

Memorandum 90-115

Subject: Study L - 1991 Urgency Probate Bill

The Commission plans to have introduced in 1991 an urgency bill to make necessary corrections and revisions in the new Probate Code. The bill will become operative at the same time as the new Probate Code--July 1, 1991.

The staff will check for any revisions made to the repealed Probate Code by bills enacted in 1990 and will include in the urgency bill provisions to make corresponding revisions in the new Probate Code. (At the time this memorandum was written, it was not possible to determine which bills, if any, would be enacted that would require a conforming revision in the new Probate Code. When this can be determined, the staff will prepare the necessary amendment to the new Probate Code and include it in the urgency bill.)

Exhibit 1 (attached) sets out various sections of the new Probate Code that require revision to become operative on July 1, 1991. The note under each section explains the revision.

The urgency bill will add to the new Probate Code the substance of the existing provisions governing compensation of the probate attorney (with one exception noted below). The new Probate Code as enacted merely made the provisions applicable to compensation of the personal representative applicable to the compensation of the probate attorney. In place of this somewhat confusing incorporation by reference, the urgency bill will provide compensation provisions to deal directly with the compensation of the probate attorney. These provisions would be enacted, to become operative on July 1, 1991, when the new Probate Code becomes operative. Any proposal to adopt a new system for compensation of the probate attorney will need to be proposed by a separate bill, which will have to revise the new Probate Code as revised by the urgency bill.

The urgency bill will make one revision in the law that applied before the enactment of the new Probate Code. Where the decedent's

will limits the compensation of the probate attorney, the former law permitted the attorney to "renounce" the fee provided in the will and to claim the statutory fee. This same rule formerly applied to personal representatives. However, upon Commission recommendation, the new Probate Code now requires that the personal representative obtain a court order authorizing compensation for the personal representative in an amount greater than that provided in the will. The court may make such an order if the court determines that it is to the advantage of the estate and in the best interest of the persons interested in the estate. The staff draft attached adopts the same scheme for the compensation of the probate attorney.

The staff requests that the Commission approve Exhibit 1 attached for submission to the 1991 Legislature and that the staff be authorized to include in the urgency bill any revisions of the new Probate Code that are necessary to pick up 1990 revisions of the existing Probate Code made by legislation enacted in 1990.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

07/16/90

1991 URGENCY PROBATE CODE CLEANUP BILL

SECTION 1. Section 20 of the Probate Code, as enacted by Chapter 79 of the Statutes of 1990, is amended to read:

20. (a) Unless the provision or context otherwise requires, the definitions in this part govern the construction of this code

Note. Amendment to Probate Code Section 20 deletes "(a)". There is no other subdivision in the section.

SEC. 2. Section 900 of the Probate Code, as enacted by Chapter 79 of the Statutes of 1990, is repealed.

~~900. (a) Notwithstanding their repeal, Sections 900, 901, 902, 903, 904, 910, and 911 of the former Probate Code (repealed by Chapter 79 of the Statutes of 1990), as those sections existed on June 30, 1991, continue to apply in any proceeding for the administration of a decedent's estate commenced before July 1, 1991.~~

~~(b) The following sections of this code do not apply in any proceeding for administration of a decedent's estate commenced before July 1, 1991:~~

- ~~(1) Section 7623.~~
- ~~(2) Section 7662.~~
- ~~(3) Section 7666.~~
- ~~(4) Section 8547.~~
- ~~(5) Section 9651.~~
- ~~(6) Section 10900.~~
- ~~(7) Section 10954.~~
- ~~(8) Section 11000.~~
- ~~(9) Section 11003.~~
- ~~(10) Section 12205.~~

~~(c) The sections of the former Probate Code (repealed by Chapter 79 of the Statutes of 1990) having the same section numbers as those listed in subdivision (b), as those sections existed on June 30, 1991,~~

~~continue to apply in any proceeding for administration of a decedent's estate commenced before July 1, 1991.~~

Note. Section 900 is repealed as unnecessary in view of Section 10850.

SEC. 3. Section 7622 of the Probate Code, as enacted by Chapter 79 of the Statutes of 1990, is amended to read:

7622. Except as otherwise provided in this chapter:

(a) The public administrator shall administer the estate in the same manner as a personal representative generally, and the provisions of this code concerning the administration of the decedent's estate apply to administration by the public administrator.

(b) The public administrator is entitled to receive the same compensation as is granted by this division to a personal representative generally. The attorney for the public administrator is entitled to receive the same compensation as is granted by this division to an attorney for a personal representative generally. However, the compensation of the public administrator and the public administrator's attorney shall not be less than the compensation in effect at the time of appointment of the public administrator.

Note. The amendment to Probate Code Section 7622 adds a provision relating to compensation of attorney for public administrator. This restores the substance of Section 7622 of the repealed Probate Code.

SEC. 4. Section 7662 of the Probate Code, as enacted by Chapter 79 of the Statutes of 1990, is amended to read:

7662. The public administrator acting under authority of this article shall pay out the money of the estate, in the order prescribed in Section 11420, for expenses of administration, charges against the estate, and claims presented to the public administrator before distribution of the decedent's property pursuant to Section 7663. A creditor whose claim is ~~aid~~ paid under this subdivision is not liable for contribution to a creditor whose claim is presented after the payment.

Note. Check to see if the typo which now appears in Probate Code Section 7662 as set out in SB 1775 appears in the chaptered bill. SB

1775 uses the word "aid" instead of "paid". If typo is corrected in the enrolled bill, this amendment will become unnecessary.

SEC. 5. Section 8907 of the Probate Code, as enacted by Chapter 79 of the Statutes of 1990, is amended to read:

8907. The Neither the personal representative nor the attorney for the personal representative is not entitled to receive compensation for extraordinary services by reason of appraising any property in the estate.

Note. Amendment to Probate Code Section 8907 adds reference to compensation of attorney. This restores the substance of Section 8907 of the repealed Probate Code.

SEC. 6. Section 9050 of the Probate Code enacted by Chapter 79 of the Statutes of 1990, as amended by Section 6.1 of Chapter 140 of the Statutes of 1990, is amended to read:

9050. (a) If Subject to Section 9054, if a general personal representative has knowledge of a creditor of the decedent, the personal representative shall give notice of administration of the estate to the creditor. The notice shall be given as provided in Section 1215. For the purpose of this subdivision, a personal representative has knowledge of a creditor of the decedent if the personal representative is aware that the creditor has demanded payment from the decedent or the estate.

(b) The giving of notice under this chapter is in addition to the publication of the notice under Section 8120.

Note. Amendment to Probate Code Section 9050 makes a technical clarification in the version of Section 9050, as amended in SB 1855 (1990 Stats. ch. 140, § 6.1).

SEC. 7. Section 10589 of the Probate Code, as enacted by Chapter 79 of the Statutes of 1990, is amended to read:

10589. (a) If the proposed action is one that would require court supervision if the personal representative had not been granted authority to administer the estate under this part and the personal representative has notice of a written objection made under Section

10587 to the proposed action or a restraining order issued under Section 10588, the personal representative shall, if the personal representative desires to take the proposed action, take the proposed action under the provisions of this code dealing with court supervision of that kind of action.

(b) If the proposed action is one that would not require court supervision even if the personal representative had not been granted authority to administer the estate under this part but the personal representative has given notice of the proposed action and has notice of a written objection made under Section 10587 to the proposed action or a restraining order issued under Section 10588, the personal representative shall, if he or she desires to take the proposed action, ~~(1) file a petition under Section 9684 if the proposed action involves the exercise of a power granted by Section 10565 or~~ (2) request instructions from the court concerning the proposed action ~~if the proposed action involves any other power.~~ The personal representative may take the proposed action only under such order as may be entered by the court.

(c) A person who objects to a proposed action as provided in Section 10587 or serves a restraining order issued under Section 10588 in the manner provided in that section shall be given notice of any hearing on a petition for court authorization or confirmation of the proposed action.

Note. Amendment to Probate Code Section 10589 deletes language that was included to conform to the agreed fee system for probate attorney fees. The deleted language is inconsistent with the other provisions of the Probate Code which retain the statutory fee system.

SEC. 8. Article 2 (commencing with Section 10810) of Chapter 1 of Part 7 of Division 7 of the Probate Code, as enacted by Chapter 79 of the Statutes of 1990, is repealed.

Note. This section of the bill repeals Article 2 (commencing with Section 10810) which was designed to adopt by reference the provisions relating to compensation of personal representatives. This article is superseded by the new Article 2 set out below.

SEC. 9. Article 2 (commencing with Section 10810) is added to Chapter 1 of Part 7 of Division 7 of the Probate Code, as enacted by Chapter 79 of the Statutes of 1990, to read:

10810. (a) Subject to the provisions of this part, for ordinary services the attorney for the personal representative shall receive compensation based on the value of the estate accounted for by the personal representative, as follows:

- (1) Four percent on the first fifteen thousand dollars (\$15,000).
- (2) Three percent on the next eighty-five thousand dollars (\$85,000).
- (2) Two percent on the next nine hundred thousand dollars (\$900,000).
- (3) One percent on the next nine million dollars (\$9,000,000).
- (4) One-half of one percent on the next fifteen million dollars (\$15,000,000).
- (5) For all above twenty-five million dollars (\$25,000,000), a reasonable amount to be determined by the court.

(b) For the purposes of this section, the value of the estate accounted for by the personal representative is the total amount of the appraisal of property in the inventory, plus gains over the appraisal value on sales, plus receipts, less losses from the appraisal value on sales, without reference to encumbrances or other obligations on estate property.

Note. Section 10810 retains the substance of existing law.

10811. Subject to the provisions of this part, in addition to the compensation provided by Section 10810, the court may allow additional compensation for extraordinary services by the attorney for the personal representative in an amount the court determines is just and reasonable.

Note. Section 10811 retains the substance of existing law.

10812. (a) Except as otherwise provided in this section, if the decedent's will makes provision for the compensation of the attorney

for the personal representative, the compensation provided by the will shall be the full and only compensation for the services of the attorney for the personal representative.

(b) The personal representative or the attorney for the personal representative may petition the court to be relieved from a provision of the will that provides for the compensation of the attorney for the personal representative.

(c) Notice of the hearing on the petition shall be given as provided in Section 1220 to all of the following persons:

(1) Each person listed in Section 1220.

(2) Each known heir whose interest in the estate would be affected by the petition.

(3) Each known devisee whose interest in the estate would be affected by the petition.

(4) The Attorney General, at the office of the Attorney General in Sacramento, if any portion of the estate is to escheat to the state and its interest in the estate would be affected by the petition.

(5) If the court determines that it is to the advantage of the estate and in the best interest of the persons interested in the estate, the court may make an order authorizing compensation of the attorney for the personal representative in an amount greater than provided in the will.

Note. Section 10812 adopts the concept of Section 10802 (compensation of personal representative). The section supersedes the portions of former Probate Code Sections 900 and 901 (which applied to personal representatives and were made applicable to estate attorneys by the first sentence of former Probate Code Section 910) that permitted the estate attorney to renounce the compensation provided by the will and to receive the statutory compensation. Instead Section 10812, like Section 10802 (which supersedes those portions of the former Probate Code sections for personal representatives), imposes a requirement that court approval be obtained before the estate attorney may be relieved from provisions of the will governing compensation.

10813. An agreement between the personal representative and the attorney for higher compensation for the attorney than that provided by this part is void.

Note. Section 10813 retains the substance of existing law under former Probate Code Section 903, made applicable to estate attorneys by the first sentence of former Probate Code Section 910.

10814. If there are two or more attorneys for the personal representative, the attorney's compensation shall be apportioned amount the attorneys by the court according to the services actually rendered by each attorney or as agreed to by the attorneys.

Note. Section 10814 retains the substance of existing law under the last sentence of former Probate Code Section 901, made applicable to estate attorneys by the first sentence of former Probate Code Section 910.

SEC. 10. Urgency bill, to take effect immediately upon enactment, and to become operative on July 1, 1991. The reason for urgency is: Chapter 79 of the Statutes of 1990 enacted a new Probate Code, to become operative on July 1, 1991. This bill makes technical corrections and revisions in provisions that are included in the new code. In order that these corrections and revisions will become operative at the time the new code becomes operative, it is necessary that this bill become operative on July 1, 1991.