Study L-1100 November 3, 1998

Memorandum 98-84

New Probate Code Suggestions: Informal Probate Administration

At the September 1998 meeting the Commission heard a presentation from Bob Sullivan, former Chair of the Executive Committee of the State Bar Estate Planning, Trust and Probate Law Section, concerning the need for informal probate administration in California. The Commission deferred action on this matter, until the Commission could hear from advocates of the other side of the issue. The Commission requested the staff to put together such a presentation for the Commission's December meeting.

Two of the leading opponents of informal probate administration in California on the State Bar Committee — Sandy Rae and Don Green — have agreed to attend the Commission's December meeting to present reasons why the Commission should not undertake this project. Bob Sullivan plans to attend to present counter-arguments.

By way of background, we attach the following materials:

Exhibit pp.

1. Analysis of Proposed Legislation for Informal Administration of Decedents' Estates in California 1-15
2. Sample letters pro and con 16-50

In addition, the staff analysis of this proposal may be found at pages 22-24 of Memorandum 98-56.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

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

December 1, 1995

ANALYSIS OF PROPOSED LEGISLATION FOR INFORMAL ADMINISTRATION OF DECEDENTS' ESTATES IN CALIFORNIA

I. INTRODUCTION

On September 30, 1995, the Executive Committee of the California State Bar's Estate Planning, Trust and Probate Law Section adopted a recommendation to provide for informal administration of decedents' estates as an alternative to court supervised probate administration. The Executive Committee decided that the recommendation should be summarized and published in the Section's newsletter, the *California Trusts and Estates Quarterly*; and that it be disseminated to local bar associations, probate judges, and other interested groups and individuals who are involved with the administration of decedents' estates for review and comment.

Summaries of the legislative proposal are being distributed so that interested persons will be advised of the Executive Committee's recommendation. It is hoped that many interested groups and individuals will make their views known to the Committee.

Any comments sent to the Committee will be considered at the Committee's long-range planning meeting scheduled for April 26-April 28, 1996. At that time, the Committee intends to review all comments received, determine what final provisions should be included in the recommendation, and finally determine whether to recommend the proposal to the California legislature.

It is just as important to advise the Executive Committee that you approve of the recommendation as it is to advise the Committee that you believe revisions should be made in the recommendation or that the recommendation should not be submitted to the legislature. The deadline for receipt of written comments is April 1, 1996.

The Committee may substantially revise the recommendation as a result of the comments it receives. Hence, the recommendation is not necessarily the recommendation that the Committee may consider for submission to the legislature.

The full text of the legislative proposal is approximately 30 pages long. It is available for review and comment by sending a self-addressed, stamped envelope to:

Susan Orloff
Informal Administration Committee
Estate Planning, Trust and Probate Law Section
555 Franklin Street
San Francisco, CA 94102

Digest of Legislative Proposal

Existing law provides for different levels of court supervision of decedents' estates and protection for beneficiaries. The range of options include (1) full court supervision with a bonded personal representative who has no authority under the Independent Administration of Estates Act; through (2) more limited court supervision with an unbonded personal representative who has full authority under the Independent Administration of Estates Act.

The Committee's proposal would add Division 9 to the California Probate Code beginning with new Section 14000 and renumber existing Divisions 9, 10 and 11 as Divisions 10, 11 and 12, respectively. New Division 9 would provide for the informal administration of decedents' estates as an alternative to existing Division 7 of the Code, which governs court supervised administration of decedents' estates.

II. BACKGROUND AND REASONS FOR THE LEGISLATIVE PROPOSAL

The principal purpose of the proposal for informal administration is to provide for simplicity and privacy in the administration of decedents' estates. After a noticed hearing, the court could appoint a personal representative for informal administration of the estate, after which the administration of the estate could proceed without further supervision or order of the court.

Under current law, the alternatives to court supervised administration of decedents' estates are few, e.g., the collection or transfer of small estates (Prob. Code, §§ 13100 et seq.) and passage of property to a surviving spouse without administration (Prob. Code §§ 13500 et seq.). As a result, large members of Californians have fled the probate system. Because court supervised administration is burdensome, expensive and time consuming, attorneys frequently advise clients to avoid traditional probate by utilizing revocable living trusts as an alternative to intrusive court supervision of a decedent's estate. Unfortunately, this trend has also given rise to the widespread sale of living trusts by "trust mills" in California.

The proposal will provide California consumers with the alternative of using simple and inexpensive wills coupled with powers of attorney which could be administered in mostly private post-death administration procedures and which would involve the court system only when problems arise. The proposal recognizes the value of the current California Probate Code and the role of the courts in protecting the rights of the estate beneficiaries and creditors. However, where post-death administration cases involve

estates in which family members deal with each other on a regular basis and trust each other, the proposal would provide an alternative which would allow these families to pursue estate administration privately without mandatory court supervision.

The current proposal for informal administration had its genesis with the formation of an Informal Administration Committee which was appointed in April of 1994 to study and consider the introduction of legislation that would allow for the inclusion of unsupervised administration as part of the California Probate Code.

The Informal Administration Committee began its study by focusing on the informal administration provisions of the Uniform Probate Code (UPC) which have been adopted in various forms by other jurisdictions. The Committee determined that UPC procedures for informal administration (or their rough equivalent) had been enacted in 22 different states, and when asked by members of the Committee, respected practitioners in these states uniformly indicated that informal administration worked well and had been beneficial to the vast number of their clients.

This is not the first time that the UPC (in particular, its informal administration provisions) has been considered in California. The UPC was initially proposed for adoption in California by the Commissioners on Uniform State Laws in 1969, after which the Board of Governors of the State Bar of California appointed an ad hoc committee to study and report on the UPC. The ad hoc committee concluded its study with the recommendation that the UPC not be enacted in California at that time.

As part of its deliberations, the ad hoc committee gave special attention to Article 3 of the UPC which provides a flexible system for the informal administration of decedents' estates. However, the ad hoc committee rejected informal administration, concluding that the UPC's form of informal administration "is so devoid of fundamental safeguards that the advantages it offers in the ordinary, competently administered estate are far outweighed by the potential injury to the unwary and incompetently or dishonestly administered estate."

Like the ad hoc committee, the Informal Administration Committee determined that adoption of the informal administration provisions of the UPC would not be appropriate for California. The Committee felt that the UPC had too few safeguards for beneficiaries and that it was significantly inconsistent with California's Probate Code. On the other hand, the Committee felt that Californians should be provided with an optional form of decedent estate administration, thereby giving them a choice between court supervised or non-court supervised administration of decedents' estates.

Although the proposal allows for the administration of decedents' estates without court supervision, it nevertheless provides significant safeguards for estate beneficiaries and creditors. The proposed legislation requires a formal court opening and then requires broad forms of notice and information to beneficiaries. If beneficiaries have concerns with any proposed action of a personal representative, they can object and require the personal representative to seek court involvement before proceeding with a transaction. Thus,

under informal administration, court supervision is readily available when beneficiaries want judicial review of the acts of a personal representative. However, when beneficiaries do not want court supervision, the proposal allows them to avoid it.

In summary, the proposal introduces a procedural option in probate that will enable estate settlements to more closely resemble private settlement procedures which, under current law, are only available through the use of living trusts.

III. DESCRIPTION OF PROPOSAL

Under the proposal, informal administration of decedents' estates would be governed by a new Division 9 of the Probate Code beginning with Section 14000. In the event that an aspect of the administration of the estate is not dealt with in new Division 9, the provisions of court supervised administration of decedents' estates in Division 7 continue to apply. The proposed legislation permits the personal representative or any interested party to invoke the provisions of court supervision by filing any petition permissible under Division 7. In addition, any interested party can petition to bring the entire proceeding under court supervision under Division 7.

Commencement of Proceedings

Any interested party can commence informal administration by filing a petition for probate as currently provided under Division 7 of the Probate Code. The proposal provides that the petitioner can seek a court order that the administration proceed as an unsupervised informal probate proceeding under Division 9. The Judicial Council petition for probate form would be modified to include this option. Informal administration can be requested for both testate and intestate estates, except in the case where the decedent's will prohibits either informal administration or administration under the Independent Administration of Estates Act.

The usual notice of petition to administer an estate required under current law (mailed and published) is retained in this procedure. In addition, a new Notice of Informal Administration, substantially in the form prescribed in the proposal, must be mailed or delivered to heirs and devisees. This notice discloses that a petition for informal administration has been filed, that beneficiaries have the right to require court supervision, and that important rights listed in the notice are held by beneficiaries in informal administration. In the event that an interested party objects, the court may deny the request for informal administration under Division 9, in which case the administration may proceed under Division 7 as a court supervised proceeding. Any will contest must be brought under, and remains governed by, Division 7, as under current law.

If there are no objections to the petition for informal administration under Division 9, or if the court overrules the objections, the court will order that Division 9 proceedings may commence, admit the will, if any, to probate if the court finds it is the valid last will of the decedent, and appoint the personal representative for informal administration. Letters testamentary, or letters of administration in the case of an

intestacy, are then issued by the clerk in the usual manner. The letters will state whether the personal representative is appointed for court supervised administration under Division 7 or for informal administration under Division 9.

Duties and Powers of Personal Representative

Once the personal representative has been appointed, the informal administration of the estate will proceed in most cases without further recourse to the court. The personal representative is given broad powers designed to facilitate the handling of estate business. The personal representative must take possession and control of the estate, and settle it pursuant to the terms of the will and the Probate Code, as expeditiously and efficiently as possible, without resort to the court. However, the personal representative may request court supervision or instructions by filing any petition allowed under Division 7.

While administering the estate without court supervision, the personal representative must observe the standard of care applicable to trustees as provided in Probate Code section 16040(a)-(b). If the personal representative improperly exercises any power, the representative is personally liable for damage or loss for breach of fiduciary duty to the same extent as a trustee. Third parties dealing with a personal representative under informal administration are protected if they act in good faith and for valuable consideration, without actual knowledge that the representative is acting improperly. If a will contest under Division 7 is filed, the personal representative's powers and authority to informally administer the estate under Division 9 are automatically suspended when notice of the contest is received.

Notice of Proposed Action Procedures

A personal representative acting under Division 9 must give notice of proposed action to heirs or devisees who would be affected at least 15 days before engaging in any of the acts for which such notice is required under the Independent Administration of Estates Act, and for certain additional proposed actions. Proposed actions requiring the notice are:

1. Sale or exchange of real property;

2. Sale or incorporation of any unincorporated business;

3. Abandonment of tangible personal property;

4. Borrowing money or encumbering property;

5. Transfer of property upon the exercise of an option;

6. Transfer of property to complete a contract;

7. Grant of an option to purchase property;

8. Making of a disclaimer;

9. Allowing, paying, or compromising a claim of the personal representative or the representative's attorney;

10. Compromising or settling a claim, action, or proceeding by the estate against the personal representative or the representative's attorney;

11. Extension, renewal, or modification of a debt or other obligation of the personal representative or the representative's attorney;

12. Allowance, compromise or settlement of a third party claim to real property or the decedent's claim to real property;

13. Payment of compensation to the personal representative or to the representative's attorney;

14. Paying a family allowance; and

15. Distribution of estate assets.

Notice of proposed action is not required for an interested party who has consented to the action or waived notice. Any heir or devisee who would be affected has the right to object in writing to the proposed action. If there is an objection, the personal representative may proceed, but must do so using Division 7 procedures, or request instructions from the court. Any objector also can seek a restraining order from the court against the proposed action. Any competent person who receives timely notice of proposed action and fails to object or serve a restraining order on the personal representative loses the right to have the court review the action, or to otherwise object to the action.

Inventory and Appraisal

The personal representative must prepare and mail to residuary beneficiaries an inventory of all assets owned by the decedent on the date of death, and a description of encumbrances on the assets. The inventory must be mailed within 3 months after the personal representative's appointment. At the same time, the personal representative must mail to each person entitled to a specific or pecuniary devise a statement describing the devise and its value. The inventory does not need to be filed with the court.

The fair market value of the inventory assets is determined by the personal representative. The personal representative is entitled to employ one or more appraisers to value the assets. A probate referee is not required, but may be used by the personal representative in the representative's discretion. If an appraiser is employed, his or her

name and address must be indicated on the inventory for the items he or she appraised. In any case where bond is required, the personal representative must file a statement of bond with the court, setting forth the aggregate value of the estate assets.

Notice to Creditors

With respect to creditors of the decedent who are known or reasonably ascertainable, the personal representative must either pay the creditor or give the creditor written notice that the creditor will not be paid. A personal representative may, but is not required to, give notice to creditors. If the personal representative elects to give notice, the notice and claim procedures of Division 7, Part 4, apply, including the statutory four month period for filing claims. If the personal representative does not give notice, recipients of estate assets are personally liable for claims that could have been asserted against the decedent or the estate if notice had been given. The recipient is liable to the creditor to extent of the net value, at the time of distribution, of the property received from the estate.

The personal representative is not liable to any person for electing to give notice to creditors or for electing not to give notice. The creditors' claim provisions of Division 9 do not extend the statute of limitations under Code of Civil Procedure section 366.2. Electing to give notice to creditors does not subject the estate to administration under Division 7.

Reports and Accounts

The personal representative has a duty to keep beneficiaries reasonably informed as to the administration of the estate. If the informal administration has not been completed within 12 months after appointment of the personal representative, the representative must mail a status report to every beneficiary whose interest in the estate is still unsatisfied. The status report must explain why the estate cannot be closed and distributed, and give an estimate of the time needed to complete administration.

Before the estate can be closed, the personal representative must prepare an accounting. The accounting must be mailed to interested beneficiaries, but it need not be filed with the court. The accounting need not be provided to any beneficiary who waives an accounting or whose interest in the estate has been fully satisfied, or if the will contains a valid waiver of accounting. The personal representative or a beneficiary may petition for court review and settlement of the account if desired, and Division 7 will apply to that proceeding.

Compensation

Both a personal representative and the representative's attorney are entitled to reasonable compensation for services rendered, rather than to statutory compensation. Any interested person can petition under Division 7 for judicial review of the compensation if desired. If excessive compensation has been paid to any personal

representative, attorney, investment adviser, accountant, appraiser, or other professional adviser, the person who has been overpaid may be ordered to return the excess to the estate.

Distribution and Closing

The personal representative is to distribute the estate, without court involvement, once the representative has determined that distribution is proper and that it can be made without damage or detriment to the estate or interested persons. However, if the personal representative has received notice of a petition to revoke probate of a will, no distribution can be made during the pendency of that proceeding. Preliminary and final distributions can be made beginning 30 days from the date of appointment, but the personal representative is personally liable for any loss or damage resulting from distribution within 4 months of appointment. The personal representative makes distributions by executing deeds, assignments, and other appropriate title transfer documents. Unless distribution becomes conclusive by reason of adjudication, estoppel, or limitation, any improperly distributed asset (plus all income received therefrom) must be returned to the estate, or the distributee must pay the value of the distributed property to the estate. Purchasers from distributees are protected if they acquire estate assets in good faith for consideration.

The administration is deemed completed when the inventory has been provided to interested parties; all tax returns required by the decedent's death have been filed and all taxes paid; all debts have been paid and any unpaid creditors notified; and such other actions reasonably necessary to effect distribution have been taken. If the personal representative cannot complete the administration of the estate within 12 months after appointment, the status report described above must be provided.

Prior to or concurrently with final distribution the personal representative must give all persons entitled to distribution a notice substantially in the form stated in the proposal, entitled "Notice, Receipt and Release." This notice advises interested parties that (i) administration is complete; (ii) the personal representative is making final distribution; (iii) the beneficiary should have received a copy of the inventory or description of the beneficiary's specific gift; (iv) the beneficiary should be satisfied as to the appropriateness of expenditures, including attorney's and representative's fees; (v) the beneficiary may be liable to creditors; (vi) the beneficiary has the right to request court review; and (vii) the assets being distributed and the purpose of any reserve are as stated in the notice. The receipt and release portion of the form acknowledges receipt of the distribution; waives any claim to contest the will of the decedent or to demand any additional information about the estate; releases the personal representative from any liability or claim in connection with the estate; and acknowledges that the distribution is a final settlement of the estate as it affects the beneficiary. The personal representative is not liable to any distributee who signs the receipt and release, other than for claims based upon fraud or misrepresentation related to the settlement of the estate.

If desired, the personal representative may file a verified statement that the estate administration has been completed; that final distribution has been made; and that the personal representative has received an executed copy of the receipt and release from each distributee. Ninety days after filing the statement, the personal representative's appointment is terminated, and the representative has no liability to any person with respect to the estate administration, except for liability caused by the fraud or misrepresentation of the personal representative.

IV. ARGUMENTS

In developing its recommendation for the adoption of informal decedent estate administration in California, the Executive Committee took into account a wide range of arguments both for and against the proposal. In order to assist the reader in evaluating the proposal, the arguments for and against the proposal are summarized below.

Arguments in Support of the Proposal

The principal argument in favor of adopting informal decedent estate administration in California is that it will provide an alternative to Californians who have no need for court supervision over family wealth transfers occurring at death. Under current law, except in the case of small estate set-asides and outright transfers to surviving spouses, Californians are faced with a wholly inadequate set of choices: Either establish a living trust or use a will which inevitably requires a court supervised probate. Informal administration will provide the alternative of allowing people to implement their tax planning through the use of testamentary trusts but enjoy the same simplicity, cost efficiency and privacy which under current law is only available with a living trust. In other words, people will be able to implement their estate planning through wills, but at the same time avoid mandatory court supervision over the administration of their estates.

In the past ten years, California has experienced a widespread flight from the probate system primarily through living trusts which were established, not for asset management purposes during life, but for the *sole purpose* of avoiding probate at death. Thus, while court supervised probate can be avoided under current law, doing so requires incurring the expense of drawing and funding a living trust and thereafter living with all of the administrative inconveniences which are inevitably encountered with the ownership and management of assets held in trust.

Should people be required to establish and fund the living trust just to avoid probate? At least 22 states (most recently, the state of Michigan) have said "no" by adopting some form of informal decedent estate administration. Clearly, the time has come for California, the country's most populous and influential state, to do the same.

It is important to point out that the informal administration proposal does not abolish traditional court supervised probate. Rather, the proposal merely provides an *alternative* to those families who desire to administer their estates privately and without unwanted court supervision, bureaucratic interference, and public scrutiny.

Although the proposal eliminates mandatory court supervision by making court supervision elective, it does not do so at the expense of beneficiaries' rights. As explained in detail in Part III of this Analysis, the proposal requires that beneficiaries be fully informed of their rights and that they be kept regularly and fully informed of all important steps taken by the personal representative in the administration of the estate.

One major concern that has been expressed in connection with the proposal is that beneficiaries will not be adequately protected without court supervision. As noted below, one argument against the proposal is that many small and medium-sized estates that benefit from court supervision would be attracted away from court supervised administration by the simplicity and cost efficiency offered by informal probate. However, the fact that some people who could benefit from supervision might elect not to have it, cannot justify trapping the vast majority of California residents in a system of mandatory court supervision which they neither want nor need.

On the other hand, in contrast to the concern that the proposal goes too far in simplifying decedent estate administration, there is a contrary view that the proposal doesn't go far enough. Those who are of this view believe that the notice provisions of the proposal are still too cumbersome and should, therefore, be cut down or eliminated entirely. Admittedly, many of the requirements of the proposal designed to protect beneficiaries' rights may be more cumbersome than the requirements imposed in the administration of a living trust. However, the fact remains that in most informal estate administrations, many of these requirements (e.g., notices of proposed action and accountings) can, and in most cases will, be waived. Thus, as a practical matter, except for required notices to heirs and beneficiaries, informally administered estates and living trusts will enjoy the same levels of simplicity, privacy and cost efficiency.

It should also be noted that the inclusion in the proposal of a broad framework for protecting beneficiaries' rights is effectively required by political reality. No one can doubt that California is an extremely active consumer protection state. In this political environment, the failure to include broad protection for beneficiaries' rights might well be fatal to the eventual enactment of the proposal.

Another concern with the proposal is that increased litigation might follow in the wake of the adoption of informal administration in California. It may be that a certain amount of malfeasance, incompetency and dishonesty that might otherwise occur could be prevented merely by the existence of court supervision. However, the prevention of malfeasance and dishonesty in a relatively small number of vulnerable estates does not warrant imposing mandatory court supervision on the vast majority of estates where fiduciary abuse is not, and never has been, a problem.

Some opponents of the proposal have also expressed a concern that the proposal may result in dismantling the probate department of the Superior Court. However, such a result is extremely unlikely, for following the enactment of informal administration, the Superior Court will necessarily retain a wide array of probate functions, including guardianships, conservatorships (including LPS conservatorships), court supervised

probate proceedings under Division 7, probate petitions for informal administration under new Division 9, and specific probate procedures which are initiated on a case-by-case basis by personal representatives appointed for informal administration under Division 9.

A concern has also been expressed that while an objective of the informal administration proposal is cost efficiency, the proposal may have just the opposite effect in small estates because of the elimination of statutory fees. While it is true that there is no arbitrary limit on attorneys' fees in informal administration, the fact remains that the elimination of mandatory court supervision will make the administration of small estates far more efficient and, therefore, far less consumptive of attorneys' time and, therefore, attorneys' fees.

In summary, it bears repeating that the proposal does not *eliminate* court supervised decedent estate administration; it merely provides an *alternative* to traditional court supervised probate. It avails families who regularly communicate with and trust each other with the ability to enjoy the same simplicity, cost efficiency and privacy that is enjoyed in the post-mortem administration of living trusts without having to establish, fund, or live with one.

Arguments Against the Proposal

Although the option of informal administration might be appropriate for some estates, many opponents of the proposal believe that the benefits to the public of creating an informal probate system will be significantly outweighed by the costs; that the current probate system generally works well; and that the role of the probate court in protecting the rights of those interested in decedents' estates, particularly minors and incompetent adults, and in ensuring the orderly administration and distribution of estates should be preserved.

California's tradition of court supervised probate arises from the knowledge that many people are at their most vulnerable after the death of a loved one. Many individuals who have suffered a loss are too emotional to assimilate effectively and act upon the extensive advisements which the proposal includes. Most probate practitioners have had the experience of dealing with surviving spouses who were unable to be involved in any complex decision for weeks or months after their loss. Many others, in particular minors, incompetents and non-English speakers may also be unable to protect themselves.

The principal purpose of informal administration is to provide a more efficient, less costly alternative for administration of decedents' estates. Since it will more closely resemble the administration of living trusts, it is anticipted that its availability will cause a decrease in the use of these trusts as mere probate avoidance tools and a corresponding decline in the proliferation of the trust mills.

Opponents of the propose believe that a viable alternative for avoidance of probate already exists, i.e. creation of a revocable trust which is funded only by a general transfer document. Probate courts around the state routinely approve petitions based on this

arrangement, confirming that the post-death assets are all owned by the trust. Like the informal probate proposal, this option involves only a single hearing at the decedent's death. In a world dominated by word processors, little if any additional attorney time is expended in creating a revocable trust versus a will with equivalent provisions.

The claim that the proposal will reduce the use of living trusts is unrealistic. For the sophisticated consumer who has the knowledge and resources to obtain and implement estate planning advice, a revocable living trust will still be the preferred approach. It will facilitate management of assets during life and avoid the potential need for a conservatorship. The administration and distribution of a trust upon the death of a settlor will still be subject to significantly fewer procedural requirements than the informal administration proposal, which requires a formal petition to begin administration and imposes numerous notice and time requirements.

The opponents of the proposal believe it unlikely that the availability of informal administration will reduce the allure of trust mills. They believe that for the uninformed and less discerning consumer, the availability of "bargain priced" estate planning that purports to avoid probate will continue to be attractive. The trust mills commonly market their products to the unsophisticated consumer through misleading and exaggerated claims. There appears no reason why the proposal would change that strategy. And quite correctly, the mills will still argue that: (1) probate involves an expensive, public hearing and (2) any interested party can subject the family to the alleged terrors of probate.

Unsophisticated individuals who do not have the ability or the resources to do estate planning are the ones who will be most directly affected by enactment of the proposal. The small to medium-sized estates of these individuals are the ones most frequently involved in the probate process. Informal administration offers a seemingly attractive alternative for handling these estates. Unfortunately, these are precisely the estates that most consistently benefit from court supervision and the other protections of formal probate. Decedents and beneficiaries involved in these estates are less likely to have had the advice of an estate planning attorney in preparing a will or to consult an attorney during the administration process. While an election can be made to utilize the protections of court supervision at any time in the proposed informal probate process, unsophisticated individuals who do not have the advantage of professional advice will not be able to make a knowledgeable decision about whether to do so.

In recent years there has been a dramatic increase in estate related litigation. Conflicts among beneficiaries and actions against dishonest or negligent fiduciaries are all too common. The opponents are concerned that the introduction of informal probate will only increase the incidence of such litigation. Although the experience of jurisdictions which have adopted the Uniform Probate Code is to the contrary, the fact remains that the UPC has not yet been enacted in a state that directly parallels California. The opponents of the proposal are convinced that elimination of the requirement of court supervision will only create new opportunities for conflict and fiduciary abuse. That

would very likely be the case in estates that have unsophisticated beneficiaries who do not know how to utilize the protections available under the informal probate system.

There is also a concern that under informal administration people may be tempted to act without the assistance of counsel. The elimination of the requirement of court supervision may create the impression that the procedure is simple enough to be managed without incurring the cost of a lawyer. Unfortunately, it is once again the unsophisticated individual who will be attracted by the appearance of a cost saving. It is precisely that individual who should have the assistance of competent counsel.

Pronouncements that people should still use attorneys will not get much attention and will be discounted as self-serving. Similar pronouncements fall on deaf ears now. Note the number of people who fumble through the post-death administration of a revocable trust without the assistance of an attorney. The difference, however, is that in these cases the estate will usually have been reviewed and organized by the attorney who drafted the trust, and the settlor will have made an affirmative election to avoid the supervision of the probate court.

If a system of informal administration actually did produce an overall decline in attorney involvement in estate administration, the result would be undesirable and would lead to numerous errors and problems. Consider the difficulties which could arise from the abandonment of probate referee appraisals and the elimination of formal closings of estates. In addition to creating a potential for substantially increased costs, the adoption of a self-appraisal system may mean improper and inaccurate asset valuations with resulting tax problems for the personal representative and/or the beneficiaries. Adoption of informal administration could result in the reduction or the elimination of an experienced court staff to review estate distributions. Unsophisticated personal representatives and inexperienced attorneys often make errors in identifying heirs and beneficiaries, interpreting dispositive provisions of wills, calculating income on specific bequests and other similar matters. Without the protection of court review, such mistakes are likely to increase.

Through principal purpose of the proposal is to offer a less costly alternative for administration of estates, this analysis may prove erroneous with respect to attorney fees. Informal probate has no statutory fee limitation. While there may be less work required in an informal probate, the elimination of any compensation limit is troubling. Probate practitioners are aware that the burden of increased fees will fall disproportionately on poorer people who hire attorneys to assist them in the administration of smaller estates. If attorneys charged only at their hourly rates, which would be the case under informal administration, fees on the largest estates would often be less than the statutory fees (see, e.g. Estate of Getty). In contrast, fees on the smaller, more troublesome estate would increase.

Although court supervised administration will be preserved under the proposal, the opponents believe that the statutory fee will be totally inadequate for the cases which

would be involved in the court supervised process. Only those involved in contentious probates will elect formal administration. Practitioners report particular difficulty in being adequately paid for smaller probates with squabbling beneficiaries. If the proposal is adopted, finding attorneys to handle those formal estates will become increasingly difficult.

Another major concern is that support of the proposal through the legislative process will prove costly and extremely risky. It is likely that the proposal will encounter serious opposition from a myriad of groups, including probate referees, county clerks, probate judges and examiners, creditors, title companies, banks and bonding companies. Some will be reacting against a threat to their very livelihoods. Several probate judges have already expressed concern that the elimination of court supervision of estates will give rise to a higher incidence of fiduciary abuse and misconduct. The reality is that a number of these groups have considerable political influence and the ability to mount formidable opposition to the proposal. The Committee may find that it has invested substantial time and effort in a project that cannot succeed.

At a minimum, additional compromise will be necessary to gain support for the proposal in the legislature. The proposal may be hardly recognizable once it has run the legislative gauntlet. Thus the Bar may well find itself faced with a proposal that is no longer acceptable and cannot be changed.

There is also concern that submission of the proposal to the legislature may result in an attempt by the National Conference of Commissioners on Uniform State Laws (NCCUSL) to reintroduce the UPC into California. The State Bar successfully opposed such an attempt in 1973. In its initial study, the Informal Administration Committee concluded that adoption of the UPC provisions for informal administration was not appropriate for California. However, the Committee's decision to create an informal probate system would seriously undermine the ability of the State Bar to defeat a renewed effort for enactment of the UPC.

The opponents anticipate that AARP and HALT would be enthusiastic supporters of the UPC and would use the campaign as an opportunity to attack the probate process and the probate bar. The fact that the State Bar has proposed an informal probate procedure would add strength to their argument that formal probate is unnecessary. AARP, in particular, would probably exploit the conflict as an opportunity to mount a challenge to the statutory fee system. Use of a reasonable compensation scheme in the informal probate proposal would lend credence to AARP's criticism of statutory fees.

While most of the above arguments are based on the belief that the proposal for informal administration goes too far, some opponents think it does not go far enough. Their concern is that the proposal in its current form is not significantly more efficient than administration under the Independent Administration of Estates Act and therefore does not warrant the effort that will be required to produce a final recommendation and achieve its passage in the legislature. These opponents believe that many of the

beneficiary protections contained in the proposal (e.g. the notice of proposed action provisions) are too cumbersome and should be eliminated, thereby allowing informal administration to more closely resemble the administration of a living trust.

In an era that has witnessed repeated budget crises that threaten the operation of the civil courts, some opponents think it unwise to enact legislation designed to lessen the involvement of the judiciary in the probate process. It may, as one opponent has suggested, provide an excuse for dismantling the probate department of the Superior Court. In hard economic times, maintenance of a separate department merely to provide optional court supervision may be difficult to justify.

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December 14, 1995

Informal Administration Committee
State Bar of California
555 Franklin Street
San Francisco, CA 94102
Attn: Susan Orloff

Re: Proposed legislation-informal administration of decedent's estate

Gentlemen:

I have received your summary of proposed legislation for informal administration of decedent's estates in California and have reviewed the same.

As a personal note, I am a State Bar of California Board of Legal Specialization Certified Specialist in Probate, Trusts, and Estate Planning, a Fellow of the American College of Trust and Estate Council, an active lecturer for the Continuing Education of the Bar and have been involved with Probate/Trust matters and legislation for 20 years.

I, personally, am 100% opposed to the proposed legislation. It is, in concept, similar to ideas proposed in the mid-seventies and mid-eighties, which died natural deaths. The proposed legislation, in my opinion, make representation in estate matters more expensive or none existent. Smaller estates will find it impossible to obtain legal representatives while larger estates will bear the burden of a more costly and expensive administrative system.

Additionally, and perhaps more important, the amount of malfeasance, non-feasance and fraudulent acts and activities will accelerate, leading to substantial losses and increasing litigation. I have been active in Probate/Trust litigation matters for many years (serving as founding Co-Chairman of the LA County Bar/Beverly Hills County Bar Subcommittee thereon) and have been increasingly alarmed at the amount of litigation which has been propagated by lack of judicial supervision and control which has arisen out of the growth of revocable trusts and powers of attorney.

Adoption of informal probate will expedientially increase dishonesty and/or negligence of fiduciaries thus again raising the costs to the consumer and to the court system.

Finally, I recall that at a informal conference of California ACTEC Fellows at the annual meeting in March of this year a discussion was had concerning the proposal and a significant majority of the fellows expressed our opposition and concern to Bob Sullivan, Jr., who was not very interested in hearing from us.

In summary, the proposed legislation is a significant serious mistake and will lead to increased burdens on not only the consumer, but on the California court system.

Very truly yours,

BLOOM & RUTTENBERG

By: GARY M. RUTTENBERG

GMR/mc

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Informal Administration Committee
State Bar of California
555 Franklin Street
San Francisco, CA 94102
Attention: Susan Orloff, Section Administrator

Dear Ms. Orloff:

The proposal of a system for the informal administration of decedents' estates, as recommended by the committee, seems to be going in the wrong direction. It will lead to less court supervision and more unprofessional administration of estates. I oppose it.

My position is that of an Estate Tax Attorney for the Internal Revenue Service. We suspect that with the advent of living trusts there is a great deal of failure to comply with the Federal Estate Tax law. It has been my observation that when estates are probated that the attorney and the court see that the correct tax returns are filed. When there is no court or attorney involved, there may or may not be compliance with the tax law - leaving honest taxpayers with the burden of supporting our system of government.

In addition, I have seen that when there is no probate administration - or at least a competent professional in charge of administering the trust estate - there are frequent mistakes, both to the advantage and detriment of rightful beneficiaries.

We need more, not less court supervision.

Sincerely yours,

Patricia A. Hiles

(Ms.) Patricia A. Hiles
Attorney at Law
State Bar Member # 43426

Robert M. Jones
Attorney at Law

Cindy Hemming
Paralegal

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January 25, 1996

Susan Orloff
Informal Administration Committee
Estate Planning, Trust and Probate Law Section
555 Franklin Street
San Francisco, CA 94102

Dear Ms. Orloff:

Responding to request for comments on the proposed alternatives to court supervised probate administration, I wish to add my own concerns to those outlined in the California Trusts and Estates Quarterly of Winter 1995.

While I believe at best, but on a very minor level, the proposed changes may alleviate the existence of inconsistent local rules from county to county, the potential for abuse in the proposed legislation as to creditors and beneficiaries is just too great. The Independent Administration of Estates Act was an innovative approach to probate administration when introduced. It serves a distinct purpose in streamlining the process of probate, yet the protection exists in the Act for those who have a stake in the probate proceeding. The Act is still viable.

Existing laws of probate administration place safeguards within the probate court system with experienced court staff, probate judges and probate referees. The proposal for informal administration will allow the unscrupulous, or more likely, the incompetent personal representative to create havoc by distributing assets without proper notice, by failing to notify creditors, thus, subjecting unknowing beneficiaries to potential liability after distribution, and by failing to deal with issues of appraisals of assets, differentiating principal and income, payment of taxes, and ultimately distribution to beneficiaries. Chasing down a penurious former personal representative on behalf of an innocent beneficiary is not my idea of fun.

I see the cost of administration to "clean up" messes created by unsophisticated personal representatives an unfortunate burden to innocent beneficiaries by the proposed legislation. There is a need now more than ever for attorneys to remain in the probate process. This proposal appears to be another "consumer" oriented reaction to simplify a process that has been simplified by the Independent Administration of Estates Act, and would avoid the guidance that attorneys provide to personal representatives and the process itself.

My preference would be for the committee to not submit the proposal to the legislature at this time, but rather to review the myriad of problems that already exist in the probate process that could be corrected. Creating by statute another area of the law where problems will surely come does not seem to be a productive use of the committee's time. If the committee is not otherwise persuaded, perhaps a pilot program in a county that desires to take on the proposal for a term of years would be more appropriate.

Most personal representatives that I have known, take their jobs very seriously, and understand the need for court review of their acts. I know that the beneficiaries I have represented when problems arise with personal representatives most assuredly appreciate court involvement in probate administration.

Thank you for allowing me to comment.

Very truly yours,

Robert M. Jones
Attorney At Law

RMJ:csh

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IN REPLY REFER TO

January 26, 1996

Executive Committee
California State Bar
Estate Planning, Trust & Probate Law Section
555 Franklin Street
San Francisco, California 94102

RE: Informal Administration of Decedent's Estates

Gentlemen:

I have reviewed the proposed legislation for Informal Administration of Decedent's Estates, and I have these comments:

The proposed legislation, in an attempt to make things simple, has made things more complicated. There are too many protections, which make an attorney's work more extensive and expensive. The public will perceive the new provisions as costing them less; rather, if lawyers charge what they should, it will cost them more. In the long term, the reputation of lawyers will diminish further.

The probate system should be left alone. Recent amendments have, in my opinion, made it as simple as it can be.

The only possible amendment to the Probate Code at this time should be a re-thinking of the statutory fees. I suggest that the bracket of attorney's fees should be adjusted in the 2% bracket, where most estates are, i.e., the 2% bracket could apply to estates in excess of $100,000.00 and less than $500,000.00, with a lower bracket taking effect in larger estates.

Much of the thrust of the proposed legislation is to diminish the effects of the Living Trust mills. The way most effectively to do this is for the Bar to make recommendations to its membership regarding compensation for the administration of Living Trusts. Lawyers are called upon to administer Living Trusts at rates far less than services in Probate. The work they have to do is the same, with added responsibility and potential liability because the Probate Court is not involved in most cases. Why should an attorney be asked to charge less for the same work and more responsibility? Either the Bar should sponsor legislation providing for administration of Living Trusts with an appropriate fee structure; or, informally, the Bar should issue recommendations to its membership suggesting that a reasonable

attorney fee be no less than 75% of the statutory Probate fee. If attorneys in substantial number begin charging for what their time is worth, eventually the administration of Living Trusts and Probate Estates will be comparable.

The proposed legislation appears to place emphasis where it does not belong and where it will be ineffective.

Very truly yours,

ROBERT L. PASQUINELLI

RLP:ks

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Ms. Susan Orloff
Informal Administration Committee
Estate Planning, Trust and Probate Law Section
555 Franklin St.
San Francisco, CA 94102

February 2, 1996

Dear Susan:

As an insurance professional, active in our local estate planning council, and working with attorneys on estate planning issues, I am more knowledgeable about estate planning and probate issues than the average lay person. However, I had never handled a probate myself until my mother died this last spring. What a revelation!

My mother's estate was slightly under $200,000. It consisted of two simple cash assets. No one in the family was fighting The estate was probated through the Burbank division of the Los Angeles court system, and the "unwritten" folk lore oriented processes they made us do created $1000 in expenses, in addition to the statutory legal fees, not to mention the cost of my time involvement.

I completely support the efforts of the bar association to rid the system of this kind of nonsense. The courts should be used to protect people when they need protection and not to create processes for their own sake.

Good luck in your efforts.

Sincerely,

Marsha Black, CLU, ChFC, MSFS

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February 6, 1996

Executive Committee
Estate Planning, Trust and Probate Law Section
State Bar of California
555 Franklin Street
San Francisco, California 94102

Re: Proposed Legislation for Informal Administration of Decedents' Estates

Dear Sir or Madam:

I have recently had an opportunity to review the Summary and Analysis of Proposed Legislation for Informal Administration of Decedents' Estates in California. I wish to advise you of my enthusiastic support for the proposal.

I have a general practice with substantial emphasis on estate planning, probate, and related litigation. While adoption of the proposed legislation may have an adverse impact on my practice economically, I believe that the potential benefits to the public far outweigh the potential detriment suffered by attorneys. In particular, limiting the unjustified and dangerous proliferation of living trusts would be of great benefit to consumers, as would the elimination of statutory fees in probate administration matters which all too frequently result in overcompensation of attorneys who handle moderate estates.

Thank you for the opportunity to comment on this significant and timely proposal.

Very truly yours

GLENN P. OLEON

GPO/nj
ExcCom.Ltr

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February 12, 1996

Susan Orloff, Section Administrator
Informal Administration Committee
State Bar of California
555 Franklin Street
San Francisco, CA 94102

Re: Proposed Legislation for Information Administration of Decedents' Estates in California

Dear Ms. Orloff:

Why would the Executive Committee of the Estate Planning, Trust and Probate Section of the State Bar make such a ridiculous recommendation? There must be some hidden agenda such as the reasonable fee in all probate cases or some other motive.

The Committee professes to recognize the value of the California Probate Code, "and the concern of the Courts," yet this would emasculate the Probate Court as we know it. It would also be harmful to the public and the Bar.

Why hasn't the Committee or the State Bar done something about the "burgeoning popularity of living trusts" and the hype that has been sold to the public?

Why hasn't the Committee or the State Bar done something about the "mass market of pre-printed trust documents" which it claims evidences thee need for this proposed legislation?

Hasn't the Committee and the State Bar better things to do?

The Law Revision Commission just studied the whole Probate Code in 1987 and no such suggestion was made.

Has the AARP infiltrated the State Bar?

I agree with the statements made by knowledgeable types that "if it ain't broke, don't fix it."

In summary: (1) drop the recommendation, and (2) do not recommend the proposal to the Legislature.

Yours very truly,

Melvin C. Kerwin

MELVIN C. KERWIN

MCK\lm

cpr\orloff.lt1

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February 13, 1996

Arthur H. Bredenbeck, Section Chair
State Bar of California
216 Park Road
P.O. Box 513
Burlingame, CA 94011-0513

Dear Mr. Bredenbeck:

This letter will express our opposition to the proposal to adopt an informal state probate procedure. We have reviewed the changes as set forth in the article, *Out of Court, Proposed Informal Probate Procedures*, from the Los Angeles Daily Journal on November 21, 1995. We believe that the suggested changes go too far by putting too much control in the personal representative of an estate. An informal probate procedure such as the one proposed by the State Bar will allow personal representatives to take for themselves assets that belong to the intended beneficiaries.

We agree with Mr. Oldman and Ms. Cooley, the authors of the above-mentioned article, when they state that without court protection, there will be problems for bonding companies, creditors, beneficiaries, and attorneys. The loss of the statutory fee system could lead not only to abuses, but to disputes concerning the fees of the personal representative and attorneys.

It appears to us that more problems will be created than solved by the proposed changes in the present system. From the vantage point of attorneys who deal day to day with probate administration, we are convinced that the court needs to be involved in the vast majority of probate estates.

We believe that the proposals as suggested by the Estate Planning, Trust and Probate Section of the State Bar should not be incorporated into the Uniform Probate Code. Therefore, we request that the board of directors oppose the proposed informal state probate procedure.

Very Truly Yours,

GERALD E. CURRY

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February 14, 1996

Ms. Susan Orloff
Section Administrator
Informal Administration Committee
State Bar of California
555 Franklin Street
San Francisco, California 94102

Dear Ms. Orloff:

Pursuant to Warren Sinsheimer's February 9, 1996, letter, set forth below are my comments on the proposed informal administration system:

1. I am in favor of the system because I think that the current system is easily avoided by the well-informed and wealthy, and accordingly, only the ill-informed (and mostly poor) are forced to use the current system.

2. While I have no empirical evidence, my experience with other jurisdictions within the United States indicates that the level of dishonesty, improper administration, etc. does not differ materially based on the system applicable to decedents' estates. I think that someone who is going to steal will be able to steal irrespective of the system.

3. The current proposal provides sufficient protection for those estates where there is distrust or no trust in the personal representative. I think it would be appropriate to expand the liberality of the law by not requiring so much notice or a receipt and release, but making these procedures optional on the part of the personal representative. It seems to me that if a beneficiary has the right to require court supervision, I think the personal representative should have the right to give notice and insist on a receipt and release. However, there are many estates where the personal representative and the beneficiaries have no distrust and requiring all of this paperwork adds to the expense of an

estate for which there is no need to have any formal notices or other documentation. Presumably, the personal representative will remain liable indefinitely if he does not get a release, but that is up to the personal representative to decide.

In summary, I am in favor of the most liberal system that can be conceived for those who wish to avail themselves of it. Even the admission of the Will to probate should be an administrative matter in my view, giving both the beneficiaries and the personal representative the right to have a more formal proceeding at each step during the probate process. However, in the vast majority of estates, I think it is too much of a burden to require any type of formal paperwork where none of the parties feel that it is necessary.

I would be happy to expand on any of these comments.

Very truly yours,

Paul N. Frimmer

PNF:sew

cc: Warren A. Sinsheimer

JOHN W. SCHOOLING

ATTORNEY AT LAW

Certified Specialist, Estate Planning, Trust, and Probate Law. State Bar of California, Board of Legal Specialization

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February 16, 1996

Informal Administration Committee
State Bar of California
555 Franklin Street
San Francisco, CA 94102

Attention: Susan Orloff, Section Administrator

Re: Comments on proposed legislation for informal administration of decedents' estates in California

Dear Ms. Orloff:

I have reviewed the summary of this legislation prepared by the Section on October 31, 1995. I am not only favorable towards this legislation, I believe it does not go far enough.

I would like to see no administration at all, even omitting the initial admission of a Will to probate, when the Will provides only transfers to a person who is the fiduciary. This typically includes transfers into an irrevocable trust for the benefit of a surviving spouse/executor who is the trustee of the trust, or transfers from parents to adult children/executors. These two types of transfers constitute a significant portion of all estate plans anyway, and if all court proceedings could be avoided, persons would plan to name all beneficiaries as executors in many situations.

Revocable trusts have been used for years to avoid useless court administration. Courts are always accessible by any interested party in any trust situation. Why should probate be any different from any other business matter for which the courts are accessed only when need arises?

Very truly yours,

John W. Schooling

JWS/ms
c: Warren A. Sinsheimer
Don Travers

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February 20, 1996

Informal Administration Committee
State Bar of California
555 Franklin Street
San Francisco, CA 94102
Attention: Susan Orloff, Section Administrator

Gentlemen:

I have been an attorney in California for over 49 years, during most of which time I have practiced extensively in the area of estate planning and probate administration. I am also a member of ACTEC and a former member of the State Bar Executive Committee for Estate Planning, Trust and Probate Law Section.

For many years I have wondered when California would wake up to the fact that probate administration and court supervision are in the vast majority of cases neither necessary nor desirable. They mainly constitute a make-work proposition for lawyers and an expense-causing bureaucratic obstacle for clients. In recent years almost all clients with substantial assets have chosen instead to transfer their assets to a "living trust" and thereby avoid the necessity of probate. Yet that is only a clumsy substitute for the ability to transfer property by will without the necessity of court-supervised probate.

Therefore, I am whole-heartedly in support of legislation permitting informal administration of probate.

I have read the Summary of the proposed legislation. I have a few comments concerning specific provisions:

1. Requiring the filing of an inventory within three months is unrealistic. In most large estates, it is difficult even to assemble a list of all assets within that time; to get them appraised by then is normally impossible. Moreover, it is frequently unwise to put values on assets prior to the time that the federal estate tax return is filed. For example, I recently represented the estate of a well-known lyricist whose copyrights included several hundred songs, spanning a period of more than four decades. Or, in a less specialized field, I have also represented substantial investors, who own interests in twenty or more limited partnerships, each of which owns one or more interests in real property in various stages of development. It takes several months merely to prepare a list of all assets; and appraisers generally take considerable

time after that to prepare their inventories, especially where real estate valuations and minority discount problems are involved. Also, as noted, to preserve flexibility, the tax attorney does not want to show valuations on property before it is exposed to the market. In light of the above, my suggestion would be that, in the case of any estate where an estate tax return is required, the required time for preparation of the inventory should be co-terminus with the due date for the estate tax return.

2. Can a family allowance be paid to the widow or children via an informal administration? What about the setting aside of exempt property? Perhaps these should be allowed subject only to Notice of Proposed Action.

3. Has there been any discussion of the idea that before recourse to the Court, an objecting party and the personal representative should be required to mediate the dispute?

4. In connection with any Notice of Proposed Action affecting a sale of property, the personal representative should be permitted to give a range of sale price--for example, that the property will be listed for $X and that it will not be sold for less than $Y--since, especially with real property, as everyone knows, the listed price does not represent the price at which the property will be ultimately be sold; and it frequently would lead to delay and perhaps loss of the transaction, if it has to be deferred until a second Notice of Proposed Action is given. For a similar reason, the time for objecting to a Notice of Proposed Action should be kept as short as feasible--certainly not over 15 days; and provision should be made for waivers in advance by each beneficiary.

There are undoubtedly many other comments that can be made to the proposed draft. However, rather than delay indefinitely, I am sending this letter to you, based solely on my reading of the Summary.

Sincerely yours,

GANG, TYRE, RAMER & BROWN, INC.

By Hermione K. Brown
Hermione K. Brown

HKB/dg
cc: Warren A. Sinsheimer
.120222

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February 22, 1996

Susan Orloff
Informal Administration Committee
Estate Planning, Trust and Probate Law Section
555 Franklin Street
San Francisco, CA 94102

Dear Ms. Orloff:

I have been a member of the California Bar since January 5, 1965; and my comments are based upon my experience with Wills and Probate administration for the past thirty-one years.

In general, I am not in favor of the proposed Division 9, for many of the same reasons that trusts are in disfavor. It gives plenty of opportunity to "take the money and run". It also offers little protection for the unsophisticated heirs and much opportunity for litigation.

I believe that there is room for additional summary probate, I also think that it should be restricted to those situations where the sole heir is also the administrator, or the administrator of the sole heir's choice. The size of the estate should be irrelevant.

The proponents tout privacy as one advantage of the proposal. This is not true. As long as the Will is a matter of public record, it will not be private. Privacy is, of course, the advantage of an intervivos trust.

The chief advantage of a Will submitted to probate jurisdiction over trusts is that there will be court supervision. I think that the section should work on limiting some of the nit-picking powers of the probate attorneys, and streamlining current laws rather than support the new proposed Division 9.

Sincerely,

Esther S. Richmond
Attorney at Law

ESR:egr

TO: Judge Cordell

FROM: San Francisco Probate Examiners

RE: Comments on Proposed Informal Administration of Estates

DATE: February 22, 1996

One of the major arguments being made in favor of the proposed informal administration is that California is out of step with other states, some of which have successfully instigated various forms of the Uniform Probate Code. However, it is important to note that California is culturally, economically and demographically unique among the states. There are several reasons why it is advantageous for administration of decedent's estates to be more closely supervised in California than elsewhere:

1) Cultural Diversity. California has large numbers of residents for whom American culture, including the legal system, is relatively unfamiliar. Indeed, there are many decedents, personal representatives and beneficiaries for whom English is a second language or even a foreign language. Making certain that these individuals do not become disenfranchised from the probate process is a major problem in California and much more so than in many other states, particularly smaller states having more homogeneous populations. The involvement of the Probate Court, particularly with respect to the strict enforcement of notice requirements, can help to promote better understanding of the probate process.

2) Economics. In comparison with many other states California is a high-wage/high-cost of living state. Real estate values, in particular, are among the highest in the nation. The typical estate of middle class California decedent is likely to contain more assets, be subject to more liabilities and, therefore, be more complicated to administer than the typical middle class decedent's estate in other regions of the country. For example, any probate examiner can confirm that the proper pro-ration of estate taxes is an issue often mishandled in petitions for distributions. This problems arises with more frequency in California than in other states.

3) Demographics. California's population is young and highly mobile. Many of its residents do not live in close proximity to their relatives and, therefore, families are often less strongly connected than in other parts of the country. This creates the potential for more distrust and conflict among family members, especially if the Probate Court were to be more removed from the process.

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February 26, 1996

Susan Orloff, Section Administrator
Informal Administration Committee
STATE BAR OF CALIFORNIA
555 Franklin Street
San Francisco, California 94102

Dear Ms. Orloff:

I am writing this letter as an individual, and not in my capacity as Chairman of the Estate Planning, Probate and Trust Section of the Long Beach Bar Association. I am a Certified Specialist in Estate Planning, Trust and Probate Law by the State Bar of California, Board of Legal Specialization.

I want to thank the members of the committee for their time and efforts, however, I believe the approval of the proposed information probate would prove deleterious to those most in need of protection; that being the poor and middle class and the less sophisticated.

Certainly if the proposal becomes law, it is a good thing to allow issues to be brought before the Court. However, too few people understand the system or their rights and will be taken advantage of.

Bond will probably not be available in the informal setting.

The only control on fees will be the objections of a beneficiary who may not wish to delay their own distribution to bring the issue of fees before the Court. They may also not wish to incur the cost of their own attorney.

The lack of supervision over distribution will lead to many situations where distribution will be made improperly. Even an honest personal representative or their legal counsel can make errors in proposing distribution without allocating taxes; income; or dealing with the subsequent death of a beneficiary.

Again, my appreciation to all who have served and my input that this is a proposal whose time has not come.

Very truly yours,

JOHN T. ANDERSON

JTA:dln

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February 29, 1996

Attention: Susan Orloff, Section Administrator
Informal Administration Committee
State Bar of California
555 Franklin Street
San Francisco, CA 94102

RE: Proposed Legislation For Informal Administration Of Decedents' Estates In California

To the Committee:

Thank you for all your efforts in considering, drafting, and publicizing this proposal. I realize that it represents an enormous collective effort, and I am grateful for the thoughtful discussions it has provoked.

Nevertheless, I am opposed to the proposed informal administration, because it is not sufficiently "informal." This proposed procedure is "neither fish nor fowl." The proposal really appears to be an intermediate step between a "formal" probate, and a truly expedited procedure. In consequence, I believe that this proposal would simply add another level of judicial involvement, rather than avoid such process entirely.

This proposal is also based upon a false premise: that "estates in which family members deal with each other on a regular basis [who] know and trust each other...." are unfairly burdened by the requirements of current law. My observation is that such a "Happy Family" utilizes the current administration procedures without incurring undue expense or unnecessary delay. The Committee's proposal in fact makes the best argument against it. The current procedure allows a Happy Family to proceed with a Division 7 administration easily, using the IAEA as necessary.

The proposal much more resembles a Division 7 administration, minus a few requirements, than it does an informal administration. If informal administration is the genuine objective, the Committee should propose adoption of the Uniform Probate Code procedure. If that is not the genuine objective, the Committee should instead

publish and publicize a brochure entitled "The Happy Family's Guide to Probate," which brochure can explain how the IAEA permits a functional family to administer a decedent's estate efficiently, economically and expeditiously. For all other families, a Division 7 administration will be necessary anyway.

I understand that objections to this proposal have also been raised deriving from a fear that an informal administration will encourage malfeasance by unscrupulous fiduciaries. I do not agree. A revocable trust administration possess the same opportunity for wrongdoing. I have observed that alert beneficiaries have been able to protect their interest adequately. I believe that the same would hold true in any *truly* informal probate procedure. Conversely, the procedures afforded by Division 7 do not protect a sleeping beneficiary from a wicked personal representative.

The unspoken purpose behind this proposal appears to be to reduce the fear of probate so as to deprive the "trust mills" of a ready market. This purpose may be laudable, but this proposal will not achieve that goal.

I believe that the consumer's fear of probate derives from a distrust of the statutory fee schedule. A far more effective method to deprive "trust mills" of a ready market would be to abolish statutory fees. The statutory fee schedule is antiquated, not indicative of present economic reality, and reflects poorly upon our province of the bar. Forty-seven states allow reasonable compensation in estate administration. Abolition of the statutory fee schedule will deprive the "trust mills" of one of their most effective marketing ploys. California should move from the minority to the majority, as befits the most important state in the Union.

Very Truly Yours,

JOHN A. HARTOG, INC.

JAH:em
cc: Diana Hastings Temple
Warren A. Sinsheimer, III
James B. Ellis

statebar\stbar30e.ltr

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March 14, 1996

Executive Committee
Estate Planning, Trust and
Probate Law Section
555 Franklin Street
San Francisco, CA 94102

Re: Proposed Informal Probate Legislation

Dear Fellow Members of the Bar:

I am deeply concerned that your Committee has promulgated legislation of immense and direct financial impact on practicing probate attorneys and yet did not take a poll of the entire State Bar membership regarding this.

I heard about the impending legislation quite by accident when I attended a lecture on something quite unrelated. I made a few phone calls afterward to other probate attorneys and no one was aware of what you had concocted.

I formally request you to poll the entire membership of the State Bar regarding this entire matter.

Very truly yours,

MALOWNEY & MALOWNEY

Dorothy S. Malowney

DOROTHY S. MALOWNEY

DSM:jkg
cc: President, State Bar
of California

Informal Administration Committee,
State Bar of California

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March 15, 1996

Informal Administration Committee
Attn: Susan Orloff, Section Administrator
State Bar of California
555 Franklin Street
San Francisco, California 94102

Ladies and Gentlemen:

I write to support the Committee's proposal for a new Division 9 of the California Probate Code, which would provide for informal administration of decedent's estates. As a trusts and estates lawyer for more than fifteen years, I can attest to the strong desire of my clients to avoid the delays and intrusions of fully supervised estate administration. Allowing families to settle uncontested estates rapidly and economically is an admirable goal. It appears to me that the Committee's proposal includes adequate safeguards for the rights of creditors and gives other interested parties full access to the courts in those situations in which court supervision is appropriate.

Very truly yours,

Steven G. Margolin

cc: Diana Hastings Temple, Esq.

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SUSAN J. PASSOVOY
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SPECIAL COUNSEL
ANN E. JOHNSTON

TEVIS JACOB (1906-1974)
WILLIAM F. McCABE (1939-1983)

*ADMITTED IN NEW YORK ONLY
**ADMITTED IN MASSACHUSETTS ONLY

March 18, 1996

Informal Administration Committee
State Bar of California
555 Franklin Street
San Francisco, Ca 94102

Atten: Susan Orloff, Section Administrator

Re: Informal Administration of Decedents' Estate

Dear Committee:

I have reviewed the Summary of Proposed Legislation for Informal Administration of Decedents' Estates in California and I am writing this letter in support of such legislation. I have not reviewed the final proposed text, but would be glad to do so at a later date. I am familiar with the progress of the draft proposal, and have participated in a number of small - group discussions among my estate planning colleagues on this subject.

I believe the proposal makes a great deal of sense. Having practiced both before and after the implementation of the Independent Administration of Estates Act, I see this proposal as a logical extension. Independent Administration has greatly streamlined the probate process. In a "friendly" probate situation (which I encounter in a majority of cases) independent administration allows an estate to proceed more quickly, efficiently and generally more cost effectively. The proposal for Informal Administration would strongly enhance the efficiency of the probate system for a majority of the small and modest sized probate cases that I confront in my practice. And anyone who periodically sits through a probate calendar in any of the local courts has to realize that the judges, commissioners, examiners and staff have plenty of work to do without spending unnecessary attention on a "clean" estate without controversy.

I understand that the actual text provides protection for all beneficiaries and creditors through out the administration by allowing access to formal probate administration in any time

upon request. I presume there is also a method for obtaining some form of court order for final distribution, or affidavit of completion, for asset titling purposes.

I expect that the proposed legislation could be used in a meaningful number of cases to significantly expedite the probate process. Even in complex, estate - taxable estates, Informal Administration could provide significant benefit in limiting the amount of public court filings and appearances under appropriate circumstances.

It is not clear to me whether this will ultimately reduce the significance of revocable trust planning in the case of moderate to high net worth individuals, but it should certainly lessen concern about the probate process for those with modest estates. This, in turn, would seemingly allow such clients to approach their estate planning with simple wills rather than the more complex revocable trust plans that are so aggressively marketed today. Logically, costs for properly planning an estate should be reduced, and the comfort level of the client should increase since they will be working within a comprehensible realm (i.e., a simple will) and without the necessity and confusion of formally funding the revocable trust. I believe that this proposal could provide an important step to achieving this laudable goal.

You may feel free to use this letter in any manner that you find appropriate in advancing the proposal, and I would be glad to provide additional comments or a more detailed review of the text of the proposal should you so request.

Sincerely,

Philip B. Feldman

PBF/lmh
cc: Diana Hastings Temple

JAMES R. CHRISTIANSEN
ATTORNEY AND COUNSELOR AT LAW
418 CHAPALA STREET, SUITE G
SANTA BARBARA, CALIFORNIA 93101-5002
TELEPHONE 962-8141
(AREA CODE 805)

March 19, 1996

Informal Administration Committee
State Bar of California
555 Franklin Street
San Francisco, CA 94102
Attn: Susan Orloff, Section Administrator

Dear Sirs:

Your letter of February 2, 1996 which addressed a Judge Patrick L. McMahon was discussed at a conference yesterday of the probate lawyers here in Santa Barbara County.

There was not one person in the room (of over 20 people) who was in favor of adopting Division 9.

Division 9 is an attempt to counteract the living trust mills that have been operating in California for the past several years. I personally believe that it is too little too late. The State Bar of California, in my opinion, has woefully neglected its duty to the public by not counteracting some of the mistruths and half-truths spread by the living trust mills. Misuses in these living trusts are rampant. Although there has been a minimal effort in the Los Angeles area to counteract this misinformation, we have seen virtually none of it here in Santa Barbara. The State Bar would be well advised to spend more money promoting and informing the public in this area that it has in spending three quarters of its enormous budget for discipline.

More specifically, Division 9 merely adds another set of procedures that can be followed and is confusing at best and, at worst, leads to abuses and uncertainty. The State Bar of California would be better advised to merely provide, at various steps along the way, that parties can opt out of various proceedings by having unanimous consent of all those involved. For example, if all the beneficiaries want to dispense with an inventory and appraisement, that ought to be permitted. If they want to dispense with all further proceedings before the Court after the will has been admitted to probate, then that ought to be permitted. In essence, the objectives of Division 9 could be achieved just as readily by providing simple provision allowing the parties to opt out after being informed of the consequences.

JAMES R. CHRISTIANSEN
ATTORNEY AND COUNSELOR AT LAW

There is no need to adopt further and confusing different approaches to the probate of wills.

Very sincerely yours,

James R. Christiansen

JRC:ajs
Personal:(St-Bar.319)
cc: Warren Sinsheimer

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1215 DE LA VINA STREET, SUITE C
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March 22, 1996

Informal Administration Committee
State Bar of California
555 Franklin Street
San Francisco, CA 94102

Attention: Ms. Susan Orloff, Section Administrator

Re: Proposed Division 9 of the California Probate Code

Just as I thought that temporarily all abominations had ceased being thrust upon us, along comes Division 9. I can't believe that people spent a lot of time on this horrible mess.

Please consider the following:

1. Who is going to police the executor or administrator? Certainly the court can't. No one is. In our probate section meeting on Division 9 two probate judges were present and they stated they would have no controls. The executor or administrator is given a license to steal, or at the very minimum handle his duties in a despotic manner. Don't come back with the beneficiary can always file a lawsuit.

2. Any chance someone could be held in contempt? No.

3. As to an antidote to the revocable trust, consider:

> The usual cost of a trust is $500 to $1,500, not counting the frauds that run seminars and they charge more. The attorney's fee to unwind a trust could run as high as $3,000, depending upon the combativeness of stock transfer agents, and other holders of assets. This means that the work could come close to the statutory fee.

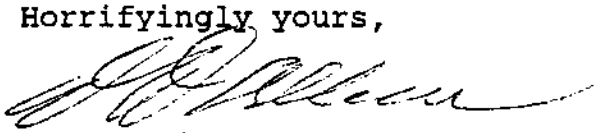
4. Then there is the problem, what would be the cost of an informal probate. Will it cost more than a formal probate? Think about it. The notices that will have to be given if numerous beneficiaries. The cost of any lawsuits that are spawned.

5. On our probate committee is a lawyer, and she is also with the Internal Revenue Service. She didn't expressly say, but certainly implied, that all Inventory and Appraisements would be subject to inspection. She also said that all informal probate proceedings would be subject to inspection.

6. I have thirty-four more criticisms of the proposed informal probate, and if you would like to hear them, advise. I am sure this letter would never see the light of day because egos are involved.

7. So what is the answer? Very simple. The Star Bar should engage in an intensive education of the public, like they have done before. Put all the energy into it that has been put in the new proposed Division 9.

Horrifyingly yours,



W.D. Allison

A/c

ROBERT L. VERES
CAROL VERES REED
RICHARD K. VERES

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March 27, 1996

Susan Orloff
Informal Administration Committee
Estate Planning, Trust
and Probate Law Section
555 Franklin Street
San Francisco, CA 94102

Re; Proposed Legislation for Informal
Administration of Decedent's Estates
in California

Dear Ms. Orloff:

These are my comments with respect to the above matter.

I am an attorney, certified as a specialist in the area of probate and estate planning. I work for two law firms, Veres, Reed and Veres of Oakland, and Nichols, Catterton, Downing & Reed of Orinda. After nineteen years of practice, I have averaged about 10-12 formal probates of estates over $60,000 in value per year. I am very opposed to the proposal. These are my reasons:

1. The effect of the proposal will be that very often personal representatives will not seek legal representation. This will result in complex intestate succession laws being misinterpreted by laymen, interpretation of Wills (especially holographic) that do not follow the law, and asset distributions without regard to creditors or beneficiaries. Unfortunately, once the distribution is mistakenly made it will be very difficult and expensive for those damaged to recoup their legal entitlement.

2. The premise that this process, successful with living trust administration, will work with all probate administration is flawed. Living Trusts are overwhelmingly drafted by attorneys. These documents are drawn up for successful people whose beneficiaries are not unaccustomed or unwilling to seek legal counsel. I contrast this to informal administration of estates of the type I generally handle that have such thorny issues as holographic Wills with no residual clause, intestate estates with missing heirs, bequests that require research to interpret and whose beneficiaries are poor and unable or unwilling to seek legal advice.

3. The present system is working and I see its success in many ways. From the bonding protection ,through the appraisal process, to the probate examiners, and finally to the Probate Judge, the beneficiaries have a high level of protection. Independent Administration of Estates Act procedures were enacted to allow non-judicial control of many aspects of administration of an estate while retaining some supervision. It has worked very well.

4. The Estate Planning, Trust and Probate Law Section has a responsibility to its members and to the public not to advocate for a system that will promote litigation which will often be the only recourse for heirs, beneficiaries and creditors who can afford it, many times to find that the barn door has been opened and the horses gone.

In addition to my name, add the following names to the list of attorneys and other non-attorney professionals in this field that oppose the proposed legislation:

Carol Veres Reed
CAROL VERES REED, SBN 077860
(The Author)

Jane E. Reed
JAMES E. REED, SBN 072345

Richard K. Veres
RICHARD K. VERES, SBN 154367

Robert L. Veres
ROBERT L. VERES, SBN 21395

JOSEPH C. KENSTON, SBN 074632

Peter Quittman
PETER QUITTMAN, SBN 72311

William N. Douglass
WILLIAM DOUGLASS, SBN 18774

Greg Abel
GREG ABEL, SBN 158037

PATRICK L. McMAHON
Superior Court

PHONE (805) 568-3165

SANTA BARBARA COUNTY

SANTA BARBARA, CALIFORNIA

APR 01 1996

March 27, 1996

Informal Administration Committee
State Bar of California
555 Franklin Street
San Francisco, CA 94102
ATTN: Susan Orloff, Section Administrator

Warren A. Sinsheimer, Esq.
1010 Peach Street
San Luis Obispo, CA 93401

Re: Comments to Informal Administration Proposal

Dear Ms. Orloff and Mr. Sinsheimer:

In response to the proposal to add a new Division 9 to the Probate Code, I asked the Probate Section of the Santa Barbara County Bar Association to meet earlier this month and consider the merits of the new proposal. No one endorsed the proposal as a whole and several members voiced trenchant criticism of various components of "informal administration." Likewise, I understand that probate judges throughout the state have objected to this concept.

The State Bar does not seem to appreciate the law of unintended consequences. Although it was designed to provide an alternative to living trusts, and to fire a shot across the bow of the so called "trust mills," it will simply enable numerous "pro pers" to dominate the administration of estates. Aided by the new forms, "form mills" will soon be advertising: "Avoid lawyers, we will help you get your probate through court for $250!"

It is true that well over 80% of estates are quite uncomplicated and require only two hearings, namely, admitting the will to probate and distributing the estate to the rightful heirs. Furthermore, no imaginative proposal should be rejected simply because it threatens the judicial probate bureaucracy. But what about the problems?

Probate fees are less in California than in several eastern states. (Remember Mr. Dacey, who I believe lived in Connecticut?) But the

fee schedule provides stability and prevents attorneys from taking advantage of people of modest means. For instance, I am old enough to have practiced when minimum fee schedules were honored. Actually, they should have been termed the "maximum fee schedules," for once the reformers succeeded, and the schedules were found unlawful, attorneys' fees sky-rocketed at the same pace as gasoline prices did during the oil embargo.

Furthermore, if all fees are going to be "reasonable," the practitioner will have to spend time filling out the required forms. If the decedent's family were pre-existing clients, the charge of undue influence may be heard more often. And what is to prevent certain attorneys from claiming that what is reasonable is simply what he or she elects to charge. Fortunately, the present law which significantly limits extraordinary fees serves to prevent these people from succeeding.

To keep this letter within reasonable limits, may I simply mention three other serious problems. First, heirs expect protection from the probate judge. While most probates do past muster, probate judges do discover instances in which the decree of distribution is mistaken or where the personal representative has failed to distribute the entire estate. Under informal administration, these protections are abandoned. If taxes are not paid, the heirs and distributee are going to be presented with an expensive surprise. Second, informal administration provides no realistic protection for heirs who are weak and incompetent. It is fatuous to suggest that they will, on their own initiative, hire counsel to protect them. Finally, there are no automatic sanctions if nothing happens. Unlike the present automated system, which allows us to identify inactive files more than one year old, under "informal administration," these files will be closed once the will (and codicils) are admitted. My own experience confirms everyone's suspicion that procrastination, if not fraud, abounds when the estate is allowed to languish.

If the Probate Bar feels that the personal representative should have additional powers, let us simply address changes in the Independent Administrator of Estates Act. However, we should reject the present proposal, so fraught with mischief and false assumptions.

Very truly yours,

PATRICK L. McMAHON
Judge of the Superior Court

PLM/kea

cc: Judge Ronald C. Stevens
Kathryn Smith

LOS ANGELES COUNTY BAR ASSOCIATION

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WRITER'S DIRECT LINE:

April 2, 1996

VIA FAX AND US MAIL

Arthur H. Bredenbeck
Carr, McClellan, Ingersoll,
Thompson & Horn
216 Park Road
PO Box 513
Burlingame, CA 94011-0513

Dear Mr. Bredenbeck:

On March 27, 1996, the Los Angeles County Bar Association board of trustees voted unanimously to oppose the State Bar Estate Planning, Trust and Probate Law Section's proposed legislation for informal administration of decedents' estates in California.

The chair of this Association's Trusts and Estates Section, John T. Rogers, Jr., will be in touch with you regarding our specific concerns.

Thank you for the opportunity to comment on the proposal.

Sincerely,

Laurie D. Zelon
President

LDZ:gml

cc: Association Trustees
Robert L. Sullivan, Jr.
Thomas J. Stikker
John T. Rogers, Jr.
Richard Walch
Susan Orloff, Section Administrator