

rm31
9/7/89

First Supplement to Memorandum 89-33

Subject: Study L-1030 - Summary Collection in Small Estates (Team 4
Comments)

Attached to this Supplement as Exhibit 1 is a letter from Kathryn Ballsun for Team 4 of the State Bar Estate Planning, Trust and Probate Law Section. Team 4 supports the three staff recommendations in the basic memo:

(1) No change should be made to Section 13154 concerning the wording of the court order determining that real property "is property passing to the petitioners."

(2) The real property set-aside procedure should be expanded as set out in Exhibit 2 to the basic memo to permit inclusion of personal property in an appropriate case.

(3) The forms question should be referred to the Judicial Council, as the staff has done.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

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PLEASE REFER TO
FILE NO.

899001L.722

August 29, 1989

James Quillinan, Esq.
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444 Castro Street, #900
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BY FAX

Re: Law Revision Commission Study 89-33;
Collection of Small Estates

Dear Jim:

On August 10, 1989, Team 4 (Barbara Miller, Harley Spitler, James Willett, Clark Byam and I) discussed Law Revision Commission Study 89-33; Collection of Small Estates. Team 4's comments about the above-referenced Memorandum are as follows:

Team 4 carefully reviewed the Memorandum's three major points, all of which were generated by a letter from a Mr. Cameron to James Willett, a member of the Executive Committee of the Estate Planning, Probate and Trust Law Section of the State Bar. Mr. Cameron recommended that Probate Code sections 13150-13157 be amended by changing the language to authorize the court to "set aside" property to those entitled to it. This change, as characterized by the Law Revision Commission, is only a "change of taste" rather than a substantive change; for that reason, the Law Revision Commission recommended that the existing statutory language not be changed. Team 4 agrees with the position of the Law Revision Commission.

Mr. Cameron's second point concerns the summary collection of real property which requires a petition and a court order. Mr. Cameron thought it would be "simpler" to allow the court in that situation to order the disposition of personal property as well as real property; thus, the affidavit procedure would be unnecessary if a petition to the court were required. In paragraph 2, page 2, the Commission stated:

"When the Commission developed the 'procedure for real property', personal property was intentionally excluded because of the concern that the holder of decedent's per-

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sonal property, when presented with an affidavit under sections 13100-13116, might seize on the availability of a court remedy to insist on a court order before releasing the personal property."

In response to the potential problem raised by Mr. Cameron, the Commission created an option so that personal property, if appropriate, could be described in the order authorizing the summary collection of real property. Team 4 agrees with the Commission's approach.

The third point raised by Mr. Cameron concerned judicial council forms. We agree with the Law Revision Commission that it is appropriate to review this comment to the Judicial Council.

Thank you for your consideration.

Cordially,

Kathryn A. Ballsun

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cc: Terry Ross, Esq. (By Fax)
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