

First Supplement to Memorandum 89-1

Subject: Study L-1025 - Probate Law and Procedure (Notice to Creditors--
additional comments on tentative recommendation)

Attached to this supplementary memorandum is a letter from Michael Patiky Miller of Palo Alto commenting on the tentative recommendation relating to notice to creditors. Mr. Miller opposes the concept of the tentative recommendation that the personal representative should have no duty to search for and notify reasonably ascertainable creditors, with unnotified creditors having the right to make a late claim or recover from distributees. He believes this protects professional fiduciaries at the expense of California's traditional protection of distributees and traditional requirement that creditors act promptly. He states:

If the constitutional standard is to notify "all known and/or reasonably ascertainable creditors", let the law state that clearly. Let us not, however, monkey around with the basic four month period in which to file claims.

Probate has a bad reputation among the public because it is perceived as being too slow. The proposed legislation will make it incumbent to wait a full year after obtaining letters before one files for final distribution. When you add to this the usual wait to get a hearing date, notice requirements, etc., it will mean that even a simple estate will take at least 18 months to close from date of death. This would place an undue hardship on needy beneficiaries.

Mr. Miller offers an alternate approach to problems involved with notification of creditors--a central credit bureau, such as TRW, could be used to receive and disseminate notices of death. "It is time for your staff to again consider the use of modern technology to get notices out, rather than tinkering with statutes of limitation." The staff does not believe the concept of a central clearing house for notices of death would be practicable, although we could explore the costs and burdens of such a system if the Commission is so inclined.

Apart from his position on the basic thrust of the tentative recommendation, Mr. Miller also has a problem with the specific amendment of Section 9053 (immunity of personal representative) to remove the attorney from the section. He is concerned that litigants will dream up all sorts of derivative actions against the attorney for perceived failures, which would be unjust and costly to defend.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

DEC 20 1988

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OF COUNSEL

DAN MUHLFELDER

DAVID G. HARVEY

WEINBERG, ZIFF & MILLER
ATTORNEYS AT LAW

DAVID C. WEINBERG
HARVEY L. ZIFF
MICHAEL PATIKY MILLER
CARLYLE W. KINNISON

400 Cambridge Avenue, Suite A

P.O. Box 60700

Palo Alto, California 94306-0700

(415) 329-0851

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FAX # (415) 324-2822

Law Revision Commission
Attn: N. Sterling, Esq.
4000 Middlefield Rd. #D-2
Palo Alto, CA 94303-4739

RE: L-1025 "Creditor Claims"

Dear Nat:

I would imagine that I did not fully understand the newly proposed rules per your Oct. 1988 circular; however, upon reading the comments contained in your 12/15/88 Memorandum 89-1, I must raise a note of concern. It seems that what the staff is proposing is dropping California's long standing preference for creditor diligence and for protection of heirs, in exchange for New York's view of protection of professional fiduciaries. If the constitutional standard is to notify "all known and/or reasonably ascertainable creditors", let the law state that clearly. Let us not, however, monkey around with the basic four month period in which to file claims.

Probate has a bad reputation among the public because it is perceived as being too slow. The proposed legislation will make it incumbent to wait a full year after obtaining letter before one file for final distribution. When you add to this the usual wait to get a hearing date, notice requirements, etc., it will mean that even a simple estate will take at least 18 months to close from date of death. This would place an undue hardship on needy beneficiaries.

Further, I agree with Wilbur Coats that the proposed rewording of §9053 will actually place additional liability upon the attorney. Litigants will dream up all sorts of derivative actions against the attorney for perceived failures; this would be unjust and costly to defend.

I have felt for some time that if the concern is notification to all possible creditors, a central credit bureau, such as TRW, should be used to receive and disseminate notices of death. This was suggested by me several years ago to the LRC as part of a review undertaken by a sub-committee of the San Mateo Bar which I headed. It is time for your staff to again consider the use of modern technology to get notices out, rather than with tinkering with statutes of limitation.

You once took a probate administration course from me because you wanted to see how probate is handled out in the trenches. I can tell you that the newly revised proposals in L-1025 will make the "war" out here difficult for even we veterans!

Sincerely,

A handwritten signature in cursive script, appearing to read "Mike", written in dark ink.

Michael Patiky Miller

MPM:kh