

First Supplement to Memorandum 90-44

Subject: Study L-1025 - Late Claims; Statute of Limitations

In connection with the notice to creditors legislation, a defect in the late claim statute has been called to our attention. This matter could be addressed in the tentative recommendation attached to Memorandum 90-44.

When a claim is filed, the filing of the claim tolls the statute of limitations until the claim is resolved; the claimant has three months thereafter in which to sue if the claim is rejected. Prob. Code §§ 9350-9354. But if a petition to file a late claim is filed, the statute of limitations is not tolled. Thus a possible result is that the statute of limitations could run before the court acts on the petition.

Such a result was not intended. The statute should make clear that the filing of a petition to file a late claim tolls the statute of limitations, just as the filing of the claim itself tolls the statute. This could be done by the following amendment:

§ 9352. Tolling statute of limitations

9352. (a) The filing of a claim or a petition under Section 9103 to file a claim tolls the statute of limitations otherwise applicable to the claim until allowance, approval, or rejection.

(b) The allowance or approval of a claim in whole or in part further tolls the statute of limitations during the administration of the estate as to the part allowed or approved.

Comment. Subdivision (a) of Section 9352 is amended to provide that filing a petition for a late claim tolls the statute of limitations applicable to the claim.

The staff recommends that the proposed revision be included for comment in the tentative recommendation on this matter.

Respectfully submitted,

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