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10/04/88

Third Supplement to Memorandum 89-35

Subject: Study L - 1989 Legislative Program--Miscellaneous Matters
(Comments of State Bar Team 1)

Attached are letters from State Bar Team 1 approving the staff suggestions in Memorandum 89-35 and the First Supplement to Memorandum 89-35.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

**ESTATE PLANNING, TRUST AND
PROBATE LAW SECTION
THE STATE BAR OF CALIFORNIA**

APR 06 1989

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REPLY TO:

April 6, 1989

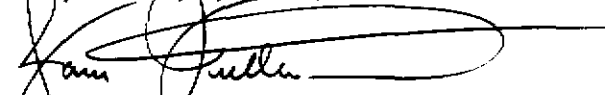
John H. DeMouilly
Executive Director
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303

Re: LRC Memo 89-35.

Dear John:

I have enclosed copies of Team 1's reports on memo 89-35, First and Second Supplements. The reports have not been reviewed by the Executive Committee and represent the opinions of the author only. The reports are to assist in the technical and substantive review of those sections involved.

Very truly yours,


James V. Quillinan
Attorney at Law

JVQ/h1
Encls.
cc: Valerie Merritt

Terry Ross Irv Goldring

REPORT

TO: ✓ JAMES V. QUILLINAN
STERLING L. ROSS, JR.
IRWIN D. GOLDRING
VALERIE J. MERRITT
THE EXECUTIVE COMMITTEE IN GENERAL

FROM: WILLIAM V. SCHMIDT

DATE: April 4, 1989

RE: SECOND SUPPLEMENT TO LRC MEMORANDUM 89-35
(Miscellaneous Matters)

This memorandum was reviewed by William V. Schmidt in the absence of any meeting or conference among the members of Study Team No. 1.

I agree with the proposal of the staff to amend Probate Code §§ 8401 and 8483 to coordinate with the deposit procedure set forth in §§ 9700-9705.

In the second portion of the memorandum the staff addresses the question of the finality of court order settling an account and the apparent conflict between the provisions of § 9612 and § 11006(b). The first section states that the personal representative is released from all claims of heirs or devisees when an order becomes final. It expressly refers to an order settling an account of the personal representative.

The second section states that a person under legal disability has the right to reopen and examine the account at any time before the entry of an order for final distribution of the estate. Apparently this right exists even if the order settling the account sought to be reopened has become final. I favor finality and consistency. I am also troubled by the concept that a person under legal disability may reopen an

otherwise "final" order settling an account when such a person may not reopen or re-examine a final order of preliminary distribution, or of entitlement to estate distribution, or of family allowance, or any number of other orders which could vitally affect the rights of such a person under legal disability.

I agree with the staff that the policy needs to be decided by the commission, but once that policy has been determined all of the statutes implementing it should be consistent and clear.

Respectfully submitted,
STUDY TEAM NO. 1

By: 

William V. Schmidt
Captain

REPORT

TO: ✓ JAMES V. QUILLINAN
STERLING L. ROSS, JR.
IRWIN D. GOLDRING
VALERIE J. MERRITT
THE EXECUTIVE COMMITTEE IN GENERAL

FROM: WILLIAM V. SCHMIDT

DATE: March 28, 1989

RE: FIRST SUPPLEMENT TO LRC MEMORANDUM 89-35
(Enforcement of Judgment Lien in Probate)
Study L-1026.

Study Team No. 1 did not meet or confer on this Memorandum. William Schmidt talked to both Bruce Ross and Michael Vollmer and submits this Report based on those conversations and his reading of the Memorandum.

Assembly Bill #157 proposes to change California Code of Civil Procedure Section 686.020 in a manner which seems acceptable and proper. The staff recommends further amending the section as set out in Exhibit 2 to the Memo, which simply adds to that proposed change the words "and not by this title."

Study Team NO. 1 concurs with this recommendation. The additional five words seem to clarify the law and rectify the decision in the Coronado Bank case.

Respectfully submitted,

STUDY TEAM NO. 1

By: William V. Schmidt
William V. Schmidt,
Captain