

First Supplement to Memorandum 83-60

Subject: Study L-641 - Creditor's Right to Reach Payments From Trust

The Commission's Tentative Recommendation Relating to Garnishment of Amounts Payable to Trust Beneficiary was distributed to interested persons and organizations for review and comment. A copy of the tentative recommendation is attached to Memorandum 83-60 (sent August 9, 1983).

We received comments from (1) the Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association, (2) Professor Jesse Dukeminier, our consultant, (3) Charles A. Dunkel, Vice President and Trust Officer, Crocker National Bank, and (4) Henry Angerbauer, a private citizen. All approved the tentative recommendation without qualification. You should read the thoughtful letters attached as Exhibits 1 and 2.

The staff recommends that the tentative recommendation be approved for printing and submission to the 1984 session of the Legislature.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

**Los Angeles County
Bar Association**

Probate and Trust Law Section

617 South Olive Street
Los Angeles, California 90014
213 627-2727

Mailing address:
P.O. Box 55020
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September 6, 1983

Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94306

Re: Tentative Recommendations L-641, L-651,
L-653, L-810 and L-826; July 22, 1983
Request for Survey of Views

Dear Sirs:

Speaking on behalf of the Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association, we wish to comment on these Tentative Recommendations and respond to the Request for Survey of Views as follows:

L-641, Garnishment of Amounts Payable to Trust Beneficiary

Those who establish spendthrift trusts generally intend the beneficiary's judgment creditors may not levy upon the beneficiary's interest in the trust. However, public policy demands that we balance the interests of judgment creditors, judgment debtors who are beneficiaries of such a trust, and the grantor of such a trust (who is usually no longer living). The proposed changes to the law to allow garnishment of amounts payable to a beneficiary of a spendthrift trust in amounts which accord with the General Wage Garnishment Law seem to be a valid and justifiable balancing of those interests. Furthermore, by reducing court time, it reduces costs to the judgment creditor, the trustee of the trust (and indirectly the trust beneficiary), and the taxpayers of the State. We believe this is good legislation which should be supported, even though many of us represent those grantors who create spendthrift trusts. We recognize that it is important that beneficiaries not be allowed to utilize existing law to evade legitimate creditors through exemptions from execution or garnishment which are greater than those accorded to working people.

Law Revision Commission
September 6, 1983

We would like you to carefully examine our comments when revising your recommendations. Our comments represent the practical experience of probate practitioners who regularly deal with the probate courts. We support those changes we believe to be true improvements. We can not support those changes we believe would adversely affect the rights of estate beneficiaries or that would make the probate process worse rather than better.

Executive Committee

By Valerie J. Merritt
Secretary - Treasurer



SCHOOL OF LAW
LOS ANGELES, CALIFORNIA 90024

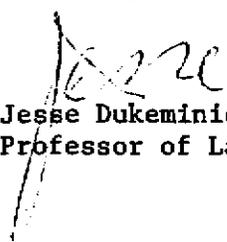
August 18, 1983

Mr. John DeMouly
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94306

Dear John:

I am delighted that you are recommending that the same garnishment rules apply to beneficiaries of spendthrift trusts as apply to wage earners. What is wrong with the spendthrift trust is not that it drives the price of credit up because spendthrifts do not pay their bills (I assume they usually do, and anyway consumer credit is not extended on the basis of whether the applicant is a spendthrift trust beneficiary). I doubt that wage earners are in any way hurt by the fact that creditors cannot reach spendthrift trust income. What is wrong with the spendthrift trust is that it is symbolically wrong: it signals that we protect the beneficiaries of inherited wealth from creditors when we do not so protect wage earners. That is the wrong symbol in a democracy. Wage earners are not deserving of less protection and should not be symbolically treated as second-class citizens. All income recipients should be treated alike, regardless of the source of the income.

Sincerely,


Jesse Dukeminier
Professor of Law

JD/908/bd



Charles A. Dunkel
Vice President
Trust Officer

August 19, 1983

California Law Revision
Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94306

Re: L-641: Garnishment of Amounts Payable to
Trust Beneficiary
L-651: Simultaneous Death and Survival

Gentlemen:

Your tentative recommendation relating to the above two subjects meets with my approval in its present form.

Sincerely,



Charles A. Dunkel
Vice President &
Trust Officer
(415) 477-2756

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HENRY ANGERBAUER, CPA
4401 WILLOW GLEN CT.
CONCORD, CA 94521

8/19/83

California Law Peram Commission:

Gentlemen:

I have read your proposal and
Tentative Recommendation on Garnishment
of Amounts payable to Trust Beneficiaries.
and ~~my~~ agree with the recommendations.
& I hope you will implement that
recommendation by suggesting it to the
legislature ^{for} ~~of~~ ^{as} ~~an~~ law.

Thank you for asking
me to share my views with you.

Sincerely
H