement to Memorandum 88-43

Subject: Study L-1036/1055 - Compensation of Personal Representative
and Estate Attorney (Expenses of Administration)

In Exhibit 5 to the Third Supplement, Charles Collier urged us to be careful not to restrict the rule that expenses of administration are paid out of the estate. The staff suggested language for the Comment to proposed Section 10804 to make this clear. After further thought, the staff thinks statutory language may be desirable.

Probate Code Section 900 provides that the personal representative "shall be allowed all necessary expenses in the care, management and settlement of the estate." This language was deleted from Section 900 by AB 2841 (operative July 1, 1989), and put into new Section 11004 which provides that the personal representative "shall be allowed all necessary expenses in the administration of the estate." The Comments to Sections 900 and 11004 say:

Probate Code § 900 (amended). Compensation of personal representative

Comment. Section 900 is amended to delete the portion relating to allowance of the necessary expenses in the care, management, and settlement of the estate. That portion is continued without substantive change in Section 11004. . . .

Probate Code § 11004 (added). Expenses of personal representative

Comment. Section 11004 restates a provision formerly found in the first sentence of Section 900. It generalizes the former language that provided for allowance of expenses in the care, management, and settlement of the estate.

These Comments make clear that there was no intent to change the law by omitting "care, management and settlement" of the estate in Section 11004. However, we can make this even clearer by amending Section 11004:

11004. The personal representative shall be allowed all necessary expenses in the administration of the estate , including but not limited to necessary expenses in the care, management, preservation, and settlement of the estate.

This would avoid any argument that expenses for insurance, gardening, pool maintenance, and maintenance of property pending sale or distribution are no longer payable from the estate. This revision can be accomplished in the Commission's 1989 probate cleanup bill. Does the Commission want to do this?

Respectfully submitted,

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