

Second Supplement to Memorandum 88-50

Subject: Study L-1026 - Probate Code (Payment of Debts--comments of
Beverly Hills Bar Association)

Attached to this memorandum is a letter from the Legislative Committee of the Probate, Trust and Estate Planning Section of the Beverly Hills Bar Association commenting on the issues raised in Memorandum 88-50.

Respectfully submitted,

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August 31, 1988

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Re: Study L-1026, Payment of Debts
Memorandum 88-50 dated 6-20-88

Dear Nat,

I am writing on behalf of the Legislative Committee of the Probate, Trust, & Estate Planning Section of the Beverly Hills Bar Association.

In accordance with the request of the Commission at the July 14-15 meeting for our input, we have the following comment(s) about the above study:

1. Section 9154 (former §929), Waiver of Formal Defects

- a. Vis a vis the May 11, 1988 Court of Appeal decision in the Estate of Sturm, we suggest the adoption of staff recommendation #3, i.e., revise §9154 to allow the doctrine of estoppel or detrimental reliance to be litigated on a case-by-case basis.

As in the actual notice to creditors context, the personal representative should focus on paying legitimate claims, not tricking the good-faith creditor. Thus, §9154 and any other relevant statute(s) should allow a creditor to prove (by way of formal acknowledgment of some sort, payment in full or part by the personal representative, settlement negotiations, etc.) that the representative had adequate notice of a claim during the claim period, thereby giving the representative credit in the accounts for a payment if it was made in good faith, etc.

- b. Referring to the July 11th letter of the State Bar Special Creditors' Claim Team, we strongly disagree with the suggestion that the payment could be made at any time before or after the expiration of the claims period. This would lead to confusion, especially on the part of the creditor, who would not know whether its claim had been approved or not if a long delay occurred before payment or other action.

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- c. However, the language added by the State Bar to Subparagraph (a) of Section 9154 is useful, especially for those who do not practice frequently in the probate area.

2. Section 9250, Allowance and Rejection of Claims

We don't feel that there is any confusion about whether a formal allowance should go to those creditors whose debts have been paid informally, without a formal claim, because the allowance [or rejection] notice is for filed claims.

However, if a change is to be made, we would prefer (for the same reason the staff does -- that the Bar's added language could impose some notification duties on the representative) the staff-recommended language:

"This section does not apply to a demand the personal representative elects to treat as a claim under Section 9154."

Sincerely,



PHYLLIS CARDOZA

PC:pk

cc: James J. Stewart, Esq. (attendee at 9/8 - 9/9/88 meeting of LRC)
Kenneth G. Petrulis, Esq., Chair, Legislative Committee
David E. Lich, Esq., Chair-Elect, Legislative Committee
Melinda J. Tooch, Esq., Chair, Probate Section, BHBA