

Memorandum 90-11

Subject: Study L-1028 - Independent Administration of Estates Act
(Suggestion for Substantive Revision)

In a letter circulated to the Commission at the July meeting from Henry A. Preston of Chicago (July 7, 1989), Mr. Preston relates his experiences as an executor in a simple estate in Los Angeles County. Mr. Preston notes that he was hampered in making preliminary distributions under the Independent Administration of Estates Act. The estate was clearly more than adequate to pay all claims against it, but he nonetheless would have been required to go to court to make preliminary distribution. Since he was unwilling to run up that kind of expense for a small estate, his solution was to make preliminary distribution without court order, taking a personal risk:

[I]t was apparent from the beginning that the cash assets of the estate would be much more than sufficient to pay all claims and expenses several times over. I was unable to obtain authority to pay the small bequests (totalling \$15,000) without going to the difficulty and expense of obtaining an order of partial distribution. Nevertheless, I paid one of them about four months after the estate was opened without such authority because the beneficiary was in need and I paid the remaining two (including one to a charitable organization) about a year after the date of death, still without specific authority to do so [in order to save the estate the expense of having to pay interest that accrues on a specific bequest one year after the date of death]. An independent executor should have authority to pay specific bequests, especially to charitable organizations and to needy beneficiaries, where the assets of the estate, after allowance for all claims, are more than sufficient.

The Commission's tentative recommendation on miscellaneous Probate Code revisions would address this problem somewhat by providing explicitly in Section 12250 that "Nothing in this section precludes discharge of the personal representative for distribution made without prior court order, so long as the terms of the order for final

distribution are satisfied." A further step would be to eliminate the court approval requirement from the independent administration statute, thus:

10501. (a) Notwithstanding any other provision of this part, whether the personal representative has been granted full authority or limited authority, a personal representative who has obtained authority to administer the estate under this part is required to obtain court supervision, in the manner provided in this code, for any of the following actions:

(1) Allowance of the personal representative's commissions.

(2) Allowance of attorney's fees.

(3) Settlement of accountings.

(4) ~~Preliminary and final distributions~~ Final distribution and discharge.

....

The Commission may wish to circulate this suggested change for comment.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary