

## Memorandum 87-79

Subject: Study L-1027 - Accounts (Review of Comments on Tentative Recommendation)

This summer the Commission distributed for comment its tentative recommendation relating to distribution and discharge. We have received the letters attached as Exhibits 1 to 18 that include specific comments on the recommendation. The comments are analyzed in the attached draft of the recommendation following the sections to which they relate.

A number of these 18 letters also include general support for the recommendation. In addition, we have received several other letters expressing general approval of the recommendation without further comment. The persons expressing general support or approval are:

Henry Angerbauer, Concord  
Wilbur L. Coats, Poway  
Judge William E. Fox, Paso Robles ("I feel that these amendments will be a great improvement over the old law and will save a lot of time, trouble and expense.")  
Sandra S. Kass, Los Angeles (Exhibit 11)  
Richard E. Llewellyn II, Los Angeles (Exhibit 16)  
Executive Committee of the Probate and Trust Section of the Los Angeles County Bar (Exhibit 7) ("With these few minor exceptions, this Recommendation appears in excellent form for presentation to the Legislature.")  
John G. Lyons, San Francisco (Exhibit 10) ("I believe the proposed changes would be very helpful.")  
Charles E. Ogle, Morro Bay  
Ruth A. Phelps, Burbank (Exhibit 5)  
Jeffrey A. Dennis-Strathmeyer, California Continuing Education of the Bar (Exhibit 13)  
Judge Robert A. Willard, Ventura (Exhibit 9) ("In my opinion they have substantial merit in both clarification and improvement of the statutes involved.")  
(Exhibit 9)

Respectfully submitted,

Nathaniel Sterling  
Assistant Executive Secretary

MYRON W. CURZON  
ATTORNEY AT LAW  
208 WEST EIGHTH STREET, SUITE 405  
LOS ANGELES, CALIFORNIA 90014

213-623-5163

August 13, 1987

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303-4739

Re: Tentative Recommendation relating to  
Probate Law and Procedure - Accounts  
July 1987

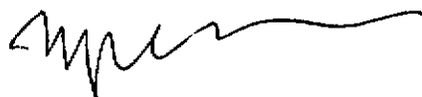
Gentlemen:

Here are my comments.

Waiver of account - The provisions for waiver of account should not be limited to persons "entitled to payment from the estate." Rather, waiver should be obtained from persons who make claim upon the estate whether or not such claim is eventually successful. Additionally, where the distributees of the estate are trustees of a trust, either *intervivos* or testamentary, where the beneficiaries of the trust are persons other than the named trustees, waiver must be joined in by each and all of the beneficiaries of the trust.

Account - It is not clear that the tentative recommendation requires an itemized specification of the assets on hand to be distributed, whether or not there is a proper waiver of account, such specification should be provided for.

Very truly yours,



Myron W. Curzon

MWC/sg

*Everett Houser*

*Attorney at Law*

*5199 E. Pacific Coast Highway #508*

*Long Beach, Calif. 90804-3307*

*(213) 498-3955*

Aug. 13, 1987

Law Revision Commission  
4000 Middlefield Road D2  
Palo Alto, CA 94343

Re: Probate Tentative Recs

Thank you for the shipment of tentative recommendations.  
I respond as follows:

L-1025 - no comment  
L- 1938 - no comment  
L-1048 - No comment

L. 1027 - Accounts. I have comments on this part of the law.  
It occupies an important part of a probate attorneys time.

§10954 - The words "each person entitled to payment or  
distribution " are sure to cause argument. You explain them in  
a note. Why not say "Unpaid creditors who have demanded special  
notice"?

§11001 (1) This matter about challenging creditor's claims  
already approved and allowed is a sore point with me. I presume  
you are keeping the same procedure of submitting creditors claims.  
They have been examined for validity and propriety once,  
presumably by the Judge himself. Yet all the fuss and bother is to  
noavail when the account is filed. Here is duplication of  
effort. If I were going to simplify things, I would make the  
filing of creditors claims strictly optional. Executors would like  
to be able to pay claims and not fear reversal. What good does  
it do to file claims and have them approved if they can be  
challenged on the account? A creditor of the deceased should be  
willing to wait four months for payment when death stays the hand  
of the debtor.

Very truly yours,

*Everett Houser*

FRANK M. SWIRLES  
LAW CORPORATION

August 15, 1987

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303

Re: July 1987 Tentative Recommendations relating to Probate  
Law and Procedure - Accounts

Gentlemen:

Your tentative Section 10900 - Contents of account - does not address the issues of "trust (or estate) accounting income", "taxable income", nor "distributable net income".

The first, trust (or estate) income, bears directly on the principal and income act which you have now succeeded in shifting to the new trust law. An alarming number of wills (and trusts) are silent as to instructions to the fiduciary regarding allocations of principal and income, and fall back heavily on the principal and income act. I believe that the effect of this act should be an essential part of every accounting. In other words, that an accounting should clearly indicate what the fiduciary has done as to allocations of principal and income, and the result. Only by doing that is it possible to determine the value of the corpus.

For example, in a recent trust account I handled, I inserted the following language in the account, plus an exhibit 3, per the attached:

"In addition to the regular accounting which has been presented to the Court in all previous Account Current, petitioners have set forth in Exhibit 3, incorporated herein by reference, the complete allocations between principal and income required by them, as fiduciaries, under the California Revised Principal and Income Act now incorporated in the California Probate Code as section 16300, et seq. Specifically, trustee fees have been allocated according to section 16312(b)(5), litigation expenses and extraordinary accounting fees have been charged to principal in accordance with section 16312(d)(2), etc., Petitioners allege that such allocations between principal and income represent their understanding of trust accounting

FRANK M. SWIRLES  
LAW CORPORATION

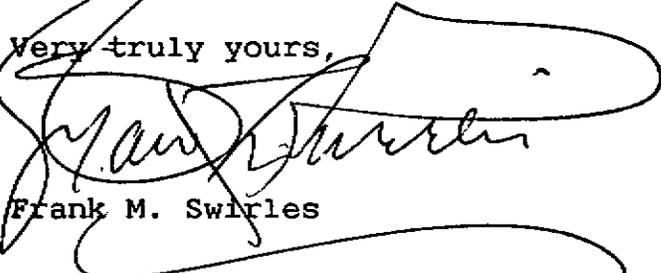
principles, and are the result of their exercise of judgment as to the character of trust receipts and disbursements, that said allocations have been made according to law and the trust instrument, and that the result of the allocations accurately reflect the character of the trust corpus as of March 31, 1987."

Your proposal merely suggests that receipts and disbursements be included in the account, which, in my mind, is inadequate. The account should show what the fiduciary has done and the results of those actions.

The second and third issues, taxable income and distributable net income, are important, I believe, because of the recent changes in the federal and state estate taxes. There are fewer and fewer forms 706 being filed because of the unlimited marital deduction, and the IRS is shifting a lot of manpower to audits of 1041's. Few CPAs, and even fewer lawyers, are competent in this field, but they should be if they are going to be filing such returns. I am sure that it would require cooperation between the attorneys and the accountants to put together accurate exhibits for court accountings showing taxable income and distributable net income, but that is the kind of cooperation we have been told for years should exist in trust and estate administration. Such exhibits would take some of the mystery out of accounts, and be the basis for fiduciary income tax returns so that the whole thing would hang together.

I don't have any concrete suggestion as to a format for such exhibits, but perhaps one exhibit showing all 3 allocations, something like the attached, may be suitable. In any event, I am sure that Jerry A. Kasner at Santa Clara would be glad to make suggestions.

Very truly yours,

  
Frank M. Swirles

Enclosures

P.O. BOX 1490  
RANCHO SANTA FE, CALIFORNIA 92067  
(619) 756-2080

**EXHIBIT 3**

**Trust Allocations of Principal and Income**

Dates	Total Assets on hand	Principal	Income	Date	Transaction
					First Account Current
03-18-73	363200.69	*	0		Gross transfer from estate
04-01-73	339805.79	312062.65	27743.13		Income earned during est. admin.
-	-	-12493.48	12493.48	4-24-73	Probate fees & commissions
-	-	-5000.00	5000.00	4-6-73	Request to surviving spouse
-	-	760.90	-760.90	10-26-73	Capital gain on sale of stock
-	-	-213.05	213.05		Estimated 28% capital gain tax
-	-	-	148001.94	3-31-74	Net income after taxes, distributions and expenses chargeable to income
03-31-74	529605.72	295117.02	192690.70		Total assets = Principal + Income
-	-	8262.00	-8262.00	11-18-74	Capital gain on sale of stock
-	-	-2313.36	2313.36		Estimated 28% capital gain tax
-	-	-9104.00	9104.00	3-25-75	Trustee fees
-	-	277.71	-	3-31-75	Adjustment to stock
-	-	-	355639.41	3-31-75	Net income after taxes, distributions and expenses chargeable to income
03-31-75	843724.84	292239.37	551485.47		total assets = Principal + Income
-	-	-206.50	206.50	1-2-76	Capital loss on sale of stock
-	-	-3500.00	3500.00	1-21-76	Appraisal of Corpus Fee
-	-	-11438.00	11438.00	3-28-76	Trustee fees
-	-	-1000.00	1000.00	3-28-76	Extraordinary Legal Fees
-	-	-	12665.69	3-31-76	Net income After taxes, distributions and expenses chargeable to income
03-31-76	856390.53	276094.87	580295.66		Begin Second Account Current
-	-	-21532.88	21532.88	6-14-76	Capital loss on stocks sold
-	-	-8900.00	8900.00	1-4-77	Trustees fees
-	-	-26750.00	26750.00	1-20-77	Legal fees in defense of corpus
-	-	727.75	-	3-31-77	Adjustment to inventory
-	-	-	83870.46	3-31-77	Net income after taxes, distributions and expenses chargeable to income
03-31-77	940988.74	219639.74	721349.00		Begin Third Account Current
-	-	25000.00	-25000.00	06-09-77	Sale of oil interest
-	-	37500.00	-37500.00	01-06-78	Sale of oil interest
-	-	-3000.00	3000.00	06-01-78	Legal fees in defense of corpus
-	-	-9759.75	9759.75	06-27-78	Trustee fees
-	-	-8994.07	8994.07	12-27-78	Legal fees in defense of corpus
-	-	-	57066.71	03-31-78	Net income after taxes, distributions and expenses chargeable to income
	978055.45	260385.92	13918.28		Total assets = Principal + Income

**EXHIBIT 3**

03-31-78	998055.45	260385.92	737669.53		Begin Fourth Account Current
-		5500.00	-5500.00	07-12-78	Proceeds from sale of stock
-		-10634.18	10634.18	06-30-78	Trustee fees
-		-7776.58	7776.58	08-16-78	Legal fees in defense of corpus
-		-6858.38	6858.38	10-30-78	Legal fees in defense of corpus
-		-1444.34	1444.34	12-20-78	Legal fees in defense of corpus
-		-2278.96	2278.96	03-26-79	Legal fees in defense of corpus
			-86902.13	03-31-79	Net income after taxes, distributions and expenses chargeable to income
<hr/>					
03-31-79	911153.32	236893.48	674259.84		Begin Fifth Account Current
-		-4887.16	4887.16	05-25-79	Legal fees in defense of corpus
-		-854.24	854.24	06-28-79	Legal fees in defense of corpus
-		-958.09	958.09	08-06-79	Legal fees in defense of corpus
-		-10544.62	10544.62	09-04-79	Trustee fees
-		-2000.00	2000.00	09-04-79	Funeral deposit for prime beneficiary
-		-4867.24	4867.24	10-22-79	Legal fees in defense of corpus
-		-7050.42	7050.42	01-19-80	Legal fees in defense of corpus
-		-1929.32	1929.32	02-27-80	Legal fees in defense of corpus
-		-541.25	541.25	03-29-80	Legal fees in defense of corpus
			92278.56	03-31-80	Net income after taxes, distributions and expenses chargeable to income
<hr/>					
03-31-80	1003431.88	203261.14	800170.74		Begin Sixth Account Current
-		2923.70	-2923.70	07-31-80	Sale of bond
-		-1038.49	1038.49	04-17-80	Legal fees in defense of corpus
-		-2935.79	2935.79	05-27-80	Legal fees in defense of corpus
-		-2612.99	2612.99	07-09-80	Legal fees in defense of corpus
-		-12006.60	12006.60	09-03-80	Trustee fees
-		-4866.51	4866.51	08-04-80	Legal; fees in defense of corpus
-		-2355.64	2355.64	10-29-80	Legal fees in defense of corpus
-		-1500.51	1500.51	01-22-81	Legal fees in defense of corpus
-		-2470.64	2470.64	02-20-81	Legal fees in defense of corpus
-		2658.00	-2658.00	03-31-81	Bond redeemed during accounting period
			89170.08	03-31-81	Net income after taxes, distributions and expenses chargeable to income
<hr/>					
	1092601.96	179055.67	913546.29		Total assets = Principal + income

**EXHIBIT 3**

03-31-81	1092601.96	179055.67	913546.29		Begin Seventh Account Current
-	-15981.52	15981.52		06-04-81	Legal fees in defense of corpus
-	-14917.98	14917.98		06-22-81	Legal fees in defense of corpus
-	-3117.58	3117.58		07-03-81	Legal fees in defense of corpus
-	-12200.69	12200.69		07-27-81	Legal fees in defense of corpus
-	-16147.85	16147.85		03-19-81	Trustee fees
-	-8204.11	8204.11		09-26-81	Legal fees in defense of corpus
-	-5000.00	5000.00		09-23-81	Fee for appraisal of corpus
-	-4421.59	4421.59		11-14-81	Legal fees in defense of corpus
-	-2440.48	2440.48		12-04-81	Legal fees in defense of corpus
-	-5000.00	5000.00		01-20-82	Legal fees in defense of corpus
-	-128.53	128.53		01-28-82	Legal costs in defense of corpus
-	-40.12	40.12		03-23-82	Legal costs in defense of corpus
-	-1654.50	1654.50		03-31-82	Loss on sale of bond
-	-	84929.14		03-31-82	Net income after taxes, distributions and expenses chargeable to income
<hr/>					
03-31-82	1177531.10	89800.72	1087730.38		Begin Eighth Account Current
-	-14076.21	14076.21		07-23-82	Trustee fees
-	-47.37	47.37		10-11-82	Legal costs in defense of corpus
-	-	195666.76		03-31-83	Net income after taxes, distributions and expenses chargeable to income
<hr/>					
03-31-83	1373197.86	75677.14	1297520.72		Begin Ninth Account Current
-	353291.71	-353291.71		09-08-83	Settlement of Argo Petroleum law suit
-	-15137.98	15137.98		07-27-83	Trustee fees
-	-1271.13	1271.13		09-08-83	Legal fees in defense of corpus
-	415.75	415.75		03-31-84	Capital gain on matured bond
-	-	6050.33		03-31-84	Net income after taxes, distributions and expenses chargeable to income
<hr/>					
03-31-84	1380079.69	412975.49	967104.20		Begin Supplemental Account to Ninth Account Current
-	-2979.00	2979.00		04-19-84	Legal fees in defense of corpus
-	-1219.55	1219.55		06-04-84	Legal fees in defense of corpus
-	-1175.00	1175.00		06-18-84	Accounting fees in defense of corpus
-	-360.00	360.00		07-05-84	Legal fees in defense of corpus
-	-1872.00	1872.00		11-02-84	Legal fees in defense of corpus
-	-	-215755.97		11-30-84	Net income after taxes, distributions and expenses chargeable to income
<hr/>					
11-30-84	1164323.72	405369.94	758953.78		Begin Tenth Account Current
-	-1700.00	1700.00		02-11-85	Legal fees in defense of corpus
-	-2647.20	2647.20		03-03-85	Legal fees in defense of corpus
-	-15204.38	15204.38		03-29-85	Trustee fees
-	-	-83283.37		03-31-85	Net income after taxes, distributions and expenses chargeable to income
<hr/>					
1081040.35	385818.36	695221.99			Total Assets = Principal + Income

**EXHIBIT 3**

03-31-85	1081040.35	385818.36	675221.99		Begin Eleventh Account Current
-	840.00	-840.00	01-16-86	West Italo shares tendered	
-	110.85	-110.85	01-24-86	Weststates Petroleum liquidation	
-	-2415.00	2415.00	04-11-85	Legal fees in defense of corpus	
-	-4334.82	4334.82	05-06-85	Legal fees in defense of corpus	
-	-4652.16	4652.16	06-05-85	Legal fees in defense of corpus	
-	-1190.94	1190.94	07-09-85	Legal fees in defense of corpus	
-	-14688.39	14688.39	08-19-85	Trustee fees	
-	-378.00	378.00	11-08-85	Legal fees in defense of corpus	
-	-5909.32	5909.32	08-02-85	Legal fees in defense of corpus	
-	-4622.20	4622.20	12-12-85	Legal fees in defense of corpus	
-	-1755.78	1744.78	01-06-86	Legal fees in defense of corpus	
-	-342.00	342.00	01-14-86	Legal fees in defense of corpus	
-	-987.00	987.00	02-08-86	Legal fees in defense of corpus	
-		-179208.53	03-31-86	Net income after taxes, distributions and expenses chargeable to income	
<hr/>					
03-31-86	901820.92	345493.60	556327.22		Begin Twelfth Account Current
-	1217.00	-1217.00	09-17-86	Legal fees reimbursed	
-	-891.50	891.50	06-11-86	Legal deposition expense - corpus	
-	-3135.54	3135.54	07-05-86	Legal fees in defense of corpus	
-	-204.90	204.90	07-16-86	Legal deposition expense - corpus	
-	-2615.04	2615.04	08-05-86	Legal fees in defense of corpus	
-	-14407.53	14407.53	09-09-86	Trustee fees	
-	-2312.95	2312.95	09-15-86	Legal fees in defense of corpus	
-	-10715.57	10715.57	10-7-86)	Legal fees & costs in defense of corpus	
-	-	-	03-22-87)		
-	-612.26	625.26	04-04-86	Legal fees in defense of corpus	
-	-2040.96	2040.96	05-05-86	Legal fees in defense of corpus	
-	-801.95	801.95	03-28-87	Court Reporter - corpus litigation	
-	-14474.66	14474.66	03-30-87	Legal fees in defense of corpus	
-	-15000.00	15000.00	03-31-87	Accounting fees - defense of corpus	
-		41893.88	03-31-87	Net income after taxes, distributions and expenses chargeable to income	
<hr/>					
03-31-87	943727.70	279497.74	664229.96		Begin Thirteenth Accounting Period

* Adjustment to gross transfer from estate:	Gross:	363200.69
	Add:	1718.75 stocks not in inventory 27743.14 income during administrati
	Less:	17500.00 Home not included in trust 35356.79 adjustment to joint venture
	Net:	<u>339805.79</u> =====

	Accounting Income	Taxable Income	DNI
Net rent	15,000	15,000	15,000
Dividends	10,000	10,000	10,000
Exempt	5,000	-	5,000
Loss	-	3,000	-
Fee	(2,500)	(5,000)	(5,000)
CPA fee	(500)*	(1,000)	(1,000)
Interest	(3,000)	-	(3,000)
Depreciat.	- **	(5,000)**	-

\* This is the way 730.13(a)(4) would probably split the fee, but was this for a court accounting, or otherwise? Court accountings only report trust or estate accounting income, not taxable income, and not DNI.

\*\* Note that depreciation is never a part of DNI. It may or may not be a part of accounting income, depending on the document.

All the tax exempt interest expense must be pro rated to all the other deductions - thereby reducing them - such as to the trustee fees, the accounting fees, etc. But, costs attributable to items of income must be allocated first. For example, allocate maintenance against rental income, Second, pro rate the general expenses against the various items of income in the discretion of the trustee, except that if any expense relates to tax exempt income, it is first allocated to that income.

(Estates and trusts are not characterized as "pass through" entities such as partnerships and sub S corporations. Trusts and estate do pay taxes in certain circumstances, but the others do not.)



August 17, 1987

OUR FILE NUMBER  
9911.81-35Attorneys at Law  
601 Montgomery Street  
Suite 900  
San Francisco  
California 94111Telephone  
415/788-8855Cable Address BAM  
TELEX 3725929Telecopier  
415/397-1925JAMES R. BANCROFT  
OF COUNSELJAMES H. McALISTER  
LUTHER J. AVERY  
ALAN D. BONAPART  
NORMAN A. ZILBER  
EDMOND G. THIEDE  
ROBERT L. DUNN  
JAMES WISNER  
SANDRA J. SHAPIRO  
GEORGE R. DIRKES  
BOYD A. BLACKBURN, JR.  
DENNIS O. LEUER  
JOHN R. BANCROFT  
ROBERT L. MILLER  
JOHN S. McCLINTIC  
REBECCA A. THOMPSON  
LEWIS WARREN  
CAROL M. HEHMEYER  
ARNOLD S. ROSENBERG  
JOHN L. KOENIG  
DAVID P. LIUMr. John H. DeMouly, Executive Secretary  
California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303-4739TENTATIVE RECOMMENDATION RELATING  
TO PROBATE LAW AND PROCEDURE  
ACCOUNTS, JULY 1987

Dear John:

The National Fiduciary Accounting Standards Project ("Fiduciary Accounting Project") (copy attached) was a valuable addition to the literature concerning fiduciary accounting.

Computer software has been developed for the use of probate practitioners based upon the Fiduciary Accounting Project. In my opinion, the statutes of California should prescribe that the accounts described in Part 8 conform to the standards of the Fiduciary Accounting Project. It would be particularly important to impose upon all the probate courts of the state a requirement of uniformity in the form of accounting so that costs of probate can be lowered by permitting lawyers to use a standard format that can be produced by existing computer programs.

The Fiduciary Accounting Project has been adopted as the standard by many other states and there is a movement to try to persuade all states to adopt the format of the Fiduciary Accounting Project.

In my opinion, the format of the Fiduciary Accounting Project accomplishes everything in the July 23, 1987 Tentative Recommendation relating to accounts.

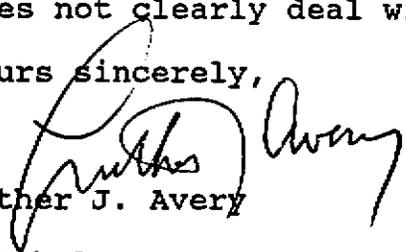
Mr. John D. DeMouilly  
August 17, 1987  
Page 2.

I do not agree with the policy in PC 10954(b) that creditors must join in any waiver of accounts. As a practical matter, that creates a bargaining position for doubtful claimants. In addition, there may be many small creditors. No waiver by a creditor should be required unless the claim is a big claim; e.g., more than 10% of the estate. It would be far better if the fiduciary can attest that all known claimants have been paid or provided for and permit a waiver of accounting by the real parties in interest.

I believe it would be important to address two questions relating to attorney fees. First, can the contestant obtain fees from the estate (i.e., can a contestant be assisted in a situation where the contestant has a substantial interest in the estate)? Second, what limits should be imposed on the fees of the fiduciary (or his attorney)? For example, are fees recoverable if the fiduciary has failed to account in a timely fashion or has failed to provide a correct or adequate accounting or failed to give notice.

In short, more attention needs to be given to the economics of disputes over an accounting. I recognize that the Commission Recommendations or Rules of Procedure in probate deal with costs but the analysis does not clearly deal with accounts.

Yours sincerely,

  
Luther J. Avery

LJA:bal  
841.8

Enclosure

# National Fiduciary Accounting Standards Project

## Uniform Fiduciary Accounting Principles and Model Account Formats

*A Joint Project of the*

**American Bankers Association  
Trust Division**

**American Bar Association  
Section of Real Property, Probate and Trust Law**

**American College of Probate Counsel**

**American Institute of Certified Public Accountants**

**National Center for State Courts**

**National College of Probate Judges**

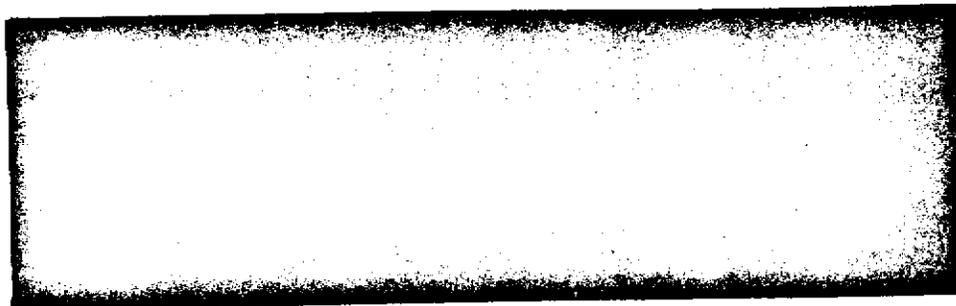
KF779  
F2  
A4  
1979  
LJA

# Committee on National Fiduciary Accounting Standards

## **American Bar Association: Section of Real Property, Probate and Trust Law**

*(Chairman of Project Committee)*

Norman H. Brown  
Ballard, Spahr, Andrews & Ingersoll  
30 South 17th St., Philadelphia, Pennsylvania 19103  
(215) 564-1800



## **American Bankers Association: Trust Division**

Charles G. Dalton  
Vice President, Chicago Title & Trust Company  
111 West Washington St., Chicago, Illinois 60602  
(312) 630-2000

## **American College of Probate Counsel**

Mary E. Brickner  
Fairfield & Woods  
1536 First National Bank Building, Denver, Colorado 80202  
(303) 534-6135

## **American Institute of Certified Public Accountants**

Richard D. Grey  
Grey, Buckno & Company  
Masonic Temple Building, 1524 Linden St., Allentown, Pennsylvania 18102  
(215) 821-8580

## **National Center for State Courts**

Geoffrey W. Peters  
300 Newport Avenue  
Williamsburg, Virginia 23185  
(804) 253-2000

## **National College of Probate Judges**

Judge William W. Treat  
P. O. Box 498, Hampton, New Hampshire 03842  
(603) 926-6311

## **Uniform Probate Code Project**

Professor Richard V. Wellman  
University of Georgia Law School, Athens, Georgia 30602  
(404) 542-7542

## **Project Reporter**

Professor Robert Whitman  
University of Connecticut Law School, Greater Hartford Campus, West Hartford, Connecticut 06117  
(203) 523-4841

Form fails to  
Contain tax form 1041

# Uniform Fiduciary Accounting Principles and Model Account Formats

September, 1979

**Project Coordinator**  
*(Contact for information on project or additional copies)*  
John C. Ruhnka  
Department of Policy Research  
Yegge, Hall & Evans  
2900 Energy Center One  
717 Seventeenth Street  
Denver, Colorado 80202  
(303) 573-5022

# Report of Fiduciary Accounting Standards Committee

## Scope of the Project

"Fiduciary Accounting" does not have one commonly understood meaning. In a broad sense, it can mean the entire process whereby a fiduciary — normally a personal representative, trustee or guardian — communicates information on an on-going basis regarding his administration of a fund and periodically justifies his administration to the parties in interest and, perhaps, to a court. In another sense, it may be the process whereby a fiduciary — here more often a trustee — periodically keeps parties in interest currently informed of transactions and investment policies being followed.

In a narrower sense, to which this report is directed, a fiduciary accounting may refer to the statement prepared by a fiduciary at the close of his administration of a fund (or at some appropriate intermediate stage) to reflect transactions that have occurred and to be presented to the parties in interest as part of a process whereby the fiduciary seeks discharge from liability for the events disclosed.

There is undoubtedly much that can be accomplished to improve the general administration of estates and trusts. A broad study of our basic fiduciary accounting models could lead to dramatic change in the future. But such a study as well as general questions regarding what constitutes fair and adequate procedures in a large variety of circumstances remain beyond the scope of this project.

### Advantages to be Gained from Uniformity

The manner in which a fiduciary records receipts and disbursements and gains and losses from investment during the course of administration is commonly dictated by local practice, court rule or statute. In many jurisdictions there is a lack of clarity or consistency regarding the form and content of such an accounting. A uniform form of account and the creation of guiding principles of accounting would be a most helpful development.

Through the development of a uniform form of account the forms that are now in use can be improved. It would not be expected that immediate change to a model account format would be required of corporate fiduciaries with substantial investments in computer programs but ultimately, standardization of forms will permit more effective utilization of machine record keeping techniques and significant cost savings. Standards for acceptable accounting practices will provide needed guidelines.

Since proposed standards can be illustrated by example, we have focused on form and content of a statement of transactions, recognizing that a proper form of account is important whether the account is to be presented in court or employed as part of an informal settlement process between a fiduciary and beneficiaries.

### Performance Accounting Distinguished

No effort has been made to standardize that kind of fiduciary accounting which is directed toward an analysis of the investment performance of a fund. Accounts of this type are often distributed to beneficiaries by corporate fiduciaries at regular intervals, generally one year or less, and contain statements of receipts, disbursements and assets on hand at the close of the period. The statement of assets customarily discloses additional information such as cost or tax basis, current market value, current yield expressed sometimes both in dollars and as a percentage of cost or market, and may show the distribution of investments among various categories such as bonds and stocks with subdivision of stocks by industry. These statements can be immensely valuable, both as an aid to the fiduciary in analyzing the structure of the portfolio, and for the information of beneficiaries. Indeed, because this form of report reflects and analyzes current investment policy, it may be described as more positive and forward looking than an unratified account of past transactions which is commonly used as a basis for discharge from responsibility for past acts. However, accountings of this type are fundamentally different in purpose from the traditional concept of discharge accounting by a fiduciary. There are inherent limitations that tend to restrict their use to professional institutionalized fiduciaries, and the need for establishment of standards appears to be less pressing than in the conventional area of discharge accounting.

# Basic Objectives and General Standards of Fiduciary Accounting

The fundamental objective of an account should be to provide essential and useful information in a meaningful form to the parties interested in the accounting process. It is also important that the account should be sufficiently simple to enable its preparation without unreasonable expense to the fund, or undue distraction from the on-going administration of the estate. Finally, although the parties should understand the nature of the accounting process and the need to protect their interests, the relationship of trust and confidence existing between the fiduciary and the beneficiaries is itself important and the account should not be presented in an adversary format that will unnecessarily impair this relationship.

## Competing Goals

Maximum clarity, full disclosure and complete description and explanation of all events to be disclosed appear to be standards that all would accept. But, in combination, they may present many difficulties. For example, clarity may be obscured by the detail that is required for a disclosure that omits nothing. Full explanation of all investment decisions might produce a massive document that few beneficiaries would read. On balance, a set of flexible principles keyed to the standard of good faith supports the utmost protection of the parties and permits accounting standards to change and mature as circumstances require.

Fiduciary accounts rarely will be identical. In addition to the predictable variables of the size and composition of the assets, the period covered and the position of those interested, the significance of particular issues in a controversy may be illuminated by special accounting treatment of some portion of a fund. This suggests that a fiduciary should have enough flexibility to state an account in the manner best adapted to the particular circumstances and discourages any effort to prescribe a totally rigid format. Accordingly, the following principles are suggested as general standards for fiduciary accounting.

## Model Accounts

Sample Executor's and Trustee's accounts are attached to illustrate the application of the suggested standards for fiduciary accounting.

## **Fiduciary Accounting Principles**

### **I. ACCOUNTS SHOULD BE STATED IN A MANNER THAT IS UNDERSTANDABLE BY PERSONS WHO ARE NOT FAMILIAR WITH PRACTICES AND TERMINOLOGY PECULIAR TO THE ADMINISTRATION OF ESTATES AND TRUSTS.**

**Commentary:** In order for an account to fulfill its basic function of communication, it is essential that it be stated in a manner that recognizes that the interested parties are not usually familiar with fiduciary accounts. It is neither practical nor desirable to require that accounts be tailored to meet individual disabilities of particular parties but any account should be capable of being understood by a person of average intelligence, literate in English, and familiar with basic financial terms who has read it with care and attention.

Problems arising from terminology or style are usually a reflection of the fact that people who become versed in a particular form of practice tend to forget that terms which are familiar and useful to them may convey nothing to someone else or may even be affirmatively misleading. For example, the terms "debit" and "credit" are generally incomprehensible to people with no knowledge of bookkeeping and many people who are familiar with them in other contexts would assume that in the context of fiduciary accounting, the receipt of an item is a "credit" to the fund rather than a "debit" to the fiduciary.

While the need for concise presentation makes a certain amount of abbreviation both acceptable and necessary, uncommon abbreviation of matters essential to an understanding of the account should be avoided or explained.

No position is taken for or against the use of direct print-outs from machine accounting systems. The quality of the accounts produced by these systems varies widely in the extent to which they can be understood by persons who are not familiar with them. To endorse or object to a direct print-out because it is produced by machine from previously stored data would miss the essential point by focusing attention upon the manner of preparation rather than the product.

## Fiduciary Accounting Principles

### II. A FIDUCIARY ACCOUNT SHALL BEGIN WITH A CONCISE SUMMARY OF ITS PURPOSE AND CONTENT.

**Commentary:** Very few people can be expected to pay much attention to a document unless they have some understanding of its general purpose and its significance to them. Even with such an understanding, impressions derived from the first page or two will often determine whether the rest is read. The use that is made of these pages is therefore of particular significance.

The cover page should disclose the nature and function of the account. While a complete explanation of the significance of the account and the effect of its presentation upon the rights of the parties is obviously impractical for inclusion at this point, there should be at least a brief statement identifying the fiduciary and the subject matter, noting the importance of examining the account and giving an address where more information can be obtained.

It is assumed that the parties would also have enough information from other sources to understand the nature of their relationship to the fund (e. g., residuary legatee, life tenant, remainderman), the function of the account, and the obligation of the fiduciary to supply further relevant information upon request. It is also assumed that *notice* will be given of any significant procedural considerations such as limitation on the time within which objections must be presented. This would normally be provided by prior or contemporaneous memoranda, correspondence or discussions.

A summary of the account shall also be presented at the outset. This summary, organized as a table of contents, shall indicate the order of the details presented in the account and shall show separate totals for the aggregate of the assets on hand at the beginning of the accounting period; transactions during the period; and the assets remaining on hand at the end of the period. Each entry in the summary shall be supported by a schedule in the account that provides the details on which the summary is based.

## Fiduciary Accounting Principles

### III. A FIDUCIARY ACCOUNT SHALL CONTAIN SUFFICIENT INFORMATION TO PUT THE INTERESTED PARTIES ON NOTICE AS TO ALL SIGNIFICANT TRANSACTIONS AFFECTING ADMINISTRATION DURING THE ACCOUNTING PERIOD.

**Commentary:** The presentation of the information in an account shall allow an interested party to follow the progress of the fiduciary's administration of assets during the accounting period without reference to an inventory or earlier accounting that is not included in the current account.

An account is not complete if it does not itemize assets on hand at the beginning of the accounting period.

#### **Illustrations:**

**3.1 The first account for a decedent's estate or a trust should detail the items received by the fiduciary and for which he is responsible. It should not simply refer to the total amount of an inventory filed elsewhere or assets described in a schedule attached to a deed of trust.**

**3.2 In later accounts for an estate or trust, the opening balance should not simply refer to the total value of principal on hand as shown in detail in the prior account, but should list each item separately.**

Instead of retyping the complete list of assets in the opening balance, the accountant may prefer to attach as an exhibit a copy of the inventory, closing balance from last account, etc., as appropriate.

Transactions shall be described in sufficient detail to give interested parties notice of their purpose and effect. It should be recognized that too much detail may be counterproductive to making the account understandable. In accounts covering long periods or dealing with extensive assets, it is usually desirable to consolidate information. For instance, where income from a number of securities is being accounted for over a long period of time, a statement of the total dividends received on each security with appropriate indication of changes in the number of shares held will be more readily understandable and easier to check for completeness than a chronological listing of all dividends received.

Although detail should generally be avoided for routine transactions, it will often be necessary to a proper understanding of an event that is somewhat out of the ordinary.

#### **Illustrations:**

**3.3 Extraordinary appraisal costs should be shown separately and explained.**

**3.4 Interest and penalties in connection with late filing of tax returns should be shown separately and explained.**

**3.5 An extraordinary allocation between principal and income such as apportionment of proceeds of property acquired on foreclosure should be separately stated and explained.**

**3.6 Computation of a formula marital deduction gift involving non-probate assets should be explained.**

## Fiduciary Accounting Principles

### **IV. A FIDUCIARY ACCOUNT SHALL INCLUDE BOTH CARRYING VALUES — REPRESENTING THE VALUE OF ASSETS AT ACQUISITION BY THE FIDUCIARY — AND CURRENT VALUES AT THE BEGINNING AND END OF THE ACCOUNTING PERIOD.**

**Commentary:** In order for transactions to be reported on a consistent basis, an appropriate carrying value for assets must be chosen and employed consistently.

The carrying value of an asset should reflect its value at the time it is acquired by the fiduciary (or a predecessor fiduciary). When such a value is not precisely determinable, the figure used should reflect a thoughtful decision by the fiduciary. For assets owned by a decedent, inventory values or estate tax values — generally reflective of date of death values — would be appropriate. Assets received in kind by a trustee from a settlor of an inter-vivos trust should be carried at their value at the time of receipt. For assets purchased during the administration of the fund, cost would normally be used. Use of Federal income tax bases for carrying value is acceptable when basis is reasonably representative of real values at the time of acquisition. However, the carry-over basis rules introduced by the Tax Reform Act of 1976 will tend to produce a tax basis that is materially different from the real value of assets owned by a decedent. Use of tax basis as a carrying value under those circumstances could be affirmately misleading to beneficiaries and therefore is not appropriate.

In the Model Account, carrying value is referred to as "fiduciary acquisition value." The Model Account establishes the initial carrying value of assets as their value at date of death for inventoried assets, date of receipt for subsequent receipts and cost for investments. No adjustment is made for subsequent receipts such as sale of rights.

Carrying value would not normally be adjusted for depreciation.

Except for adjustments that occur normally under the accounting system in use, carrying values should generally be continued unchanged through successive accounts and assets should not be arbitrarily "written up" or "written down." In some circumstances, however, with proper disclosure and explanation, carrying value may be adjusted.

#### **Illustrations:**

**4.1 Carrying values based on date of death may be adjusted to reflect changes on audit of estate or inheritance tax returns.**

**4.2 Where appropriate under applicable local law, a successor fiduciary may adjust the carrying value of assets to reflect values at the start of his administration.**

**4.3 Assets received in kind in satisfaction of a pecuniary legacy should be carried at the value used for purposes of distribution.**

Though essential for accounting purposes, carrying values are commonly misunderstood by laymen as being a representation of actual values. To avoid this, the account should include both current values and carrying values.

The value of assets at the beginning and ending of each accounting period is necessary information for the evaluation of investment performance. Therefore, the account should show current values at the start of the period for all assets whose carrying values were established in a prior accounting period.

#### **Illustrations:**

**4.4 The opening balance of the first account of a testamentary trustee will usually contain assets received in kind from the executor. Unless the carrying value was written up at the time of distribution (e.g., 4.2 or 4.3 supra) these assets will be carried at a value established during the executor's administration. The current value at the beginning of the accounting period should also be shown.**

**4.5 An executor's first account will normally carry assets at inventory (date of death) values or cost. No separate listing of current values at the beginning of the accounting period is necessary.**

Current values should also be shown for all assets on hand at the close of the accounting period. The date on which current values are determined shall be stated and shall be the last day of the accounting period, or a date as close thereto as reasonably possible.

Current values should be shown in a column parallel to the column of carrying values. Both columns should be totalled.

In determining current values for assets for which there is no readily ascertainable current value, the source of the value stated in the account shall be explained. The fiduciary shall make a good faith effort to determine realistic values but should not be expected to incur expenses for appraisals or similar costs when there is no reason to expect that the resulting information will be of practical consequence to the administration of the estate or the protection of the interests of the parties.

**Illustrations:**

4.6 When an asset is held under circumstances that make it clear that it will not be sold (e.g., a residence held for use of a beneficiary) the fiduciary's estimate of value would be acceptable in lieu of an appraisal.

4.7 Considerations such as a pending tax audit or offer of the property for sale may indicate the advisability of not publishing the fiduciary's best estimate of value. In such circumstances, a statement that value was fixed by some method such as "per company books", "formula under buy-sell agreement", "300% of assessed value" would be acceptable, but the fiduciary would be expected to provide further information to interested parties upon request.

## Fiduciary Accounting Principles

### V. GAINS AND LOSSES INCURRED DURING THE ACCOUNTING PERIOD SHALL BE SHOWN SEPARATELY IN THE SAME SCHEDULE.

**Commentary:** Each transaction involving the sale or other disposition of securities during the accounting period shall be shown as a separate item in one combined schedule of the account indicating the transaction, date, explanation, and any gain or loss.

Although gains and losses from the sale of securities can be shown separately in accounts, the preferred method of presentation is to present this information in a single schedule. Such a presentation provides the most meaningful description of investment performance and will tend to clarify relationships between gains and losses that are deliberately realized at the same time.

## Fiduciary Accounting Principles

### VI: THE ACCOUNT SHALL SHOW SIGNIFICANT TRANSACTIONS THAT DO NOT AFFECT THE AMOUNT FOR WHICH THE FIDUCIARY IS ACCOUNTABLE.

**Commentary:** Transactions such as the purchase of an investment, receipt of a stock split or change of a corporate name do not alter the total fund for which a fiduciary is accountable but must be shown in order to permit analysis and an understanding of the administration of the fund. These can be best shown in information schedules.

One schedule should list all investments made during the accounting period. It should include those subsequently sold as well as those still on hand. Frequently the same money will be used for a series of investments. Therefore, the schedule should not be totalled in order to avoid giving an exaggerated idea of the size of the fund.

A second schedule (entitled "Changes in Investment Holdings" in the Model Account) should show all transactions affecting a particular security holding such as purchase of additional shares, partial sales, stock splits, change of corporate name, divestment distributions, etc. This schedule, similar to a ledger account for each holding, will reconcile opening and closing entries for particular holdings, explain changes in carrying value and avoid extensive searches through the account for information scattered among other schedules.

## Model Executor's Account

FIRST AND FINAL ACCOUNT OF  
William C. Doe, Executor  
For  
ESTATE OF John Doe, Deceased

Date of Death: November 14, 1978  
Date of Executor's Appointment: November 24, 1978  
Accounting for the Period: November 24, 1978 to  
November 30, 1979

Purpose of Account: William C. Doe, Executor, offers this account to acquaint interested parties with the transactions that have occurred during his administration.  
\*The account also indicates the proposed distribution of the estate.

It is important that the account be carefully examined. Requests for additional information or questions or objections can be discussed with:

[Name of Executor, Counsel or other appropriate person]

[address and telephone number]

[Note: See discussion under Fiduciary Accounting Principal II with respect to presentation of collateral material needed by beneficiaries.]

\*optional — for use if applicable

## Summary of Account

	<i>Page</i>	<i>Current Value</i>	<i>Fiduciary Acquisition Value</i>
*Proposed Distribution to Beneficiaries	12	<u>\$102,974.56</u>	<u>\$ 90,813.96</u>
<b>Principal</b>			
Receipts	3-4		\$160,488.76
Net Gain (or Loss) on Sales or Other Disposition	5		<u>2,662.00</u>
			\$163,150.76
Less Disbursements:			
Debts of Decedent	6	\$ 485.82	
Funeral Expenses	6	1,375.00	
Administration Expenses	6	6,156.34	
Fees	6	<u>11,689.64</u>	<u>19,706.80</u>
Balance before Distributions			\$143,443.96
Distributions to Beneficiaries	7		<u>52,630.00</u>
Principal Balance on Hand	8		\$ 90,813.96
For Information:			
Investments Made	9		
Changes in Investment Holdings	9		
<b>Income</b>			
Receipts	10		\$ 2,513.40
Less Disbursements	11		<u>178.67</u>
Balance Before Distributions			\$ 2,334.73
Distributions to Beneficiaries	11		<u>2,334.73</u>
Income Balance on Hand			-0-
Combined Balance on Hand			<u>\$ 90,813.96</u>

\*Optional — for use if applicable

## Receipts of Principal

<i>Assets Listed in Inventory (Valued as of Date of Death)</i>		<i>Fiduciary Acquisition Value</i>
<b>Cash:</b>		
First National Bank — checking account	\$ 516.93	
Prudent Saving Fund Society — savings account	2,518.16	
Cash in possession of decedent	<u>42.54</u>	\$ 3,077.63
<b>Tangible Personal Property:</b>		
<b>Jewelry —</b>		
1 pearl necklace		515.00
<b>Furniture —</b>		
1 antique highboy	\$ 2,000.00	
1 antique side table	60.00	
1 antique chair	<u>55.00</u>	2,115.00
<b>Stocks:</b>		
200 shs. Home Telephone & Telegraph Co., common	\$ 25,000.00	
50 shs. Best Oil Co., common	5,000.00	
1,000 shs. Central Trust Co., capital	50,850.00	
151 shs. Electric Data Corp., common	1,887.50	
50 shs. Fabulous Mutual Fund	1,833.33	
200 shs. XYZ Corporation, common	<u>6,000.00</u>	90,570.83
<b>Realty:</b>		
Residence — 86 Norwood Road West Hartford, CT		50,000.00
	<b>Total Inventory</b>	<u>\$146,278.46</u>
<i>Receipts Subsequent to Inventory (Valued When Received)</i>		
2/22/79	Proceeds of Sale — Best Oil Co., rights to subscribe received 2/15/79	\$ 50.00*
3/12/79	Fabulous Mutual Fund, capital gains dividend received in cash	32.50
5/11/79	Refund of overpayment of 1978 U.S. individual income tax	127.80
9/25/79	From Richard Roe, Ancillary Administrator, net proceeds on sale of oil and gas leases in Jefferson Parish, Louisiana	<u>10,000.00</u> \$ 10,210.30

\*Proceeds of sale of rights may be treated as an additional receipt, as illustrated here, or may be applied in reduction of carrying value as illustrated on page T-8 of the Model Trustee's Account. Either method, consistently applied, acceptable.

**Adjustment to Carrying Values**

Increased value of 200 shs. XYZ Corporation,  
common stock upon audit of Federal Estate Tax Return:

Adjusted value upon audit	\$ 10,000.00	
Value per Inventory	<u>6,000.00</u>	\$ 4,000.00
Total Receipts of Principal		<u>\$160,488.76</u>

*Note:* To facilitate preparation, the accountant may prefer to detail the starting balance by attaching a copy of the inventory as an exhibit. (This would be inappropriate if the inventory is prepared in a form that includes substantial extraneous material or does not list assets in an orderly manner.) The opening entry would then read:

“Assets Listed in Inventory per copy attached \$146,278.46”

## Gains and Losses on Sales or Other Dispositions

		<i>Gain</i>	<i>Loss</i>
2/7/79	100 shs. Home Telephone & Telegraph Co., common		
	Net Proceeds	\$14,025.00	
	Fiduciary Acquisition Value	<u>12,500.00</u>	\$ 1,525.00
3/15/79	1,000 shs. Central Trust Co., capital		
	Net Proceeds	27,467.00	
	Fiduciary Acquisition Value	<u>25,425.00</u>	2,042.00
3/15/79	200 shs. XYZ Corporation, common		
	Fiduciary Acquisition Value	10,000.00	
	Net Proceeds	<u>9,000.00</u>	\$ 1,000.00
5/21/79	35 shs. Electric Data Corp., common		
	Net Proceeds	530.00	
	Fiduciary Acquisition Value	<u>437.50</u>	92.50
7/20/79	\$10,000 U.S. Treasury Bonds, 3%, due 7/1/82		
	Net Proceeds	10,000.00	
	Fiduciary Acquisition Value	<u>9,997.50</u>	2.50
	Total Gains and Losses	\$ 3,662.00	\$ 1,000.00
	Less Loss		<u>1,000.00</u>
	Net Gain	<u>\$ 2,662.00</u>	

## Disbursements of Principal

	<b>Debts of Decedent</b>		
1/25/79	John T. Hill, M.D., professional services	\$ 250.00	
4/12/79	State Tax Commissioner, 1978 state capital gains tax	156.00	
1/25/79	Thomas Pharmacy, prescriptions	23.82	
2/1/79	Sanders Hardware, purchases per bill dated 12/15/78	<u>56.00</u>	\$ 485.82
	<b>Funeral Expenses</b>		
1/10/79	Smith Funeral Home, services	1,200.00	
2/15/79	Jones Memorials, grave marker	<u>175.00</u>	1,375.00
	<b>Administration Expenses</b>		
11/14/78	Clerk of Court, probate costs	72.00	
2/22/79	Henry Smith, appraisal of jewelry and antiques	50.00	
11/16/79	Arden, Miles & Solomon, disbursements	56.00	
	Various miscellaneous affidavits, registered mail, toll telephone charges and other costs	16.25	194.25
	<b>Federal and State Taxes</b>		
8/13/79	State Tax Commissioner, state death tax	2,501.33	
8/13/79	Internal Revenue Service, federal estate tax	2,663.29	
11/15/79	Internal Revenue Service, U.S. fiduciary income tax for fiscal year ending 7/31/78 (attributable to capital gains)	283.84	
11/23/79	Internal Revenue Service, deficiency in Federal Estate Tax interest 8/14/79 to 11/24/79	\$505.24 <u>8.39</u>	5,962.09
	<b>Fees</b>		
11/16/79	Albert Schryver, Esq., fee as Guardian ad litem	375.00	
11/16/79	William C. Doe, Executor's principal commission 5% on \$50,000 4% on \$50,000 3% on \$60,488	6,314.64	
11/16/79	Arden, Miles & Solomon, attorney's fees	<u>5,000.00</u>	<u>11,689.64</u>
			<u>\$ 19,706.80</u>

## Distributions of Principal to Beneficiaries

		TO: Janet Doe. in satisfaction of gift under Article FIRST of Will		
12/1/78	1 pearl necklace	\$	515.00	
	1 antique highboy		2,000.00	
	1 antique side table		60.00	
	1 antique side chair		55.00	
			2,630.00	\$ 2,630.00
		TO: Janet Doe. in satisfaction of gift under Article SECOND of Will		
12/1/78	Residence — 86 Norwood Road West Hartford, CT			50,000.00
	Total Distributions of Principal to Beneficiaries			\$ 52,630.00

## Principal Balance on Hand

	<i>Current Value 12/10/79 or as noted</i>	<i>Fiduciary Acquisition Value</i>
Cash	\$ 5,305.63	\$ 5,305.63
Stocks:		
50 shs. Best Oil Co., common	4,500.00	5,000.00
1,000 shs. Central Trust Co., capital — value at most recent sale, 9-18-79	32,168.76	25,425.00
116 shs. Electric Data Corp., common — not traded, value per company books, 12/29/78	1,684.00	1,450.00
50 shs. Fabulous Mutual Fund	4,016.17	1,833.33
200 shs. Home Telephone & Telegraph Co., common	16,000.00	12,500.00
\$40,000 U.S. Treasury Bills due 12/14/79	39,300.00	39,300.00
	<u>\$102,974.56</u>	<u>\$ 90,813.96</u>

## Information Schedules — Principal

			<i>Cost</i>
	<b>Investments Made</b>		
2/1/79	\$10,000 U.S. Treasury Bonds, 3%	\$ 10,022.50	
	Less accrued interest collected 6/29/79	<u>25.00</u>	\$ 9,997.50
9/14/79	\$40,000 U.S. Treasury Bills, due 12/14/79		39,300.00
	<b>Changes in Investment Holdings</b>		
	<b>Central Trust Co.</b>		
11/14/78	1,000 shs. Capital stock, par \$5 inventoried		\$ 50,850.00
1/15/79	1,000 shs. additional received in 2 - 1 split, par reduced to \$2.50		
	2,000 shs. par \$2.50 carried at		<u>50,850.00</u>
3/15/78	1,000 shs. sold, carried at		<u>25,425.00</u>
	<u>1,000</u> shs. remaining, carried at		<u>\$ 25,425.00</u>
	<b>Home Telephone &amp; Telegraph Co.</b>		
11/14/78	200 shs. common par \$10, inventoried		\$ 25,000.00
2/7/79	100 shs. sold, carried at		<u>12,500.00</u>
	100 shs. remaining, carried at		12,500.00
3/30/79	100 shs. additional received in 2 - 1 split, par reduced to \$5		
	<u>200</u> shs. par \$5 carried at		<u>\$ 12,500.00</u>

## Receipts of Income

## Dividends

Best Oil Co., common 1/2/79 to 10/2/79 — 50 shs.		\$	20.00	
Central Trust Co., common 1/15/79 — 2,000 shs.	\$600.00			
4/13/79 to 10/15/79 — 1,000 shs.	<u>900.00</u>		1,500.00	
Electric Data Corp., common 12/29/78 to 3/30/79 — 151 shs.	30.20			
6/29/79 to 9/28/79 — 116 shs.	<u>23.20</u>		53.40	
Fabulous Mutual Fund 3/12/79 to 9/12/79 — 50 shs.			140.00	
Home Telephone & Telegraph Co., common 2/1/79 — 200 shs.	225.00			
5/1/79 to 11/1/79 — 200 shs. (after stock split)	<u>450.00</u>		<u>675.00</u>	\$ 2,388.40
<b>Interest</b>				
U.S. Treasury Bonds, 3%, due 7/1/82 6/29/79 — \$10,000	150.00			
Less: accrued interest paid on purchase 2/1/79	<u>(25.00)</u>		<u>125.00</u>	<u>125.00</u>
	<b>Total</b>			<b>\$ <u>2,513.40</u></b>

## Disbursements of Income

11/15/79	U.S. Fiduciary Income Tax for fiscal year ended 7/31/79 (allocable to income)	\$ 53.00
	To be paid:	
	William C. Doe — Executor's income commission	<u>125.67</u>
	5% on \$2,513.40	<u>\$ 178.67</u>

## Distributions of Income to Beneficiaries

	TO: William C. Doe, Trustee under Article FOURTH (A) for Walter Doe	
11/16/79	Cash	\$ 1,167.37
	TO: Sharon Doe	
11/16/79	Cash	<u>1,167.36</u>
	<b>Total</b>	<u>\$ 2,334.73</u>

## Proposed Distributions to Beneficiaries

	<i>Current Value 12/10/79 or as noted</i>	<i>Fiduciary Acquisition Value</i>
Per Article FOURTH (A) of Will:		
TO: William C. Doe, Trustee for Walter Doe		
25 shs. Best Oil Co., common	\$ 2,250.00	\$ 2,500.00
500 shs. Central Trust Co., capital	16,084.38*	12,712.50
58 shs. Electric Data Corp., common	842.00*	725.00
25 shs. Fabulous Mutual Fund	2,008.09	916.67
100 shs. Home Telephone & Telegraph Co., common	8,000.00	6,250.00
\$20,000 U.S. Treasury Bills, due 12/14/79	19,650.00	19,650.00
Cash	<u>2,652.81</u>	<u>2,652.81</u>
	<b>\$ 51,487.28</b>	<b>\$ 45,406.98</b>
Per Article FOURTH (B) of Will:		
TO: Sharon Doe		
25 shs. Best Oil Co., common	\$ 2,250.00	\$ 2,500.00
500 shs. Central Trust Co., capital	16,084.38*	12,712.50
58 shs. Electric Data Corp., common	842.00*	725.00
25 shs. Fabulous Mutual Fund	2,008.09	916.67
100 shs. Home Telephone & Telegraph Co., common	8,000.00	6,250.00
\$20,000 U.S. Treasury Bills, due 12/14/79	19,650.00	19,650.00
Cash	<u>2,652.81</u>	<u>2,652.81</u>
	<b>\$ 51,487.28</b>	<b>\$ 45,406.98</b>
<b>Total</b>	<b><u>\$102,974.56</u></b>	<b><u>\$ 90,813.96</u></b>

\*Central Trust Co. — valued at most recent sale, 9/18/79

\*Electric Data Corp. — not traded, valued per company books 12/29/78

[Note: I.R.C. § 6039A added by the Tax Reform Act of 1976 requires that beneficiaries be advised of the tax basis of property distributed in kind. It is assumed that this information will be supplied collaterally in whatever form may be prescribed.]

WILLIAM C. DOE, Executor under the Last Will and Testament of JOHN DOE, deceased, hereby declares under oath [penalties of perjury] that he has fully and faithfully discharged the duties of his office; that the foregoing First and Final Account is true and correct and fully discloses all significant transactions occurring during the accounting period; that all known claims against the estate have been paid in full; that, to his knowledge, there are no claims now outstanding against the Estate; and that all taxes presently due from the estate have been paid.

\_\_\_\_\_  
WILLIAM C. DOE  
Executor

Subscribed and sworn to  
by WILLIAM C. DOE before  
me this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

\_\_\_\_\_  
Notary Public

\*Execution under oath before a notary or under penalty of perjury is optional, depending on rules of the local jurisdiction.

# Model Trustee's Account

## FIRST AND FINAL ACCOUNT

For the "Marital Trust" Established under the Will of John H. Doe, Deceased

Stated by UPSTANDING TRUST COMPANY, Surviving Trustee and  
Mary W. Doe (Deceased Trustee, Died December 30, 1977)  
presented on her behalf by UPSTANDING TRUST COMPANY,  
as Executor of her Will.

John H. Doe, Died	January 30, 1965
Date of Trustees' first receipt of funds	February 11, 1967
Account Stated for the Period	February 11, 1967 to June 15, 1979

Purpose of Account: The Trustees offer this account to acquaint interested parties with the transactions that have occurred during their administration of the trust.  
It is important that the account be carefully examined. Requests for additional information or questions or objections can be discussed with:

[Name of Trustee, Counsel or other appropriate person]

[address and telephone number]

[Note: See discussion under Fiduciary Accounting Principal II with respect to presentation of collateral material needed by beneficiaries.]

## Summary of Account

	<i>Page</i>	<i>Current Value</i>	<i>Fiduciary Acquisition Value</i>
*Proposed Distributions to Beneficiaries	13	<u>\$293,572.79</u>	<u>\$261,006.44</u>
<b>Principal</b>			
Receipts	3		\$158,259.02
Net Gain (or Loss) on Sales or Other Disposition	4		<u>113,549.47</u>
			\$271,808.49
General Disbursements	5	77.36	
Fees	5	<u>4,300.00</u>	<u>4,377.36</u>
Balance before Distributions			\$267,431.13
Distributions to Beneficiaries	6		<u>10,703.79</u>
Principal Balance on Hand	7		\$256,727.34
For Information:	8-11		
Investments Made	8		
Changes in Investment Holdings	8-11		
<b>Income</b>			
Receipts (see note on Page 12 about waiver)	12		\$ 5,907.25
Less Disbursements	12		<u>227.96</u>
Balance before Distributions			\$ 5,679.29
Distributions to Beneficiaries	12		<u>1,400.19</u>
Income Balance on Hand	12		\$ 4,279.10
Combined Balance on Hand			<u>\$261,006.44</u>

\*Optional — for use if applicable.

## Receipts of Principal

Assets Awarded trustees by adjudication dated January 30, 1967,  
of Smith, J., Upon the First Account of the executors and the  
schedule of distribution pursuant thereto:

1. Premises 789 Main Street, Media, PA	\$10,000.00	
2. \$7,000 face value, Bethlehem, PA General Bonds 1.75%, due 4/1/1968	6,965.00	
3. \$20,000 face value, Ohio Turnpike Commission Project One bonds 3.25%, due 6/1/2000	18,025.00	
4. 352 shs. American Telephone & Telegraph Co., capital	54,340.00	
5. 703 shs. X Y Z & Co., common	67,663.75	
6. 5 shs. Southwest Rodeo Oil Co., common	1.00	
7. Checking account, Upstanding Trust Company	<u>264.27</u>	\$157,259.02
Other Receipts:		
3/15/67 Federal Estate Tax Refund		<u>1,000.00</u>
		<u>\$158,259.02</u>

*Note:* To facilitate preparation the accountant may prefer to detail the starting balance by attaching as an exhibit a copy of the closing balance from the last account, schedule of assets in the deed, etc., as appropriate. The opening entry would then read:

“Assets awarded by adjudication dated January 30, 1967, of Smith J., upon the First Account of the executors per schedule of distribution pursuant thereto, copy attached \$158,259.02.”

## Gains and Losses on Sales or Other Dispositions

			<i>Gain</i>	<i>Loss</i>
7/2/67	103 shs. X Y Z & Co., common			
	Net Proceeds	\$25,614.54		
	Fiduciary Acquisition Value	<u>9,913.75</u>	\$15,700.79	
7/11/67	5 shs. Southwest Rodeo			
	Oil Co., common			
	Company declared bankrupt	0.00		
	Fiduciary Acquisition Value	<u>1.00</u>		\$ 1.00
4/6/68	100 shs. X Y Z & Co., common			
	Net Proceeds	22,226.25		
	Fiduciary Acquisition Value	<u>9,625.00</u>	12,601.25	
12/29/74	\$20,000 face value, Ohio			
	Tumpike Commission Project			
	One bonds due 6/1/1980			
	Net Proceeds	18,450.00		
	Fiduciary Acquisition Value	<u>18,025.00</u>	425.00	
6/19/78	500 shs. X Y Z & Co., common			
	Net Proceeds	56,337.21		
	Fiduciary Acquisition Value	<u>1.00</u>	56,336.21	
9/22/78	852 shs. American Telephone &			
	Telegraph Co., capital			
	Net Proceeds	39,503.92		
	Fiduciary Acquisition Value	<u>19,816.70</u>	19,687.22	
11/17/78	Premises 789 Main Street, Media, PA			
	Sold receiving Purchase Money			
	Mortgage	15,000.00		
	Cash	<u>5,000.00</u>		
	Total	20,000.00		
	Less expense of			
	Sale:			
	Commission	1,000.00		
	Transfer Tax	<u>200.00</u>	1,200.00	
	Balance	18,800.00		
	Fiduciary Acquisition Value	<u>10,000.00</u>	8,800.00	
	Total Gains and Losses		\$113,550.47	\$ 1.00
	Less Loss		<u>1.00</u>	
	Net Gain		<u>\$113,549.47</u>	

## Disbursements of Principal

**General Disbursements**

5/15/78	Fire Insurance, 789 Main Street, Media, PA		\$ 50.00
6/15/79	Reimbursement to Smith, Jones and Brown, Esquires, for Miscellaneous expenses, 2/11/67 to date:		
	Postage and Insurance	\$ 26.21	
	Telephone	<u>1.15</u>	<u>27.36</u>
	Total		\$ 77.36
<b>Fees</b>			
6/15/79	Smith, Jones and Brown, Esquires, Attorneys' Fee		\$ 4,300.00
			<u>\$ 4,377.36</u>

## Distributions of Principal to Beneficiaries

		TO: Mary W. Doe	
7/1/67	\$7,000 face value Bethlehem, PA. General bonds 1.75%, due 4/1/75	\$ 6,965.00	
		<u>238.79</u>	\$ 7,203.79
7/2/67	Cash		
		TO: XYZ Charity	
5/4/79	Advance distribution, cash		<u>3,500.00</u>
	<b>Total Distributions of Principal to Beneficiaries</b>		<u><u>\$ 10,703.79</u></u>

## Principal Balance on Hand

	<i>Current Value</i>	<i>Fiduciary Acquisition Value</i>
\$20,000 face value, Indiana Toll Road Commission East/West Revenue Bonds, 3.5%, due 1/1/2002	\$ 13,600.00	\$ 17,275.00
1,260 shs. American Telephone & Telegraph Company, capital	57,015.00	29,306.40
680 shs. A B C Corp., common	56,355.00	48,124.00
Mortgage, 789 Main Street, Media, PA, face amount \$15,000 reduced to	14,750.00	14,750.00
\$120,000 face value, A B C Corp. demand note	120,000.00	120,000.00
Checking account, Upstanding Trust Company	27,271.94	27,271.94
Total	<u>\$288,991.94</u>	<u>\$256,727.34</u>

## Information Schedules — Principal

		<i>Cost</i>
<b>Investment Made</b>		
12/28/74	\$20,000 Indiana Toll Rd. Comm. East/West Revenue Bonds, 3.5%, due 1/1/2002 Bought at face value	\$ 17,275.00
6/29/78	\$50,000 Commercial Credit Co., demand note	50,000.00
8/18/78	\$70,000 U.S. Treasury Bills due 11/19/78	68,000.00
9/28/78	\$120,000 A B C Corp., demand note	120,000.00
<b>Changes in Investment Holdings</b>		
2/11/67	American Telephone & Telegraph Company, common	
2/11/67	352 shs. awarded	\$ 54,340.00
4/24/67	704 shs. received in three for one split	0.00
	1,056 shs. carried at	54,340.00
3/22/69	1,056 rights to subscribe to additional stock sold for	1,484.41*
		52,855.59
3/12/72	1,056 rights to subscribe to additional stock sold for	2,507.00
		50,348.59
6/22/72	1,056 shs. received in two for one split	0.00
	2,112 shs. carried at	50,348.59
5/5/78	2,112 rights to subscribe to additional stock sold for	1,225.49*
		49,123.10
9/22/78	852 shs. sold for	\$39,503.92
	Less Gain on Sale	19,687.22
	<u>1,260 shs. carried at</u>	<u>\$ 29,306.40</u>

\*Proceeds of sale of rights may be applied in reduction of carrying value as illustrated here, or may be treated as an additional receipt, as illustrated on page E-3 of the Model Executor's Account. Either method, consistently applied, is acceptable.

	<b>Bethlehem, PA, General bonds 1.75%, due 4/1/1968</b>		
2/11/67	\$7,000 face value awarded		\$ 6,965.00
7/1/67	\$7,000 face value distributed		<u>6,965.00</u>
	<u>0</u> No Longer held		<u>\$ 0.00</u>
	<b>Commercial Credit Co., demand note</b>		
6/29/78	\$50,000 face value bought at		\$ 50,000.00
8/9/78	\$50,000 face value called at		<u>50,000.00</u>
	<u>0</u> No Longer held		<u>0</u>
	<b>X Y Z &amp; Co., common</b>		
2/11/67	703 shs. awarded		\$ 67,663.75
7/2/67	103 shs. sold for	\$25,614.54	
	Less gain on sale	<u>15,700.79</u>	<u>9,913.75</u>
	600 shs. carried at		\$ 57,750.00
4/6/68	100 shs. sold for	\$22,226.25	
	Less gain on sale	<u>12,601.25</u>	<u>9,625.00</u>
	500 shs. carried at		\$ 48,125.00
7/9/70	250 shs. A B C Corp., common received @ 47.6875 in one-half for one divestment distribution		<u>11,921.88</u>
			\$ 36,203.12
1/6/72	180 shs. A B C Corp., common received @ 79 in a 0.36 share for one divestment distribution		<u>14,220.00</u>
			\$ 21,983.12
1/4/73	*250 shs. A B C Corp., common received @ 96.0625 in a one-half for one divestment distribution, normally \$24,015.62, of which the following was applied to account value.		<u>\$ 21,982.12</u>
			1.00
6/19/78	500 shs. sold for	\$56,337.21	
	Less gain on sale	<u>56,336.21</u>	<u>1.00</u>
	<u>0</u> No Longer held		<u>\$ 0.00</u>

This example is included to illustrate treatment of a case where the value of distribution exceeds carrying value.

	<b>A B C Corp., common</b>		
7/9/70	250 shs. received in distribution on 500 shs. X Y Z & Co., common		\$ 11,921.88
1/6/72	180 shs. received in similar distribution		<u>14,220.00</u>
	430 shs. carried at		26,141.88
1/4/73	250 shs. received in similar distribution		<u>21,982.12</u>
6/15/79	34 shs. received as 5% stock dividend, transferred to income		
	<u>680 shs. carried at</u>		<u>\$ 48,124.00</u>
	<b>789 Main Street, Media, PA</b>		
2/11/67	Awarded		\$ 10,000.00
11/17/78	Sold for purchase money mortgage of \$15,000 and cash of \$5,000	20,000.00	
	Less settlement costs itemized in principal account	<u>1,200.00</u>	
	Balance	18,800.00	
	Less Gain on Sale	<u>8,800.00</u>	<u>10,000.00</u>
	No Longer Held		<u><u>\$ 0.00</u></u>
	<b>Mortgage on 789 Main Street, Media, PA</b>		
11/17/78	\$15,000 mortgage received on sale of said premises		\$ 15,000.00
6/15/79	250 principal received on account		<u>250.00</u>
	\$14,750 balance remaining		<u>\$ 14,750.00</u>
	<b>Ohio Turnpike Commission Project One bonds, 3.25%, 6/1/2000</b>		
2/11/67	\$20,000 face value awarded		\$ 18,025.00
12/29/74	\$20,000 face value sold for	\$18,450.00	
	Less gain on sale	<u>425.00</u>	<u>18,025.00</u>
	<u>0</u> No Longer Held		<u>\$ 0.00</u>

	<b>Southwest Rodeo Oil Co., common</b>	
12/11/67	5 shs. Awarded	\$ 1.00
7/11/67	_____ Company Declared Bankrupt	<u>1.00</u>
	<u>0</u>	<u>0.00</u>

	<b>U.S. Treasury bonds due 11/19/1975</b>	
8/18/78	\$70,000 face value bought at	\$ 68,000.00
11/17/78	\$70,000 received at maturity, of which	
	_____ principal is	\$ 68,000.00
	<u>0</u>	<u>0.00</u>

## Receipts of Income

### Waiver of Income Accounting

An income accounting having been waived for the period February 11, 1967 to May 30, 1979, a limited schedule of receipts of income follows:

6/1/79	Balance per last income statement rendered	\$ 1,773.25
	<b>Dividend</b>	
6/8/79	A B C Corp. on 680 shs.	578.00
6/15/79	34 shs. A B C Corp. — 5% stock dividend @ \$79.00	2,686.00
	<b>Interest</b>	
6/1/79	Indiana Toll Road Commission	350.00
6/15/79	A B C Corp., demand note	<u>520.00</u>
	<b>Total Income Receipts</b>	<u><u>\$ 5,907.25</u></u>

## Disbursements of Income

6/1/79	Patrick Green, tax collector, 1979 personal property tax	\$ 155.56	
6/15/79	Upstanding Trust Co., — 5% commission on income collected 3/30/79 — 5/31/79	<u>72.40</u>	<u>\$ 227.96</u>

## Distributions of Income to Beneficiaries

6/1/79	TO: Upstanding Trust Co., executor under the will of Mary W. Doe, deceased, on income arising before 1/1/1978 Cash	\$ 650.19	
6/15/79	TO: XYZ Charity Cash	<u>750.00</u>	<u>\$ 1,400.19</u>

## Balance of Income on Hand

		<i>Current Value</i>	<i>Fiduciary Acquisition Value</i>
6/15/79	Cash	\$ 1,593.10	\$ 1,593.10
6/15/79	34 shs. A B C Corp., common	<u>2,987.75</u>	<u>2,686.00</u>
		<u><u>\$ 4,580.85</u></u>	<u><u>\$ 4,279.10</u></u>

## PROPOSED DISTRIBUTIONS TO BENEFICIARIES

Per Article FIFTH of Will:

Mary W. Doe not having exercised her general power of appointment granted to her over the assets of the Marital Trust, the entire fund on hand is to be distributed pursuant to the terms of Article FIFTH of the Will to XYZ charity.

### PRINCIPAL

	<i>Current Value</i>	<i>Fiduciary Acquisition Value</i>
\$20,000 face value, Indiana Toll Road Commission East/West Revenue Bonds, 3.5%, due 1/1/2002	\$ 13,600.00	\$ 17,275.00
1,260 shs. American Telephone & Telegraph Company, capital	57,015.00	29,306.40
680 shs. ABC Corp., common	56,355.00	48,124.00
Mortgage, 789 Main Street, Media, PA, face amount \$15,000 reduced to	14,750.00	14,750.00
\$120,000 face value, ABC Corporation demand note	120,000.00	120,000.00
Checking account, Upstanding Trust Company	<u>27,271.94</u>	<u>27,271.94</u>
Total Principal	<u>\$288,991.94</u>	<u>\$256,727.34</u>

### INCOME

6/15/79	Cash	\$ 1,593.10	\$ 1,593.10
6/15/79	34 shs. ABC Corp.	<u>2,987.75</u>	<u>2,686.00</u>
	Total Income	\$ 4,580.85	\$ 4,279.10
	Combined Total	<u>\$293,572.79</u>	<u>\$261,006.44</u>

WALTER TRUST, Vice President of Upstanding Trust Company, Surviving Trustee under the Will of JOHN H. DOE and Executor under the Will of Mary C. Doe, Deceased, Trustee under the Will of John H. Doe, hereby declares under (oath)\* (penalties of perjury) that said Trustees have fully and faithfully discharged the duties of their office; that the foregoing First and Final Account is true and correct, and fully discloses all significant transactions occurring during the accounting period; that all known claims against the trust have been paid in full; that, to his knowledge, there are no claims now outstanding against the Trust Estate; and that all taxes presently due from the trust have been paid.

\_\_\_\_\_  
WALTER TRUST

Subscribed and sworn to  
by WALTER TRUST before  
me this \_\_\_\_\_ day of \_\_\_\_\_, 1980.

\_\_\_\_\_  
Notary Public

\*Execution under oath before a notary or under penalties of perjury is optional, depending on rules of the local jurisdiction.

## MACCARLEY, PHELPS &amp; ROSEN

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

3800 ALAMEDA AVENUE, SUITE 1150  
BURBANK, CALIFORNIA 91505-4331TELEPHONES  
(818) 841-2900  
(213) 984-1234MARK MACCARLEY  
EDWARD M. PHELPS  
WALTER K. ROSEN  
RUTH A. PHELPS  
DEBORAH BALLINS SCHWARZ  
THOMAS J. MILHAUPT

August 21, 1987

California Law Revision Commission  
4000 Middlefield Road  
Suite D-2  
Palo Alto, California 94303-4739RE: Tentative Recommendation Relating to Probate  
Law and Procedure Accounts

Dear Sir/Madame:

I have read the tentative recommendation relating to probate law and procedure on accounts. I have two comments.

In the comment to proposed Section 10900 it states that actual notice was given to known creditors. I think this is a significant change and needs to be highlighted. I also agree with it.

I have a question on proposed Section 11001(B). The last sentence states "the amount awarded that remains unsatisfied is a charge against any interest of the contestant in the estate." Remains unsatisfied after what? Is the bulk of it to be paid from the estate as a whole? Are the fees only awarded against that contestants interest in the estate? I think this should be clarified. I think it should be stated as follows: "The amount awarded is a charge against interest of the contestant in the estate".

I approve of this tentative recommendation.

Very truly yours,

MACCARLEY, PHELPS & ROSEN  
A Professional Law CorporationBy: Ruth A. Phelps  
Ruth A. PhelpsRAP:mr  
1951m

**ROBERT K. MAIZE, JR.**  
A PROFESSIONAL LAW CORPORATION

1604 FOURTH STREET  
POST OFFICE BOX 11648  
SANTA ROSA, CALIFORNIA 95406

(707) 544-4462

August 26, 1987

California Law Revision Commission  
4000 Middlefield Road, Ste. D-2  
Palo Alto, CA 94202-4739

Re: Probate Law and Procedures -- Accounts

Gentlemen:

I have reviewed your tentative recommendations in regards to accounts. I have some thoughts in regards to accounts in general, the legal purpose for having an account and their other uses.

Historically the form of the account has been an after-the-fact report of property inventoried plus receipts less disbursements and then an approval of that report. However, if the fiduciary accounting is to be made more analogous to standard type of financial statements some provisions should be included for long-term liabilities (creditor's claims) that are not paid off during the term of the administration because these items will effect distributions being ordered by the court based upon the accounting.

However, for the past year I have been considering organizing a system (hopefully computer based) for maintaining an account that would provide all the information needed for the account and related matters. The related matters would include the estate tax return including nonprobate assets, the fiduciary income tax returns for the estate and testamentary trusts; tracing the deduction of administration of expenses on the estate tax return and the income tax return, providing a check on the receipt of income including rents, interest on bonds and bank accounts and dividends on stock, and providing a report to the personal representative and interested persons as to the effectiveness of the administration of the estate assets. Further, these same considerations and others should be included in the system to take into consideration the differences between revocable and irrevocable inter vivos trusts, testamentary trusts and conservatorships.

In regards to preparing the accounting for the estate it is also necessary on occasions to trace receipts and disbursements by particular assets because some plans for testamentary disposition

August 26, 1987

Page 2

of the assets include gifts of specific assets, which would include the receipts from those assets after the date of death.

It is my opinion that the accounting needs to be viewed in the context broader than the disclosure of information sufficient to obtain a discharge of the personal representative and needs to be also viewed from the prospective of the decisions that will be made based upon the accounting. Therefore, I would recommend that the contents of the accounting as provided in Probate Code §10900 include the following items:

1. The fair market value of the remaining property -- So that information would be available to evaluate the personal representatives management of the estate and any in-kind distribution proposed by the personal representative.
2. Unpaid liabilities and claims against the estate, and the properties which are subject to those liabilities or claims -- So that information would be available to evaluate the personal representatives management of the estate and any in-kind distribution proposed by the personal representative.
3. A summary of receipts and disbursements relating to assets that are the subject of specific gifts -- This would provide the information needed when those assets are distributed.

Very truly yours,

ROBERT K. MAIZE, JR.,  
A Professional Law Corporation

by:   
Robert K. Maize, Jr.

RKM:jas

STANLEY L. HAHN \*  
 DAVID K. ROBINSON \*  
 LOREN H. RUSSELL \*  
 LEONARD M. MARANGI \*  
 WILLIAM S. JOHNSTONE, JR. \*  
 GEORGE R. BAFFA \*  
 DON MIKE ANTHONY \*  
 ROBERT W. ANDERSON  
 WILLIAM K. HENLEY \*  
 CLARK R. BYAM \*  
 RICHARD L. HALL \*  
 SUSAN T. HOUSE \*  
 CARL J. WEST \*  
 DIANNE H. BUKATA  
 GENE E. GREGG, JR.  
 R. SCOTT JENKINS  
 CHARLES J. GREAVES  
 DALE R. PELCH  
 WILLIAM S. GARR

\*PROFESSIONAL CORPORATION

## HAHN & HAHN

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

LAWYERS

SUITE 900  
 301 EAST COLORADO BOULEVARD  
 POST OFFICE BIN B  
 PASADENA, CALIFORNIA 91109

August 28, 1987

BENJAMIN W. HAHN, 1868-1932  
 EDWIN F. HAHN, 1872-1951  
 HERBERT L. HAHN, 1893-1982

OF COUNSEL

GEORGE E. ZILLGITT

RETIRED PARTNERS

EDWIN F. HAHN, JR.

A. HALE DINSMOOR

RICHARD G. HAHN

TELEPHONES

(818) 796-9123

(213) 681-6948

CABLE ADDRESS

HAHNLAW

TELECOPIER

(818) 449-7357

California Law Revision Commission  
 4000 Middlefield Road, Suite D-2  
 Palo Alto, CA 94303-4739

Attention: Mr. John H. DeMouilly

Re: CLRC Recommendation Re: Accounts  
 Memorandum L-1027

Dear John:

On behalf of the Executive Committee of the Probate and Trust Section of the Los Angeles County Bar, I would like to make several comments regarding the Commission's Tentative Recommendation regarding Accounts. They will be discussed by code section.

Section 10900(b). I would suggest that the phrase in the last line of that section "due date of the claim" be revised to say "due date for the filing of the claim." The first few times I read this section I was confused because I thought this section related to "payment" of the claim rather than its filing date.

I am delighted with the modifications to Section 10954 which have been made since the last CLRC meeting. I believe you have successfully addressed the concern I expressed about not requiring waivers from estate beneficiaries and creditors whose interests are proposed to be satisfied in full in the account.

Section 11000(b). There is a typographical error in the word "following."

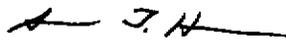
Section 11001(b). Do we want expressly to include referee's fees amongst the fees, commissions, and costs incurred to defend the account? Because there is specific provision for

California Law Revision Commission  
Attention: Mr. John H. DeMouilly  
August 28, 1987

such referee fees under Section 11002, it may be wise to make clear that such cost is intended to be included under Section 11001. Presumably this end could be accomplished either by including the language under Subsection (b) or clarifying the question in the comment.

With these few minor exceptions, this Recommendation appears in excellent form for presentation to the Legislature.

Very truly yours,



Susan T. House  
of HAHN & HAHN

STH:mc  
10275L

cc: Mr. Richard L. Stack



Writer's Direct Dial Number

OFFICES OF  
**THE COUNTY COUNSEL**  
**COUNTY OF ORANGE**

10 CIVIC CENTER PLAZA  
 MAILING ADDRESS: P.O. BOX 1379  
 SANTA ANA, CALIFORNIA 92702-1379

714/834-3300

**ADRIAN KUYPER**  
 COUNTY COUNSEL  
**WILLIAM J. McCOURT**  
 CHIEF ASSISTANT  
**ARTHUR C. WAHLSTEDT, JR.**  
**LAURENCE M. WATSON**  
 ASSISTANTS

SEP 03 1987

September 1, 1987

C E I

California State Law Revision Commission  
 4000 Middlefield Road, Suite D-2  
 Palo Alto, California 94303-4739

<b>VICTOR T. BELLERUE</b>	<b>SUSAN STROM</b>
<b>JOHN R. GRISET</b>	<b>DAVID BEALES</b>
<b>EDWARD N. DURAN</b>	<b>TERRY C. ANDRUS</b>
<b>IRYNE C. BLACK</b>	<b>CLAUDIA L. COWAN</b>
<b>RICHARD D. OVIEDO</b>	<b>JAMES L. TURNER</b>
<b>O.M. MOORE</b>	<b>PETER L. COHON</b>
<b>BENJAMIN P. DE MAYO</b>	<b>NICHOLAS S. CHRISOS</b>
<b>HOWARD SERBIN</b>	<b>DAVID G. EPSTEIN</b>
<b>DANIEL J. DIDIER</b>	<b>THOMAS F. MORSE</b>
<b>GENE AXELROD</b>	<b>WANDA S. FLORENCE</b>
<b>ROBERT L. AUSTIN</b>	<b>HOPE E. SNYDER</b>
<b>DONALD H. RUBIN</b>	<b>THOMAS C. AGIN</b>
<b>DAVID R. CHAFFEE</b>	<b>SHERIE A. CHRISTENSEN</b>
<b>CAROL D. BROWN</b>	<b>SUSAN M. NILSEN</b>
<b>BARBARA L. STOCKER</b>	<b>SARA L. PARKER</b>
<b>JAMES F. MEADE</b>	<b>SHARON LOWSEN</b>
<b>STEFEN H. WEISS</b>	

Ladies and Gentlemen:

DEPUTIES

Thank you for sending me your tentative recommendations relating to accounts, abatement, rules of procedure in probate, and litigation involving decedents.

My comments on matters of special interest follow. As with my previous comments to you, please note that these are my individual views. I do not write here as a representative of the Orange County Counsel, the Orange County Public Administrator/Public Guardian, or the County of Orange.

I. Recommendations Relating To Accounts:

- A. Proposed Section 10900: I do not support the proposed change. In the particular case of the Orange County Public Administrator/Public Guardian, it would probably cost money to change the form of accounts as allowed by the proposed law, due to modifications that would be needed in the computer system. Of more general interest, I do not think an account which only summarizes categories of receipts, disbursements, etc., generally gives interested persons sufficient information about how an estate has been managed. If an account only lists, for example, the amount of rents received, but not the specific payments, this will only engender more calls and questions from interested persons. While 10901 would provide a procedure to obtain the supporting documentation, I believe it would be fairer to require the party presenting the account to list all receipts therein, rather than to require the recipient of the account to pursue the information under 10901. After all, the preparer had to have the individual receipts available when preparing the account, so as to provide the total.

This matter is perhaps most important where the recipient of an account will be the successor administrator. The Public Administrator fairly often succeeds a personal representative who has mismanaged an estate or absconded. The accounting by the former administrator or his attorney is often the starting point for determining a surcharge and for

determining what needs to be done to close the estate. In receiving such an account, I, as attorney for the successor, would want to know, for example, not just the total of rents received but exactly which months' rent the predecessor did collect. This may be something I would need to know promptly, and it should be a part of the account.

- B. Proposed Sections 10952 and 10953: I support these changes. It will be helpful to have the sixty-day time limit. In the past, it sometimes takes the predecessor representative too long to present his account. This, of course, delays the administration of the estate and collection of any surcharge.
- C. Proposed Section 11000(c): I support this change. Perhaps a note should clarify whether the exact amount of fees must be set forth.
- D. Proposed Section 11002: I support the discontinuance of a jury trial being available in a contest of an allowed claim.
- E. Proposed Section 11005(b): I support the proposed change.

II. Recommendations Relating to Abatement:

- A. Proposed Section 21402: The explicit preference for specific gifts over general gifts makes the statute comply with the case law as I understand it.
- B. Proposed Section 21403: I support this, as it seems to be the most likely way to carry out implied testamentary intent.
- C. Proposed Section 21405: I support the addition of (b). This sets forth a solution that not only can help a beneficiary, but can make the eventual distribution as much as possible the way the testator wanted it.

III. Recommendations Relating To Rules Of Procedure In Probate:

- A. Proposed Section 7050(b): I support this provision.
- B. Proposed Section 7200: I support this provision.
- C. Proposed Section 7240(a): I think it is helpful to have this explicit provision that orders granting or revoking letters of special administration are not appealable.
- D. Proposed Section 7241(b): I support this addition.

IV. Recommendations Relating To Litigation Involving Decedent:

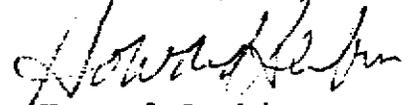
A. Proposed Section 505: I am not certain of all the ramifications of the proposed change, but in general the proposal appears to me to be a good one. Expanding the procedure to estates that do not qualify under 13100 seems particularly well-taken.

B. Proposed Section 9103(a): I support this addition.

V. General Comment:

The Commission may recall that I appeared at one of your recent meetings and commented in opposition to one of your proposals. I did not then also take the opportunity to indicate that I have supported the vast majority of your proposals and have found a number of them helpful in my work. Let me use this occasion to thank you for your good work.

Very truly yours,



Howard Serbin  
Deputy County Counsel

HS:mm

cc: William A. Baker, Public Administrator/Public Guardian  
Carol Gandy, Asst. Public Administrator/Public Guardian  
Dwight G. Tipping, Jr., Supv. Deputy Public Administrator  
Laurence M. Watson, Assistant County Counsel  
James F. Meade, Deputy County Counsel  
Nicholas S. Chrisos, Deputy County Counsel

CHAMBERS OF  
**The Superior Court**

VENTURA, CALIFORNIA  
ROBERT R. WILLARD, JUDGE

September 1, 1987

California Law Revision Commission  
4000 Middlefield Rd., Suite D-2  
Palo Alto, CA 94303-4739

Gentlemen:

I have reviewed the tentative recommendations dated July 1987 relating to the Probate Code. In my opinion they have substantial merit in both clarification and improvement of the statutes involved.

Following are a few specific comments and questions.

1. Section 1043(b). I particularly like this provision. Quite frequently interested parties appear in court without attorneys and orally object to certain aspects of an account or to the amount of requested fees. Almost as frequently the petitioner's attorney asks that such oral and unverified objections be disregarded. I have never refused to consider such objections, and would welcome statutory justification for a common sense approach.

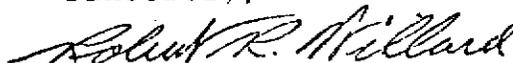
2. Section 11002. When a hearing is called on a contested account the parties frequently seek to have their opponents go forward and assume the burden of producing evidence. It is my practice to require the objector to specify objections, with the petitioner then having the burden of producing evidence with regard to the specified items. It would be helpful to have a statutory uniform procedure, subject to modification in the discretion of the court.

3. Section 10,954. A problem frequently arises concerning the base for statutory fees where accounting has been waived. It has been my practice to limit the fee base to the referee's appraisal, or in the alternative to require a detailed accounting of increases in the fee base and a specific representation that there have been no losses.

4. Section 10,900. I like this section, particularly item (a) (2). Many accounts presented to me group all money received as receipts without distinguishing between income and the collection or sale of inventoried items. It is not uncommon for petitions to duplicate such items in the base for statutory fees.

Thank you for letting me review these tentative recommendations.

Sincerely,



Robert R. Willard  
Judge of the Superior Court

LAW OFFICES OF  
VAUGHAN, PAUL & LYONS  
1418 MILLS TOWER  
220 BUSH STREET  
SAN FRANCISCO 94104  
(415) 392-1423

September 3, 1987

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

Re: #L-1027  
Tentative Recommendation relating  
to Accounts

Gentlemen:

Thank you for providing me the opportunity to review these recommended provisions.

Proposed Section 10900 Contents of account, will be very helpful to improve accounts.

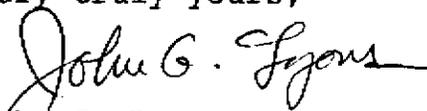
Proposed Section 10901 Production of supporting documents, fails to cover some points covered by present Section 925. How long should vouchers be retained? Can we withdraw a voucher by substituting a certified copy?

Perhaps proposed Section 10901 is easier to read if we change it to read:

"On court order, or on request by an interested person filed with the clerk and a copy served on the personal representative, the personal representative shall submit for inspection or audit by the court or interested person the documents specified in the order or request that support on account."

In other respects, I believe the proposed changes would be very helpful.

Very truly yours,

  
John G. Lyons

JGL:ea

# SHEA & GOULD

(A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS)

1800 AVENUE OF THE STARS-SUITE 500

LOS ANGELES, CALIFORNIA 90067

(213) 277-1000

TELEX 910 490-2597

CABLE "SHEGOU"

TELECOPIER (213) 553-4647

ALBANY OFFICE  
111 WASHINGTON AVENUE  
ALBANY, NEW YORK 12210  
(518) 449-3320  
TELECOPIER (518) 499-5612

BRADENTON OFFICE  
1301 SIXTH AVENUE WEST  
BRADENTON, FLORIDA 33506  
(813) 747-3025

LONDON  
37 PARK STREET  
LONDON W1Y 3HG ENGLAND  
01-493-8513  
TELEX 269488

NEW YORK OFFICE  
330 MADISON AVENUE  
NEW YORK, NEW YORK 10017  
(212) 370-8000  
TELEX: 423973  
CABLE: HOLMANG  
TELECOPIER (212) 661-2314

WASHINGTON, D.C. OFFICE  
1627 K STREET, N.W.  
WASHINGTON, D.C. 20006  
(202) 833-9850  
CABLE: MIRGO  
TELECOPIER (202) 833-1992

MIAMI OFFICE  
801 BRICKELL AVENUE  
MIAMI, FLORIDA 33131  
(305) 372-2000  
TELECOPIER (305) 372-2088

August 25, 1987

Mr. John H. DeMouilly  
Executive Secretary  
California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303-4739

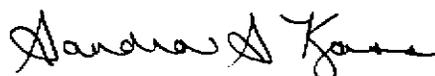
Re: Tentative Recommendation With  
Respect to Accounts

Dear Mr. DeMouilly:

I support the Tentative Recommendation with respect to proposed Sections 10900 through 11052. In particular, I feel that the waiver provisions in Section 10954 are significantly better than those in existing Section 933. As the staff has pointed out, the beneficiaries of an estate may presently waive an accounting and thereby conceal the details of administration from the decedent's legitimate creditors. Section 10954 would require that such creditors join in any waiver unless their interests will be satisfied in full. This is a much more equitable approach.

I also find proposed Section 11002 to be preferable to existing Section 928. There is absolutely no need to have a jury determine whether or not an account is proper; the court is perfectly capable of making that determination and doing so in a much more efficient and expeditious manner. Particularly with the present congestion in the courts, the expense and delay resulting from the empanelling of a jury is unjustified for a matter such as a probate accounting.

Very truly yours,



SANDRA S. KASS

SSK:na

POST OFFICE BOX 138

RAWLINS COFFMAN  
ATTORNEY AT LAW  
RED BLUFF, CALIFORNIA 96080

TELEPHONE 527-2021  
AREA CODE 916

September 3, 1987

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

Gentlemen:

Thank you for permitting me to review Tentative Recommendations #L-1025, #L-1027, #H-408 and #L-1038.

TR #L-1025 entitled "LITIGATION INVOLVING DECEDENT" is excellent. Hopefully, the legislature will follow your recommendations.

(NOTE: Reference is made in the footnote on page 8 to "Claim covered by insurance §9354". At page 10 reference is made to §9354 in §554 (b). I have trouble with these references. There is no §9354 in my Probate Code; there is no §9354 in AB 708 [Harris]; in your January 1987 Blue Book entitled RECOMMENDATIONS relating to Probate Law (received in my office July 13, 1987) I can find no §9354 in Part 4, Creditors Claims. To further complicate this matter, the July 1986 TR Study L 1025 at page 23 contains a comment which reads as follows: "Comment §9354 continues formal Probate Code §732 without substantive change". I agree. On the other hand, §732 relates to "Converting Attachment Lien to Judgement Lien"! (WHERE DO I GO FROM HERE?)

TR #L-1027 entitled "ACCOUNTS" embodies the procedures followed in my office. May I offer two suggestions?

First: when I report the reasons for the delay in distribution of an estate as required by §1025.5 of the Probate Code, I include an interim account. In my opinion, this should be mandatory;

Second: in almost every probate it is necessary, after final distribution, to file a brief account supplemental to the final account to pick up additional interest, refunds, unused closing expenses, etc. which cannot be determined until several weeks or months after actual distribution. I suggest this be required by statute. In the absence of a request by an interested distributee, no hearing need be held nor approval sought from the court with respect to such supplemental account.

With respect to TR #H-408 relating to "UNIFORM DORMANT MINERAL INTERESTS ACT", I have no comment. I have never had occasion, in my practice, to get involved in this problem. On the other hand I am happy to know that the California statutes offer guidance.

With respect to TR #L-1038 entitled "ABATEMENT", locating the new provisions with the other rules of construction of wills, trusts, and other instruments is appropriate.

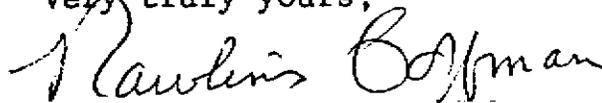
With respect to TR #L-1048 entitled "RULES OF PROCEDURE IN PROBATE", the new limitations on jury trials in the probate court met with my approval. As a matter of fact I would hope that §1081 could be amended to deny jury trials in 1080 proceedings.

I agree that contents of the judgment role should be left to Judicial Council rule. This in turn should eliminate §1050.

Section 1020 requires the signature of all petitioners; §1021 requires verification by only one of several petitioners. Why the inconsistency?

Please keep me on your mailing list.

Very truly yours,



RAWLINS COFFMAN

**CALIFORNIA CONTINUING EDUCATION OF THE BAR**

2300 Shattuck Avenue, Berkeley, CA 94704  
(415) 642-3973; Direct Phone: (415) 642-8317

September 3, 1987

John H. DeMouilly, Esq.  
Executive Director  
California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

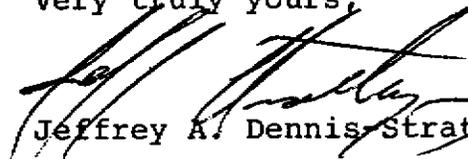
Re: Study L-1027: Accounts

Dear John:

I approve the tentative recommendation. You might consider deleting section 11002. It is absurdly obvious that the personal representative may be examined on oath, and saying so implies that other persons cannot be examined.

Section 11004(c), pertaining to a representative paying a debt of the decedent without presentation of a claim should be modified to avoid the implication that representative must pay the exact amount due in order to be entitled to credit. If he overpays, he should get partial credit to the extent of the amount actually owed. If he is underpaid, he should still get full credit.

Very truly yours,



Jeffrey A. Dennis-Strathmeyer

JAD-S:dp

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

Chair LLOYD W. HOMER, Campbell Vice-Chair D. KEITH BILTER, San Francisco

Advisors HERMIONE K. BROWN, Los Angeles THEODORE J. CRANSTON, La Jolla JAMES D. DEVINE, Monterey IRWIN D. GOLDRING, Beverly Hills KENNETH M. KLUG, Fresno JAMES C. OPEL, Los Angeles LEONARD W. POLLARD II, San Diego JAMES V. QUILLINAN, Mountain View JAMES F. ROGERS, Los Angeles HUGH NEAL WELLS III, Irvine

Section Administrator PRES ZABLAN-SOBERON



555 FRANKLIN STREET SAN FRANCISCO, CA 94102-4498 (415) 561-8200

Executive Committee KATHRYN A. BALLSUN, Los Angeles D. KEITH BILTER, San Francisco OWEN C. FIORE, San Jose JOHN A. GROMALA, Eureka ANNE K. HILKER, Los Angeles WILLIAM HOISINGTON, San Francisco LLOYD W. HOMER, Campbell JAY ROSS MacMAHON, San Rafael STERLING L. ROSS, JR., Mill Valley WILLIAM V. SCHMIDT, Costa Mesa CLARE H. SPRINGS, San Francisco ANNE E. STODDEN, Los Angeles JAMES A. WILLET, Sacramento JANET L. WRIGHT, Fresno DIANE C. YU, Oakland

September 9, 1987

Mr. John H. DeMouilly Executive Director California Law Revision Commission 4000 Middlefield Road, Room D-2 Palo Alto, CA 94303

Re: LRC TR's re Abatement & Accounts

CA LAW REV. COMM'N SEP 10 1987 RECEIVED

Dear John:

I have enclosed copies of Study Team 4's technical report on the TR for Abatement and the TR for Accounts. The reports represent the opinions of the team only. The reports have not been reviewed by the Executive Committee. I am sending them to you for your information and comment. They are intended to assist in the technical review of those sections involved.

Very truly yours,

Handwritten signature of James V. Quillinan

James V. Quillinan Attorney at Law

JVQ/h1 Encls.

cc: Chuck Collier Jim Opel Keith Bilter Jim Devine Irv Goldring Lloyd Homer

## STANTON AND BALLSUN

A LAW CORPORATION

AVCO CENTER, SIXTH FLOOR

10850 WILSHIRE BOULEVARD

LOS ANGELES, CALIFORNIA 90024-4318

(213) 474-8257

TELEX/FAX (213) 474-1246

ELECTRONIC MAIL VIA  
ABA/NET I.D. # ABA2769PLEASE REFER TO  
FILE NO.

TEAM4002.03L

KATHRYN A. BALLSUN

PAUL L. STANTON

LESLIE K. STUART

September 9, 1987

By Fax

James Quillinan, Esq.  
444 Castro Street, #900  
Mountain View, CA 94041

Re: Tentative Recommendation Relating to Accounts

Dear Jim:

On September 3, 1987, Team 4 (Harley Spitler, Jim Willett and I) discussed the Tentative Recommendation Relating to Accounts. Team 4's comments about the above-referenced Tentative Recommendation are as follows:

1. Section 10900 - Contents of Account.

1.1 Team 4 believes that the words "but is not limited to" (line 3, subparagraph (b)) could create confusion among practitioners. As written, the statute only requires certain information about creditor's claims. Practitioners might be uncertain as to which additional allegations are required in a report of administration. It would be helpful if the statute set forth the exact allegations which must be contained in an account. In the event that the Commission does not agree that the statute should expressly set forth the required allegations, then Team 4 suggests either:

(1) the words "but is not limited to" be deleted altogether; or

(2) the phrase be modified by adding the word "necessarily" as follows: "but not necessarily limited to..."

1.2 - It is Team 4's understanding that the Commission is not prohibiting a chronological form of account; however, it could be implied from the Comment that a chronological form of account is no longer acceptable. Therefore, the Comment should

James Quillinan, Esq.  
September 9, 1987  
Page 2

state that the form of an account may be either chronological or by category.

1.3 - Since the National Fiduciary Accounting Standards would be difficult for the average practitioner to obtain, Team 4 believes that the last sentence of paragraph 2 of the Comment to Section 10900 should be deleted. Perhaps a reference more readily available to California practitioners could be recommended.

2. Section 10954 - Waiver of Account. Team 4 wishes to express its continuing concern about the new Section 10954 requirement that creditors execute a waiver of account. Team 4 believes that this extension of the law is unnecessary. In recent years, creditor's rights have been greatly expanded. Creditors can submit (as most now do) a request for special notice to insure that notice will be given; and in any event, a creditor must be given notice if he/she/it have given notice of appearance in the estate. The proposed statute appears to unduly favor creditors. Therefore, Team 4 believes that the requirement of a creditor's waiver should be deleted.

Thank you for your consideration.

Cordially,

*Kathryn A. Ballsun*

KATHRYN A. BALLSUN  
A Member of  
STANTON AND BALLSUN  
A Law Corporation

KAB/rwm

cc: Richard Polse, Esq.  
Harley Spitler, Esq.  
Janet Wright, Esq.  
Clare Springs, Esq.  
William Hoisington, Esq.  
Lloyd Homer, Esq.  
James Willett, Esq.  
Irv Goldring, Esq.  
Jim Devine, Esq.  
Jim Opel, Esq.  
Keith Bilter, Esq.

LAW OFFICES  
IRVING KELLOGG

1880 CENTURY PARK EAST, 12TH FLOOR  
LOS ANGELES, CALIFORNIA 90067  
(213) 551-9127 • (213) 276-3415 • (213) 277-1226  
September 12, 1987

John DeMouly  
California Law Review Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, Ca 94303-4739

Re: Probate Law and Procedure Recommendations - Accounts and  
Litigation Involving Decedent

Dear John:

I enclose the following that contain my comments about those recommendations:

1. A white sheet containing two columns of recommended redrafting of the sections that are numbered.

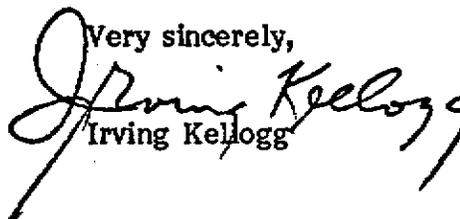
In doing this, I applied these principles of drafting:

- (a) Put as much into active voice as possible.
  - (b) Put conditions and exceptions at the beginning of the sentence so that the reader proceeds with a knowledge of what is excepted and what is the condition, rather than read to the end of the sentence to be surprised by the exception or the condition. Further, there is the danger that the reader may, under anxiety, fail to reach the exception or condition. In statutes, that is undesirable.
  - (c) Number or letter series so that the reader puts them together.
2. A number of the printed sheets contained in the recommendations. Those printed sheets contain my handwritten drafting corrections which I hope are legible. I did not have the time to retype all of them, and some are not changes in drafting but in word clarification.

I hope that these suggestions are helpful.

By the way, I have written about financial statements in my book, *How To Find Negligence and Misrepresentations in Financial Statements*. The book contains a chapter on Fiduciary Accounting and how to find negligence in fiduciary reports. Enclosed is a brochure about the book.

Very sincerely,

  
Irving Kellogg

Enclosures.

PART 8. ACCOUNTS

CHAPTER 1. GENERAL PROVISIONS

§ 10900. Contents of account

*Why not incorporate the National Fiduciary Accounting Standards*

10900. An account shall include all of the following:

(a) A summary statement, together with supporting schedules, of:

(1) Property in all inventories.

(2) Receipts, excluding property listed in an inventory, *analyzed between principal and income receipts*

(3) Gains on sales.

(4) Other acquisitions of property.

(5) Disbursements.

(6) Losses on sales.

(7) Other dispositions of property.

(8) Property remaining.

(b) A report of administration that states all other matters necessary to show the condition of the estate. The report shall include, but is not limited to, a statement whether notice to creditors was given under Section 9050 [AB 708] and a statement of creditor claims, including the name of each claimant, the nature and due date of the claim, and the action taken on the claim.

Comment. Section 10900 supersedes former Section 920.3 [AB 708] and the first sentence of former Section 921.

Subdivision (a) is based on concepts developed in Note, California Probate Accounting Procedures, 39 S. Cal. L. Rev. 316 (1966). In the account, each schedule should contain a breakdown of the summary item into its component parts. For instance, the summary item of receipts might be broken down into the totals of interest income, dividend income, royalties received, and miscellaneous receipts. The exact breakdown would vary, depending on the nature of the estate. It would be unnecessary to show in the summary more than the total amount of each component part making up the total. For illustrative material, see American College of Probate Counsel, National Fiduciary Accounting Standards (1980).

The report of administration (subdivision (b)) should include, among other relevant matters, that actual notice was given to known creditors (Section 9050 [AB 708]) and that cash was invested in interest-bearing accounts or other proper investments (Section 9652 [AB 708]). In the case of a final account, the report of administration must include the amount of fees and commissions paid or payable to the personal representative and to the attorney and must set forth the basis for determining the amount. Section 10954(c) (waiver of account).

CROSS-REFERENCES

Definitions

- Personal representative § 58
- Property § 62
- Verification required § 1284

*an interested person's*

§ 10901. Production of supporting documents

10901. On court order, or on request by ~~an interested person~~ filed with the clerk and a copy served on the personal representative, the personal representative shall <sup>produce</sup> submit the documents specified in the order or request that support an account for inspection and audit by the court or interested person.

Comment. Section 10901 supersedes former Section 925, extending the voucher procedure to supporting documents generally.

CROSS-REFERENCES

Definitions

- Interested person § 48
- Personal representative § 58

CHAPTER 2. WHEN ACCOUNT REQUIRED

§ 10950. Court-ordered account

10950. (a) On its own motion or on <sup>an interested person's</sup> petition of ~~an interested person~~, the court may order an account at any time.

(b) The court shall order an account on <sup>an interested person's</sup> petition of ~~an interested person~~ made more than one year after the last account was filed or, if no previous account has been filed, made more than one year after issuance of letters to the personal representative.

(c) The court order shall specify the time within which the <sup>an account</sup> account must be filed. *f n*

Comment. Section 10950 supersedes portions of the first sentences of former Sections 921 and 922. The section is subject to Section 10954 (waiver of account).

CROSS-REFERENCES

- Actions in chambers, Code Civ. Proc. § 166
- Defined terms
  - Interested person § 48
  - Letters § 52
  - Personal representative § 58

§ 10951. Final account

10951. The personal representative shall file a final account and petition for an order for final distribution of the estate when the estate is in a condition to be closed.

Comment. Section 10951 supersedes the second sentence of former Section 922 and is consistent with Section 11640 (petition and order for final distribution) [to be drafted]. The section is subject to Section 10954 (waiver of account).

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 10952. Account after authority terminated

10952. A personal representative who resigns, is removed from office, or whose authority is otherwise terminated, shall file an account <sup>not later than</sup> ~~within~~ 60 days <sup>after termination</sup> ~~thereafter~~ <sup>the court extends the time</sup> unless the time is extended by the court. If the personal representative fails to so file the account, the court may compel the account pursuant to Chapter 4 (commencing with Section 11050).

Comment. Section 10952 supersedes former Section 923. The section is subject to Section 10954 (waiver of account). For an account where the personal representative dies or becomes incompetent, see Section 10953.

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 10953. Account where personal representative dies or becomes incompetent

10953. (a) As used in this section, "legal representative" means the personal representative of a deceased personal representative or the conservator of the estate of an incompetent personal representative.

(b) If a personal representative dies or becomes incompetent and a legal representative is appointed for the deceased or incompetent personal representative, <sup>shall not later than</sup> ~~within~~ 60 days <sup>the court</sup> ~~after~~ <sup>the court</sup> ~~appointment~~ the legal representative, <sup>the legal representative</sup> shall file an account of the administration of the deceased or incompetent personal representative <sup>from the date of</sup> ~~the~~ <sup>the most recent account to the date of death or incompetency</sup>

(c) If a personal representative dies or becomes incompetent and no legal representative is appointed for the deceased or incompetent personal representative, or if the personal representative absconds, *then* the court may compel the attorney for the absconding, deceased, or incompetent personal representative or attorney of record in the estate proceeding to file an account of the administration of the absconding, deceased, or incompetent personal representative.

(d) The legal representative or attorney shall exercise reasonable diligence in preparing an account under this section. The court shall settle the account as in other cases. The court shall allow a fee to the legal representative or the attorney for preparing the account; the fee shall be a charge against the estate that was being administered by the deceased, incompetent, or absconding personal representative.

Comment. Section 10953 restates former Section 932 with changes for internal consistency. The court referred to in this section is the court in which the estate of the original decedent is being administered.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58  
Verification required § 1284

#### § 10954. Waiver of account

10954. (a) Notwithstanding any other provision of this part, the personal representative is not required to file an account if any of the following conditions is satisfied as to each person entitled to payment or distribution from the estate *at the date of filing the account.*

(1) The person has executed and filed a written waiver of account or a written acknowledgment that the person's interest has been satisfied.

(2) Adequate provision has been made for satisfaction in full of the person's interest. This paragraph does not apply to a residuary devisee or a devisee whose interest in the estate is subject to abatement, payment of expenses, or accrual of interest or income.

(b) A waiver or acknowledgment under subdivision (a) shall be executed by the following persons:

(1) If the person entitled to payment or distribution is an adult and competent, by the person entitled to payment or distribution.

(2) If the person entitled to payment or distribution is a minor, by a person authorized to receive money or property belonging to the minor. If the waiver is executed by a guardian of the estate of the minor, the waiver may be executed without the need to obtain approval of the court in which the guardianship proceeding is pending.

(3) If the person entitled to payment or distribution is a conservatee, by the conservator of the estate of the conservatee. The waiver may be executed without the need to obtain approval of the court in which the conservatorship proceeding is pending.

(4) If the person entitled to payment or distribution is a trust, by the trustee, but only if the named trustee's written acceptance of the trust is filed with the court.

(5) If the person entitled to payment or distribution is an estate, by the personal representative of the estate.

(6) If the person entitled to payment or distribution is incapacitated, unborn, unascertained, or is a person whose identity or address is unknown, or is a designated class of persons who are not ascertained or are not in being, and there is a guardian ad litem appointed to represent the person entitled to payment or distribution, by the guardian ad litem.

(c) Notwithstanding subdivision (a), the personal representative shall file a final report of administration at the time the final account would otherwise have been required. The final report shall include the amount of fees and commissions paid or payable to the personal representative and to the attorney and shall set forth the basis for determining the amount.

Comment. Section 10954 restates former Section 933, with the addition of unpaid creditors (persons entitled to payment) to those whose waiver is required and the elimination of beneficiaries whose interest will be satisfied in full. The reference to a trustee's consent to act in subdivision (b)(4) has been replaced by a reference to the trustee's written acceptance of the trust. See Section 15600 (acceptance of trust by trustee). Subdivision (b)(6) is substituted for the former provision precluding waiver if a person entitled to distribution is unascertained.

#### CROSS-REFERENCES

##### Definitions

Person § 56

Personal representative § 58

Trust § 82

Trustee § 84

Note. Further review of subdivision (a) is pending.

### CHAPTER 3. SETTLEMENT OF ACCOUNT

#### § 11000. Notice of hearing

11000. (a) The personal representative shall give notice of the hearing as provided in Section 1220 [AB 708].

(b) In addition to the notice required by subdivision (a), notice of the hearing shall be given as provided in Section 1220 to all of the following persons:

(1) Each known heir whose interest in the estate is affected by the account.

(2) Each known devisee whose interest in the estate is affected by the account.

(3) The State of California, if any portion of the estate is to escheat to it and its interest is affected by the account.

(c) If the petition for approval of the account requests fees, the notice of hearing shall so state.

(d) If the account is a final account and is filed together with a petition for an order for final distribution of the estate, the notice of hearing shall so state.

Comment. Subdivisions (a) and (b) of Section 11000 restate the third sentence of former Section 926 [AB 708] without substantive change. Subdivision (c) is new. Subdivision (d) restates the first portion of the second sentence of former Section 926(a) [AB 708] without substantive change. Notice must also be given to persons who have requested special notice. See Sections 1220(e), 1250, 1252 [AB 708].

#### CROSS-REFERENCES

Clerk to set matter for hearing § 1285

#### Definitions

Devisee § 34

Heirs § 44

Person § 56

Personal representative § 58

#### § 11001. Contest of account

11001. (a) All matters may be contested for cause shown, including but not limited to:

(1) The validity of an allowed or approved claim not reported in a previous account and not established by judgment.

Comment. Section 11005 restates former Section 931, making clear that the exception in subdivision (b) applies only until entry of the order and not until physical distribution. As to the effect of fraud on the conclusiveness of the order, cf. Lazzarone v. Bank of America, 181 Cal. App. 3d 581, 226 Cal. Rptr. 855 (1986) (trust account), and Bank of America v. Superior Court, 181 Cal. App. 3d 705, 226 Cal. Rptr. 685 (1986) (guardianship account).

#### CROSS-REFERENCES

##### Definitions

Interested person § 48

### CHAPTER 4. COMPELLING ACCOUNT

#### § 11050. Sanction for failure to account

11050. Subject to the provisions of this chapter, if the personal representative does not file a required account, the court shall compel the account by punishment for contempt.

Comment. Section 11050 restates the third sentence of former Section 922 without substantive change. This chapter may also be used to compel an account by a personal representative whose authority is terminated. Section 10952.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

#### § 11051. Citation

11051. (a) A citation shall be issued, served, and returned, requiring a personal representative who does not file a required account to appear and show cause why the personal representative should not be punished for contempt.

(b) If the personal representative purposefully evades personal service of the citation, the personal representative shall be removed from office.

Comment. Subdivision (a) of Section 11051 restates the last sentence of former Section 922 without substantive change. Subdivision (b) restates a portion of former Section 924 without substantive change.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

§ 11052. Punishment for contempt

11052. If the personal representative does not appear and <sup>board</sup> file a required account, after having been duly cited, the personal representative may be punished for contempt or removed from office, or both, in the discretion of the court.

Comment. Section 11052 restates the last sentence of former Section 921 and restates a portion of former Section 924 without substantive change. See also Section 8505 (removal from office for contempt) [to be drafted].

**CROSS-REFERENCES**

**Definitions**

Personal representative § 58

ALBERT J. GALEN  
W. MICHAEL JOHNSON  
RICHARD E. LLEWELLYN II  
HOWARD L. MAYO  
A. STEVEN BROWN

LAW OFFICES  
**HOLLEY & GALEN**  
800 SOUTH FIGUEROA STREET, SUITE 1100  
LOS ANGELES, CALIFORNIA 90017-2542  
(213) 629-1880

CLYDE E. HOLLEY (1891-1980)

September 14, 1987

CA LAW REV. COMM'N

SEP 16 1987

RECEIVED

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

Re: Tentative Recommendations Relating to  
Probate Law and Procedure

Dear Chairman:

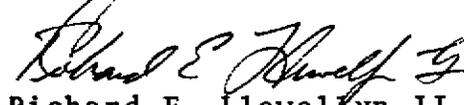
I have reviewed the July 1987 Tentative Recommendations Relating to Probate Law and specifically ACCOUNTS, and agree with them. However, I foresee possible problems with the tentative draft of Section 10954 concerning waiver of accounts. The specific language of that section does not appear to cover the situation where a distribution has been made to a beneficiary, but the beneficiary refuses to sign a receipt or to acknowledge satisfaction of the bequest. I have had this situation to occur usually in the context of contested probate litigation. In some cases it does not pose a substantial problem, such as in the case of a specific bequest of cash where the check can be filed with the court to prove distribution. However, in non-cash bequests, where the person refuses to sign a receipt, the existing draft for Section 10954 would seem to prevent the other interested persons of the estate from waiving an accounting.

In addition, one further situation does not seem to be adequately covered, that is the case of a preliminary distribution to a person that dies prior to signing a receipt. I assume that in such a case that the personal representative of the estate of the deceased beneficiary would be entitled to waive the accounting as was contemplated under subparagraph (5), but I am not sure of what the results would be if the deceased beneficiary died under circumstances where no probate administration was conducted.

California Law Revision Commission  
September 14, 1987  
Page Two

The other recommendations concerning accounts, litigation involving the decedent, abatement and rules of procedure appear to be workable.

Very truly yours,



Richard E. Llewellyn II  
of  
HOLLEY & GALEN

REL:jgp

Superior Court of the State of California  
County of Orange

700 CIVIC CENTER DRIVE WEST

P. O. BOX 1994

Santa Ana, California 92702-1994

CA LAW REV. COMM'N

SEP 18 1987

RECEIVED

Chambers of  
HENRY T. MOORE, JR.  
Judge of Superior Court

(714) 834-3734

September 15, 1987

California Law Revision Commission  
4000 Middlefield Road  
Suite D-2  
Palo Alto, CA 94303-4739

Re: Tentative Recommendations Relating to Probate

I was the Presiding Judge of Probate in Orange County for two years during the years 1985 and 1986.

I have reviewed the tentative recommendation relating to accounts and have a couple of recommendations.

In connection with notice of hearings on accounts, I would recommend that where an estate is insolvent, it be required that notice must be given to all creditors who have filed claims in the estate. For all practical purposes, when an estate is insolvent, the creditors are the beneficiaries of the estate. Notwithstanding this, it has been my experience that few attorneys give these creditors notice of hearings of settlements of accounts.

In connection with the proposed section 11004, and the settlement of claims not properly made or allowed within the time prescribed by law, a frequent trap for unwary personal representatives as well as their attorneys is the requirement that all creditor claims of a personal representative must be filed and approved by the court, even if there is an independent administration of the estate. This results many times in hardships to the personal representatives and perhaps malpractice claims against the attorneys. I believe the law should provide that the Court may, in its discretion, approve the claim of the personal representative for funeral expenses and last illness expenses only as part of a final accounting even if the claim or debt has not been paid within the time prescribed and even though a claim was not filed within the time to file. Notice should be given to all heirs and beneficiaries of the fact that such a request is being made.

Superior Court of the State of California

County of Orange

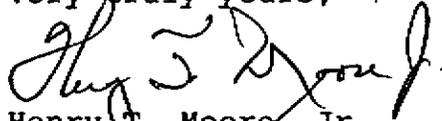
California Law Revision Commission

September 15, 1987

Page Two

The present law permits an undue windfall for heirs and beneficiaries where a personal representative has paid a funeral bill but has not gotten reimbursement and did not file a creditor's claim in time and where there is no doubt the bill was properly owing and fair in amount.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Henry T. Moore, Jr.", written in dark ink.

Henry T. Moore, Jr.  
Judge of the Superior Court

HTM:gl  
87-017

LILLICK MCHOSE & CHARLES  
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

ATTORNEYS AT LAW  
TWO EMBARCADERO CENTER

SAN FRANCISCO 94111 CA LAW REV. COMM'N  
(415) 984-8200

CABLES IRALILLICK  
TRT 184983  
WU TELEX 34-0806  
TELECOPIER (415) 421-4799

725 SOUTH FIGUEROA STREET  
LOS ANGELES 90017  
(213) 488-7100

101 WEST BROADWAY  
SAN DIEGO 92101  
(619) 234-5000

SEP 21 1987

GOLDEN SHORE, SUITE 610  
POST OFFICE BOX 1967  
LONG BEACH 90801  
(213) 491-1212

300 CAPITOL MALL  
SACRAMENTO 95814  
(916) 442-6800

1800 M STREET N W  
WASHINGTON, D. C. 20036  
(202) 785-3288

WRITER'S DIRECT DIAL NUMBER

RECEIVED

(415) 984-8301

September 18, 1987

John H. DeMouilly  
Executive Secretary  
California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

Re: Tentative Recommendation Relating to  
Probate Law and Procedure: Accounts

Dear Mr. DeMouilly:

I wish to make a partial response to the Tentative Recommendation Relating to Probate Law and Procedure regarding Accounts. My response is directed to proposed Probate Code sections 11001 and 11002 regarding contest of accounts, presently addressed in Probate Code section 927. These sections allow the court to award fees, commissions and costs against a contestant if it is determined by the court that the contest was made without reasonable cause and good faith.

I have been retained by disgruntled beneficiaries in several improperly administered estates over the past few years. In these estates, the personal representative (who was also a beneficiary) willfully or negligently misadministered the estates, refused to respond to reasonable communication to remedy the problems, forced the beneficiaries to retain legal counsel, eventually settled the matter for an amount equivalent to, or even less than, the original gift under the will and left the beneficiaries seriously harmed due to the inability to recover attorneys fees and costs.

I believe it would serve the best interests of all parties to the administration of estates to include in Probate Code section 11001 a subsection (c) which would provide as follows:

(c) If, upon the hearing, the court determines that the personal representative resisted the contest without reasonable cause and good faith, and the personal representative is not a beneficiary, the court may award against the personal representative the fees, commissions and costs of the beneficiaries and their attorneys which are incurred to protect the interests of

the beneficiaries, and the personal representative shall be personally liable therefor. If the personal representative is a beneficiary, the court shall award against the personal representative such fees, commissions and costs, and the personal representative shall be personally liable therefor. The amount awarded that remains unsatisfied is a charge against any interest of the personal representative in the estate.

In keeping with the spirit of my suggested additions to section 11001, section 11002(b) should be expanded as follows:

(b) The court may appoint one or more referees to examine the account and make a report on the account, subject to confirmation by the court. The court may allow a reasonable compensation to the referee to be paid out of the estate if it is determined that the contest was made without reasonable cause and good faith. If the court determines that the personal representative resisted the contest without reasonable cause and good faith, the court may allow a reasonable compensation to the referee to be paid by the personal representative who shall be personally liable therefor and such amount that remains unsatisfied is a charge against any interest of the personal representative in the estate.

I have also found that especially in small estates (under \$600,000), delays of more than a few weeks after statutory deadlines for such things as filing an accounting, filing a petition for final distribution, filing an inventory and appraisement and filing a supplemental inventory and appraisement for after discovered property, often occur when the personal representative is also a beneficiary of the estate and has interests adverse to the interests of the other beneficiaries of the estate. After lengthy delays, sometimes amounting to several years, and after numerous attempts (including court hearings, formal settlement conferences, informal settlement negotiations and finally, discovery procedures which should not have been required) to obtain the rightful interest of the beneficiaries, eventually a settlement is reached so that the beneficiaries may obtain property or assets of the estate equivalent or almost equivalent to what they would have received if the administration of the estate had proceeded in an orderly fashion. Unfortunately, by that time, the beneficiaries have incurred thousands of dollars in attorneys fees and costs which are not recoverable in the probate proceeding and in addition they are asked to execute a full release and settlement of all claims relating to the estate. It is for this reason that I

John H. DeMouilly  
September 18, 1987  
Page 3

believe fees and costs by such beneficiaries should be considered with regard to these other aspects of the administration of estates.

I am sufficiently concerned about these issues to be willing to meet with members of the Commission to attempt to come to a reasonable and workable proposal to deal with them. Please feel free to contact me at your convenience if I may be of further assistance. Thank you.

Very truly yours,

LILLICK McHOSE & CHARLES

  
Nancy L. Powers

175:039:92000:P DPRPL

Tentative Recommendation  
relating to

ACCOUNTS

The provisions of existing law governing accounts<sup>1</sup> are generally restated in the proposed law without substantive change. There are a few specific changes worthy of note:

Contents of account. The existing probate account includes a number of items that are of limited value and fails to require some information that would make the account a more descriptive and useful document. The proposed law revises the account contents somewhat to make the probate account more analogous to a standard type of balance sheet.<sup>2</sup>

The account will include a summary statement of the significant aspects of the administration.<sup>3</sup> The summary will be supported by schedules that break down each summary item into its component parts. For instance, the summary item of receipts might be broken down into the totals of interest income, dividend income, royalties received, and miscellaneous receipts. The exact breakdown will vary, depending on the nature of the estate. It will be unnecessary to show in the

---

1. Prob. Code §§ 920-933.

2. The concepts are derived from Craig, California Probate Accounting Procedures, 39 S. Cal. L. Rev. 316 (1966).

3. The summary includes, in addition to a report of administration, a statement of property in the estate, receipts, gains and losses on sales, and other acquisitions and dispositions of property.

summary more than the total amount of each component part making up the total.<sup>4</sup>

This scheme encourages the use of sound bookkeeping practices. It will also save the time and expense of a narrative report of the details of each transaction. In case greater detail is required by a beneficiary or other interested person, the court is authorized by the proposed law to require the personal representative to submit documents supporting the account for inspection and audit.

When interim account required. Interim accounts in estate administration are not required as a matter of course but only on petition of an interested person or on the court's own motion.<sup>5</sup> Where there is a turnover or change in administration, either because the personal representative dies or becomes incompetent, or because the personal representative resigns or absconds or the authority is otherwise terminated, an account should be required automatically without an interested person having to petition for one. The proposed law requires this in the interest of procedural efficiency. The automatic account requirement is subject to waiver by the interested parties.

Waiver of account. Existing law permits a waiver of an account by distributees of the estate.<sup>6</sup> This provision could effectively enable beneficiaries to hide details of the administration from interested creditors who would otherwise be entitled to an account.<sup>7</sup> The proposed law remedies this defect by making clear that persons entitled to payment from the estate must be joined in any waiver of accounts, unless their interests will be satisfied under the account.

---

4. For illustrative material, see American College of Probate Counsel, National Fiduciary Accounting Standards (1980).

5. Prob. Code §§ 920, 921, 923, 932. A final account is required as a matter of course. Prob. Code § 921.

6. Prob. Code § 933.

7. Prob. Code §§ 921, 922 (account on petition of person interested in estate).

Contest of account. In a contest of an account an interested person may except to settlement of an allowed claim. Existing law permits a jury trial on issues of fact in the contest.<sup>8</sup> The proposed law eliminates the jury trial provision. A jury trial on such a matter is an unnecessary imposition on the parties, the courts, and the persons required to serve as jurors, as well as an unwarranted expense. Accounts in other areas are considered to be matters appropriate for court review rather than review by a lay jury.<sup>9</sup>

The proposed law also makes clear that in addition to other appropriate proceedings, an interested person may obtain court review of actions by the personal representative through a contest of an account, in the interest of procedural efficiency.

---

8. Prob. Code § 928.

9. See, e.g., Prob. Code §§ 1452 (no jury trial of guardianship or conservatorship account), 17006 (no jury trial of trust account).

OUTLINE OF STATUTE

PART 8. ACCOUNTS

CHAPTER 1. GENERAL PROVISIONS

- § 10900. Contents of account
- § 10901. Production of supporting documents

CHAPTER 2. WHEN ACCOUNT REQUIRED

- § 10950. Court-ordered account
- § 10951. Final account
- § 10952. Account after authority terminated
- § 10953. Account where personal representative dies or becomes incompetent
- § 10954. Waiver of account

CHAPTER 3. SETTLEMENT OF ACCOUNT

- § 11000. Notice of hearing
- § 11001. Contest of account
- § 11002. Hearing on account
- § 11003. Settlement of claim not paid in full
- § 11004. Settlement of claim not properly made or allowed
- § 11005. Effect of order settling account

CHAPTER 4. COMPELLING ACCOUNT

- § 11050. Sanction for failure to account
- § 11051. Citation
- § 11052. Punishment for contempt

COMMENTS TO REPEALED SECTIONS

PART 8. ACCOUNTS

CHAPTER 1. GENERAL PROVISIONS

§ 10900. Contents of account

10900. An account shall include all of the following:

(a) A summary statement, together with supporting schedules, of:

- (1) Property in all inventories.
- (2) Receipts, excluding property listed in an inventory.
- (3) Gains on sales.
- (4) Other acquisitions of property.
- (5) Disbursements.
- (6) Losses on sales.
- (7) Other dispositions of property.
- (8) Property remaining.

(b) A report of administration that states all other matters necessary to show the condition of the estate. The report shall include, but is not limited to, a statement whether notice to creditors was given under Section 9050 [AB 708] and a statement of creditor claims, including the name of each claimant, the nature and due date of the claim, and the action taken on the claim.

Comment. Section 10900 supersedes former Section 920.3 [AB 708] and the first sentence of former Section 921.

Subdivision (a) is based on concepts developed in Note, California Probate Accounting Procedures, 39 S. Cal. L. Rev. 316 (1966). In the account, each schedule should contain a breakdown of the summary item into its component parts. For instance, the summary item of receipts might be broken down into the totals of interest income, dividend income, royalties received, and miscellaneous receipts. The exact breakdown would vary, depending on the nature of the estate. It would be unnecessary to show in the summary more than the total amount of each component part making up the total. For illustrative material, see American College of Probate Counsel, National Fiduciary Accounting Standards (1980).

The report of administration (subdivision (b)) should include, among other relevant matters, that actual notice was given to known creditors (Section 9050 [AB 708]) and that cash was invested in interest-bearing accounts or other proper investments (Section 9652 [AB 708]). In the case of a final account, the report of administration must include the amount of fees and commissions paid or payable to the personal representative and to the attorney and must set forth the basis for determining the amount. Section 10954(c) (waiver of account).

## CROSS-REFERENCES

### Definitions

Personal representative § 58

Property § 62

Verification required § 1284

*Note.* Section 10900 revises the contents of the account in a form more analogous to standard financial statements than to a narrative chronological recitation of the actions of the personal representative. This change was generally approved by the commentators. John G. Lyons, San Francisco (Exhibit 10), for example, believes the proposed section "will be very helpful to improve accounts."

However, one commentator, Howard Serbin, Orange County Counsel (Exhibit 8), opposes any change in the character of the account. He thinks that more than an account summary is required--a person interested should be able to ascertain what particular receipts and expenditures were made in the administration. The staff believes Mr. Serbin has overlooked the requirement of Section 10900 that the account include a summary statement "together with supporting schedules." The supporting schedules should provide what he is looking for. Perhaps it would be worthwhile to give illustrative material concerning supporting schedules in the Comment.

In this connection, State Bar Study Team 4 (Exhibit 14) states its understanding that a chronological form of account would not be prohibited; but it could be implied from the Comment that a chronological account is no longer acceptable. They suggest that the Comment make clear that the account may be either chronological or by category. Certainly that was the concept at some point in the development of this proposal, but it appears the proposal may have evolved beyond this. The Commission should make an affirmative decision at this point whether to retain the chronological account as an option.

Mr. Serbin also gives as a reason for opposing change in the form of the account that "it would probably cost money to change the form of accounts as allowed by the proposed law, due to modifications that would be needed in the computer system." Interestingly enough, efficiency of accounting through computerization is one of the arguments made by a number of commentators for further change in the law governing accounts. In particular, a number of commentators have suggested adoption of the National Fiduciary Accounting Standards, for which computer programs are available. See, e.g., Luther J. Avery, San Francisco (Exhibit 4) and Irving Kellogg, Los Angeles (Exhibit 15). Mr. Avery states:

Computer software has been developed for the use of probate practitioners based upon the Fiduciary Accounting Project. In my opinion, the statutes of California should prescribe that the accounts described in Part 8 conform to the standards of the Fiduciary Accounting Project. It would be particularly important to impose upon all the probate courts of the state a requirement of uniformity in the form of accounting so that costs of probate can be lowered by permitting lawyers to use a standard format that can be produced by existing computer programs.

The Fiduciary Accounting Project has been adopted as the standard by many other states and there is a movement to try to persuade all states to adopt the format of the Fiduciary Accounting Project.

In my opinion, the format of the Fiduciary Accounting Project accomplishes everything in the July 23, 1987 Tentative Recommendation relating to accounts.

Mr. Kellogg attaches a copy of the Uniform Fiduciary Accounting Principles and Model Account Formats.

On the other hand, State Bar Study Team 4 (Exhibit 14) would delete all reference to these standards from the Comment, which points the practitioner to the standards as illustrative. The Bar Team says that a copy of these would be difficult for the average practitioner to obtain. "Perhaps a reference more readily available to California practitioners could be recommended."

When the Commission studied this matter in the past it declined to adopt the National Fiduciary Accounting Standards both because of the problem of availability and because there is not unqualified acceptance of these standards by many groups within the accounting profession.

Subdivision (a).

There were a few comments addressed to the specifics of the financial statement type of account. In connection with subdivision (a)(2), listing receipts but excluding property listed in an inventory, Judge Robert R. Willard, Ventura (Exhibit 9), remarks, "I like this section, particularly item (a)(2). Many accounts presented to me group all money received as receipts without distinguishing between income and the collection or sale of inventoried items. It is not uncommon for petitions to duplicate such items in the base for statutory fees."

Subdivision (a)(8) requires a statement of the property remaining at the time of the account. Robert K. Maize, Jr., Santa Rosa (Exhibit 6) would add to this a statement of the fair market value of the property, "so that information would be available to evaluate the personal representative's management of the estate and any in-kind distribution proposed by the personal representative." The staff does not believe this would be practical, except as to stock. Moreover, it is not the value at the time of the account that is important at distribution, but value at the time of death, i.e., inventory value. Perhaps the account could list inventory values. We do note, however, that the National Fiduciary Accounting Standards does require current property values.

Mr. Maize would also require a separate statement of receipts and disbursements relating to assets that are the subject of specific gifts. He notes that specific gifts carry receipts from the date of death, so that a specific account "would provide the information needed when those assets are distributed." This makes some sense to the staff.

Frank M. Swirles, Rancho Santa Fe (Exhibit 3), and Irving Kellogg, Los Angeles (Exhibit 15), would go further and require the account to indicate allocation of receipts and disbursements to income and principal. Mr. Swirles states, "An accounting should clearly indicate what the fiduciary has done as to allocations of principal and income and the result. Only by doing that is it possible to determine the value of the corpus." This result would be achieved to a great extent by the separate statement of specific gifts, suggested above. However, in cases where estate administration had continued beyond a year and

interest had accrued on general devises, or where a devise was made in the form of future interest not subject to a trust, Mr. Swirles' and Mr. Kellogg's suggestion would require allocation of estate assets to the various devises. Such an allocation would clearly be appropriate if done voluntarily; whether it would be advisable to require it in all cases is more problematical. The final account and distribution would show these allocations, and this may be all that is really needed in the usual case.

Mr. Swirles also suggests that the account should show taxable income and distributable net income. Inclusion of such items "would take some of the mystery out of accounts, and be the basis for fiduciary income tax returns so that the whole thing would hang together." He doesn't have a concrete suggestion for the format for such an account, but volunteers Professor Kasner of University of Santa Clara Law School, who he's sure would be glad to make suggestions. Subdivision (b).

Ruth A. Phelps, Burbank (Exhibit 5), supports the requirement in subdivision (b) that the report of administration include a statement whether notice to creditors was given. "I think this is a significant change and needs to be highlighted. I also agree with it."

The Executive Committee of the Probate and Trust Section of the Los Angeles County Bar (Exhibit 7) suggests that the statement of the nature and due date of claims should refer instead to the due date "for the filing" of claims. While this would be marginally useful, the staff believes we really do want the due date of claims that are not yet due; this will enable the court to know the extent of liabilities against the estate. This point is also made by Robert K. Maize, Jr., Santa Rosa (Exhibit 6), who believes the account should state specifically the unpaid liabilities and claims against the estate, and the properties that are subject to those liabilities or claims, "So that information would be available to evaluate the personal representative's management of the estate and any in-kind distribution proposed by the personal representative." In response to these suggestions, the staff would treat creditor claims in more detail, perhaps making a separate subdivision, thus:

The account shall include a statement of liabilities of the estate. The statement shall include the following information concerning creditor claims:

(1) Whether notice to creditors was given under Section 9050.

(2) A statement of creditor claims filed, including the date of filing the claim, the name of each claimant, the nature of the claim, and the action taken on the claim.

(3) Any claim not paid, the due date of the claim and the reason for nonpayment, and any property that is security for the claim by mortgage, deed of trust, or other lien.

This would also resolve the concern expressed by State Bar Study Team 4 (Exhibit 14) that the meaning "include, but not limited to" is not clear as applied to the creditor claim material in the report of administration.

§ 10901. Production of supporting documents

10901. On court order, or on request by an interested person filed with the clerk and a copy served on the personal representative, the personal representative shall produce for inspection and audit by the court or interested person the documents specified in the order or request that support an account.

Comment. Section 10901 supersedes former Section 925, extending the voucher procedure to supporting documents generally.

CROSS-REFERENCES

Definitions

Interested person § 48

Personal representative § 58

Note. *John G. Lyons, San Francisco (Exhibit 10), notes that this section omits much of the detail of the former voucher provisions. "How long should vouchers be retained? Can we withdraw a voucher by substituting a certified copy?" The Commission replaced the voucher procedure with the court order for production of documents under this section in order to avoid all this detail and because the voucher procedure is not used in many counties. Under this section any supporting documentation should be retained by the personal representative until an order for final distribution becomes final, since the order settling an account could possibly be challenged at any time until then.*

*The staff has incorporated drafting changes suggested by Mr. Lyons and by Irving Kellogg, Los Angeles (Exhibit 15).*

CHAPTER 2. WHEN ACCOUNT REQUIRED

§ 10950. Court-ordered account

10950. (a) On its own motion or on petition of an interested person, the court may order an account at any time.

(b) The court shall order an account on petition of an interested person made more than one year after the last account was filed or, if no previous account has been filed, made more than one year after issuance of letters to the personal representative.

(c) The court order shall specify the time within which the personal representative must file an account.

Comment. Section 10950 supersedes portions of the first sentences of former Sections 921 and 922. The section is subject to Section 10954 (waiver of account).

#### CROSS-REFERENCES

Actions in chambers, Code Civ. Proc. § 166

Defined terms

Interested person § 48

Letters § 52

Personal representative § 58

*Note.* Rawlins Coffman, Red Bluff (Exhibit 12), suggests that in addition to the other situations in which an interim account is required, one should be required when reporting the reasons for delay in distribution under Section 1025.5. We do require the report of status of administration to "show the condition of the estate." Perhaps, as Mr. Coffman suggests, an account is a more precise way to "show the condition" of the estate.

#### § 10951. Final account

10951. The personal representative shall file a final account and petition for an order for final distribution of the estate when the estate is in a condition to be closed.

*Comment.* Section 10951 supersedes the second sentence of former Section 922 and is consistent with Section 11640 (petition and order for final distribution) [to be drafted]. The section is subject to Section 10954 (waiver of account).

#### CROSS-REFERENCES

Definitions

Personal representative § 58

*Note.* Rawlins Coffman, Red Bluff (Exhibit 12), observes that a supplemental account is necessary in almost every probate after final distribution, and suggests that this be required by statute. No approval by the court or hearing would occur for the supplemental account unless requested by an interested distributee.

The Commission has developed a scheme in connection with distribution and discharge that takes care of after-acquired property by sending it in accordance with an omnibus clause in the order for distribution or on a petition for instructions. The omnibus clause method is supplemented by the authority of the court, in an appropriate case, to require a supplemental account.

#### § 10952. Account after authority terminated

10952. A personal representative who resigns, is removed from office, or whose authority is otherwise terminated, shall unless court extends the time, file an account not later than 60 days after termination of authority. If the personal representative fails to so file the account, the court may compel the account pursuant to Chapter 4 (commencing with Section 11050).

Comment. Section 10952 supersedes former Section 923. The section is subject to Section 10954 (waiver of account). For an account where the personal representative dies or becomes incompetent, see Section 10953.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

*Note.* Howard Serbin, Orange County Counsel (Exhibit 8), supports this section. "It will be helpful to have the sixty-day limit. In the past, it sometimes takes the predecessor representative too long to present his account. This, of course, delays the administration of the estate and collection of any surcharge."

#### § 10953. Account where personal representative dies or becomes incompetent

10953. (a) As used in this section, "legal representative" means the personal representative of a deceased personal representative or the conservator of the estate of an incompetent personal representative.

(b) If a personal representative dies or becomes incompetent and a legal representative is appointed for the deceased or incompetent personal representative, the legal representative shall not later than 60 days after appointment file an account of the administration of the deceased or incompetent personal representative.

(c) If a personal representative dies or becomes incompetent and no legal representative is appointed for the deceased or incompetent personal representative, or if the personal representative absconds, the court may compel the attorney for the absconding, deceased, or incompetent personal representative or attorney of record in the estate proceeding to file an account of the administration of the absconding, deceased, or incompetent personal representative.

(d) The legal representative or attorney shall exercise reasonable diligence in preparing an account under this section. The court shall settle the account as in other cases. The court shall allow a fee to the legal representative or the attorney for preparing the account; the fee shall be a charge against the estate that was being administered by the deceased, incompetent, or absconding personal representative.

Comment. Section 10953 restates former Section 932 with changes for internal consistency. The court referred to in this section is the court in which the estate of the original decedent is being administered.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Verification required § 1284

Note. *Howard Serbin, Orange County Counsel (Exhibit 8) supports this section. See discussion above in Note to Section 10952.*

##### § 10954. Waiver of account

10954. (a) Notwithstanding any other provision of this part, the personal representative is not required to file an account if any of the following conditions is satisfied as to each person entitled to payment or distribution from the estate:

(1) The person has executed and filed a written waiver of account or a written acknowledgment that the person's interest has been satisfied.

(2) Adequate provision has been made for satisfaction in full of the person's interest. This paragraph does not apply to a residuary devisee or a devisee whose interest in the estate is subject to abatement, payment of expenses, or accrual of interest or income.

(b) A waiver or acknowledgment under subdivision (a) shall be executed by the following persons:

(1) If the person entitled to payment or distribution is an adult and competent, by the person entitled to payment or distribution.

(2) If the person entitled to payment or distribution is a minor, by a person authorized to receive money or property belonging to the minor. If the waiver is executed by a guardian of the estate of the minor, the waiver may be executed without the need to obtain approval of the court in which the guardianship proceeding is pending.

(3) If the person entitled to payment or distribution is a conservatee, by the conservator of the estate of the conservatee. The waiver may be executed without the need to obtain approval of the court in which the conservatorship proceeding is pending.

(4) If the person entitled to payment or distribution is a trust, by the trustee, but only if the named trustee's written acceptance of the trust is filed with the court.

(5) If the person entitled to payment or distribution is an estate, by the personal representative of the estate.

(6) If the person entitled to payment or distribution is incapacitated, unborn, unascertained, or is a person whose identity or address is unknown, or is a designated class of persons who are not ascertained or are not in being, and there is a guardian ad litem appointed to represent the person entitled to payment or distribution, by the guardian ad litem.

(c) Notwithstanding subdivision (a), the personal representative shall file a final report of administration at the time the final account would otherwise have been required. The final report shall include the amount of fees and commissions paid or payable to the personal representative and to the attorney and shall set forth the basis for determining the amount.

Comment. Section 10954 restates former Section 933, with the addition of unpaid creditors (persons entitled to payment) to those whose waiver is required and the elimination of beneficiaries whose interest will be satisfied in full. The reference to a trustee's consent to act in subdivision (b)(4) has been replaced by a reference to the trustee's written acceptance of the trust. See Section 15600 (acceptance of trust by trustee). Subdivision (b)(6) is substituted for the former provision precluding waiver if a person entitled to distribution is unascertained.

#### CROSS-REFERENCES

##### Definitions

Person § 56

Personal representative § 58

Trust § 82

Trustee § 84

Note. Subdivision (a) excuses the filing of an account if waiver is made by "each person entitled to payment or distribution." The effect of this provision is to require waiver by creditors as well as beneficiaries. The protection of creditors by this draft is new; existing law requires only beneficiaries for a valid waiver.

This change in law received substantial comment. It was opposed by Luther J. Avery, San Francisco (Exhibit 4), and by State Bar Study Team 4 (Exhibit 14). Everett Houser, Long Beach (Exhibit 2), thinks the provision should be narrowed to apply only to unpaid creditors who have demanded special notice. The Bar Team thinks even this is unnecessary--creditors are adequately protected by the ability to appear and receive notices or to request special notice. (Presumably, they are referring to notice of an order for distribution, since there settlement of an account to notice.) The Bar Team sees the proposed statute as unduly favoring creditors. This is also Mr. Avery's point, who says that the proposal creates a bargaining position for doubtful

claimants and small creditors. He thinks creditor waiver shouldn't be required unless it's a large claim. "It would be far better if the fiduciary can attest that all known claimants have been paid or provided for." The staff believes this may offer a good solution if there is a bond in the estate.

On the other hand, Sandra Kass, Los Angeles (Exhibit 11), and the Executive Committee of the Probate and Trust Section of the Los Angeles County Bar (Exhibit 7), both support the creditor claim provision. Ms. Kass believes the waiver provisions are significantly better than existing law. "The beneficiaries of an estate may presently waive an accounting and thereby conceal the details of administration from the decedent's legitimate creditors. Section 10954 would require that such creditors join in any waiver unless their interests will be satisfied in full. This is a much more equitable approach."

And, Myron W. Curzon, Los Angeles (Exhibit 1), would go even further and require a waiver from persons who make claims on the estate, whether or not the claim is eventually successful!

Mr. Curzon also believes the requirement of waiver by distributees is inadequate. Where the distributee is the trustee of a trust, he would require waiver by the trust beneficiaries. The staff fails to see the virtue of either of Mr. Curzon's suggestions.

Richard E. Llewellyn II, Los Angeles (Exhibit 16), also notes a problem with waiver by distributees. If one distributee has already received all he or she is entitled to, that distributee can nonetheless require accounts even though all other distributees may have executed waivers by either refusing to sign a waiver or receipt or by dying without subsequent appointment of a personal representative. The staff believes these situations are adequately covered by subdivision (a)(2)--adequate provision has been made for satisfaction in full of the person's interest.

Under subdivision (c), even if there is a waiver of accounts, the personal representative must file a final report of administration. Mr. Curzon suggests adding to this an itemized specification of the assets on hand to be distributed, whether or not there is a waiver of accounts. He does not elaborate reasons, or indicate why the petition for final distribution would not contain this information.

Judge Robert R. Willard, Ventura (Exhibit 9), is also concerned about a problem that can arise if there is a waiver of accounts--how to ascertain the value of the estate for purpose of applying statutory fees. His practice is to limit the fee base to the referee's appraisal, or in the alternative to require a detailed account of increases in the fee base and a specific representation that there have been no losses. The staff notes that this matter is often covered by court rules. We will look into this problem more closely in connection with the commission of the personal representative and attorney's fees.

### CHAPTER 3. SETTLEMENT OF ACCOUNT

#### § 11000. Notice of hearing

11000. (a) The personal representative shall give notice of the hearing as provided in Section 1220 [AB 708].

(b) In addition to the notice required by subdivision (a), notice of the hearing shall be given as provided in Section 1220 to all of the following persons:

(1) Each known heir whose interest in the estate is affected by the account.

(2) Each known devisee whose interest in the estate is affected by the account.

(3) The State of California, if any portion of the estate is to escheat to it and its interest is affected by the account.

(c) If the petition for approval of the account requests fees, the notice of hearing shall so state.

(d) If the account is a final account and is filed together with a petition for an order for final distribution of the estate, the notice of hearing shall so state.

Comment. Subdivisions (a) and (b) of Section 11000 restate the third sentence of former Section 926 [AB 708] without substantive change. Subdivision (c) is new. Subdivision (d) restates the first portion of the second sentence of former Section 926(a) [AB 708] without substantive change. Notice must also be given to persons who have requested special notice. See Sections 1220(e), 1250, 1252 [AB 708].

#### CROSS-REFERENCES

Clerk to set matter for hearing § 1285

Definitions

Devisee § 34

Heirs § 44

Person § 56

Personal representative § 58

Note. Judge Henry T. Moore Jr., Orange County (Exhibit 17), would add to the list in subdivision (b) of persons to be given notice of hearing, in a case where the estate is insolvent, creditors who have filed claims. "For all practical purposes, when an estate is insolvent, the creditors are the beneficiaries of the estate. Notwithstanding this, it has been my experience that few attorneys give these creditors notice of hearings of settlements of accounts."

The requirement of subdivision (c) that the notice of hearing on an account state whether fees are requested was supported by Howard Serbin, Orange County Counsel (Exhibit 8). Mr. Serbin also wonders whether the exact amount of fees should be stated in the notice. The staff does not believe this is necessary.

§ 11001. Contest of account

11001. (a) All matters may be contested for cause shown, including but not limited to:

(1) The validity of an allowed or approved claim not reported in a previous account and not established by judgment.

(2) The value of property for purposes of distribution.

(3) Actions taken by the personal representative not previously authorized or approved by the court, subject to Section 10590 (Independent Administration of Estates Act) [AB 708].

(b) If, upon the hearing, the court determines that the contest was made without reasonable cause and good faith, the court may award against the contestant the fees, commissions, and costs of the personal representative and attorney incurred to defend the account. The amount awarded that remains unsatisfied is a charge against any interest of the contestant in the estate.

Comment. Section 11001 restates the first, second, and fourth sentences of former Section 927, with the addition of a provision making clear the right of an interested person to obtain court review of actions by the personal representative through a contest of an account. See also Section 1043 (response or objection) [to be drafted]. Subdivision (a)(2) permits a contest of the value of property for purposes of distribution only, and not of the inventory and appraisal; a separate procedure is provided for a direct contest of appraisal values. See Section 8804 (objection to appraisal) [to be drafted].

CROSS-REFERENCES

Definitions

Personal representative § 58

Note. Everett Houser, Long Beach (Exhibit 2), objects to the provision of subdivision (a)(1) for challenging the validity of allowed and approved creditor claims. "They have been examined for validity and propriety once, presumably by the Judge himself. Yet all the fuss and bother is to no avail when the account is filed. Here is a duplication of effort." The problem is, as we have seen, that the judge does not really review approved claims in most cases, but simply accepts the personal representative's report. The only opportunity a beneficiary would have to object would be on approval of the account.

Subdivision (b) allows the court to award litigation expenses in the case of an unreasonable contest. The Executive Committee of the Probate and Trust Section of the Los Angeles County Bar (Exhibit 7) suggests that the statute should make clear that referee fees are included among the expenses that may be awarded (see Section 11002). The staff believes this is a good point. We would deal with it in a general way, providing that "the court may award against the contestant the fees, commissions, and costs of the personal representative and attorney and other expenses and costs of litigation incurred to defend the account." The Comment could mention referee compensation specifically.

When litigation expenses are awarded, subdivision (b) also provides that "The amount awarded that remains unsatisfied is a charge against any interest of the contestant in the estate." Ruth A. Phelps, Burbank (Exhibit 5), believes that the underscored words don't add anything and simply confuse the issue. Although the staff does not agree that the words cause any problem, we do believe they could be deleted without loss. Obviously, under general principles of law, the award would not be a charge against a share of the distributee if the distributee had already paid the award at the time of distribution.

Nancy L. Powers, San Francisco (Exhibit 18), makes a case for awarding litigation expenses against the personal representative where the personal representative unreasonably resists the contest of account:

If, upon the hearing, the court determines that the personal representative resisted the contest without reasonable cause and good faith, and the personal representative is not a beneficiary, the court may award against the personal representative the fees, commissions and costs of the beneficiaries and their attorneys which are incurred to protect the interests of the beneficiaries, and the personal representative shall be personally liable therefor. If the personal representative is a beneficiary, the court shall award against the personal representative such fees, commissions and costs, and the personal representative shall be personally liable therefor. The amount awarded that remains unsatisfied is a charge against any interest of the personal representative in the estate.

In support of this proposal Ms. Powers notes that she has been retained by disgruntled beneficiaries in several improperly administered estates over the past few years, where the personal representative "willfully or negligently misadministered the estates, refused to respond to reasonable communication to remedy the problems, forced the beneficiaries to retain legal counsel, eventually settled the matter for an amount equivalent to, or even less than, the original gift under the will and left the beneficiaries seriously harmed due to the inability to recover attorneys fees and costs." Ms. Powers elaborates on this situation in her letter, noting that problems seem especially to occur in estates under \$600,000, where the personal representative is also a beneficiary.

Similar concerns are also raised by Luther J. Avery, San Francisco (Exhibit 4), who asks whether the contestant can be obtain fees from the estate to assist a contest where the contestant has a substantial interest in the estate. Mr. Avery is also concerned about what limits

should be imposed on the fees of the fiduciary or the fiduciary's attorney. "For example, are fees recoverable if the fiduciary has failed to account in a timely fashion or has failed to provide a correct or adequate accounting or failed to give notice." This latter matter should be dealt with in connection with compensation for the personal representative and attorney, but it does reveal the sort of problem that could justify an award of expenses to contest an account.

#### § 11002. Hearing on account

11002. (a) At the hearing, the personal representative may be examined on oath.

(b) The court may appoint one or more referees to examine the account and make a report on the account, subject to confirmation by the court. The court may allow a reasonable compensation to the referee to be paid out of the estate.

(c) The court may make such orders as the court deems necessary to effectuate the provisions of this section.

Comment. Section 11002 restates the third and fifth sentences of former Section 927 without substantive change. The provision of former Section 928 for jury trial of a contest of an allowed claim is not continued. See Section 7200 (trial by jury).

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Property § 62

Note. Jeffrey A. Dennis-Strathmeyer, *California Continuing Education of the Bar (Exhibit 13)*, suggests that subdivision (a) be deleted. "It is absurdly obvious that the personal representative may be examined on oath, and saying so implies that other persons cannot be examined."

Consistent with her position on awarding litigation expenses to a contestant where the personal representative unreasonably resists, Nancy L. Powers, *San Francisco (Exhibit 18)*, would adjust the portion of subdivision (b) that governs who pays the costs of the referees. Specifically, she suggests the following:

The court may allow a reasonable compensation to the referee to be paid out of the estate if it is determined that the contest was made without reasonable cause and good faith. If the court determines that the personal representative resisted the contest without reasonable cause and good faith, the court may allow a reasonable compensation to the referee to be paid by the personal representative who shall be personally liable therefor and such amount that remains unsatisfied is a charge against any interest of the personal representative in the estate.

Subdivision (c) eliminates jury trial in a contest of an account. This change is approved by Howard Serbin, Orange County Counsel (Exhibit 8) and by Sandra Kass, Los Angeles (Exhibit 7). Ms. Kass states that, "There is absolutely no need to have a jury determine whether or not an account is proper; the court is perfectly capable of making that determination and doing so in a much more efficient and expeditious manner. Particularly with the present congestion in the courts, the expense and delay resulting from the empanelling of a jury is unjustified for a matter such as a probate accounting."

At the hearing on the account, Judge Robert R. Willard, Ventura (Exhibit 9), notes that the parties frequently seek to have their opponents go forward and assume the burden of producing evidence. It is his practice to require the contestant to specify objections, with the petitioner then having the burden of producing evidence with regard to the specified items. "It would be helpful to have a statutory uniform procedure, subject to modification in the discretion of the court." We have statutorily specified burdens for will contests in our draft of those provisions, and we could do a similar job here, along the lines suggested by Judge Willard, if the Commission believes this would be useful.

§ 11003. Settlement of claim not paid in full

11003. If in an account it appears that the personal representative has settled and paid a claim for less than its full amount, the personal representative shall have credit in the account only for the amount actually paid.

Comment. Section 11003 restates the last portion of the first sentence of former Section 583 without substantive change.

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 11004. Settlement of claim not properly made or allowed

11004. If in an account it appears that a debt has been paid within the time prescribed in Section 9154 [AB 708] but without a claim having been filed and established in the manner prescribed by statute, the court in settling the account shall allow the amount paid if all of the following are proven:

- (a) The debt was justly due.
- (b) The debt was paid in good faith.
- (c) The amount paid was the true amount of the indebtedness over and above all payments and set-offs.
- (d) The estate is solvent.

Comment. Section 11004 restates former Section 929 without substantive change. The addition of the limitation that the debt shall have been paid within the time prescribed in Section 9154 (claim filing period plus 30 days) [AB 708] codifies the effect of existing case law. Cf. Estate of Erwin, 117 Cal.App.2d 203, 255 P.2d 97 (1953) (claim not made within claim filing period).

Note. Jeffrey A. Dennis-Strathmeyer, California Continuing Education of the Bar (Exhibit 13), notes that if read literally, subdivision (c) would preclude allowance of an informally paid debt if anything other than the exact amount of the debt was paid. The personal representative would not get credit if a penny more or less was paid. Mr. Strathmeyer believes that if the debt is satisfied, the personal representative should get credit for the actual amount of the debt regardless of the overpayment or underpayment.

Judge Henry T. Moore Jr., Orange County (Exhibit 17), notes an area where he believes an informally paid debt should be allowed even if payment is not made within the creditor claim period as required by this section. This is where the personal representative is seeking to reimburse himself or herself for last illness and funeral expenses of the decedent. He believes the court should have discretion to approve the reimbursement as part of a final accounting, on notice to heirs and beneficiaries, even though no claim or reimbursement was timely made. "The present law permits an undue windfall for heirs and beneficiaries where a personal representative has paid a funeral bill but has not gotten reimbursement and did not file a creditor's claim in time and where there is no doubt the bill was properly owing and fair in amount." He thinks existing law results many times in hardships to personal representatives and perhaps malpractice claims against the attorneys.

#### § 11005. Effect of order settling account

11005. (a) Except as provided in subdivision (b), the order settling an account is conclusive against all interested persons.

(b) A person under legal disability has the right, at any time before entry of an order for final distribution of the estate, to move for cause to reopen and examine the account or to proceed by action against the personal representative or the sureties on the bond. In the action the order settling the account is prima facie evidence of the correctness of the account.

Comment. Section 11005 restates former Section 931, making clear that the exception in subdivision (b) applies only until entry of the order and not until physical distribution. As to the effect of fraud on the conclusiveness of the order, cf. Lazzarone v. Bank of America, 181 Cal. App. 3d 581, 226 Cal. Rptr. 855 (1986) (trust account), and Bank of America v. Superior Court, 181 Cal. App. 3d 705, 226 Cal. Rptr. 685 (1986) (guardianship account).

CROSS-REFERENCES

Definitions

Interested person § 48

*Note.* Howard Serbin, Orange County Counsel (Exhibit 8), supports the limitation in subdivision (b) on reopening a settled account on entry of an order for final distribution.

CHAPTER 4. COMPELLING ACCOUNT

§ 11050. Sanction for failure to account

11050. Subject to the provisions of this chapter, if the personal representative does not file a required account, the court shall compel the account by punishment for contempt.

Comment. Section 11050 restates the third sentence of former Section 922 without substantive change. This chapter may also be used to compel an account by a personal representative whose authority is terminated. Section 10952.

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 11051. Citation

11051. (a) A citation shall be issued, served, and returned, requiring a personal representative who does not file a required account to appear and show cause why the personal representative should not be punished for contempt.

(b) If the personal representative purposefully evades personal service of the citation, the personal representative shall be removed from office.

Comment. Subdivision (a) of Section 11051 restates the last sentence of former Section 922 without substantive change. Subdivision (b) restates a portion of former Section 924 without substantive change.

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 11052. Punishment for contempt

11052. If the personal representative does not appear and file a required account, after having been duly cited, the personal representative may be punished for contempt or removed from office, or both, in the discretion of the court.

Comment. Section 11052 restates the last sentence of former Section 921 and restates a portion of former Section 924 without substantive change. See also Section 8505 (removal from office for contempt) [*to be drafted*].

CROSS-REFERENCES

Definitions

Personal representative § 58

COMMENTS TO REPEALED SECTIONS

ARTICLE 3. RENDERING OF EXHIBITS AND ACCOUNTS

Probate Code § 920 (repealed)

Comment. Former Section 920 [AB 708] is a general provision that is omitted as unnecessary; the duty to account, the contents of accounts, and the settlement of accounts are governed by specific statutory provisions.

Probate Code § 920.3 (repealed)

Comment. Former Section 920.3 [AB 708] is superseded by Section 10900 (contents of account). See the Comment to Section 10900.

Probate Code § 921 (repealed)

Comment. The first sentence of former Section 921 is restated in Sections 10950 (court ordered account) and 10900 (contents of account), and in Code of Civil Procedure Section 166 (actions in chambers). The last sentence is restated in Section 11052 (punishment for contempt) without substantive change.

Probate Code § 922 (repealed)

Comment. The first sentence of former Section 922 is restated in Sections 10950 (court ordered account) and 10900 (contents of account). The second sentence is superseded by Section 10951 (final account). The third sentence is restated in Section 11050 (sanction for failure to account) without substantive change. The last sentence is restated in Section 11051(a) (citation) without substantive change.

Probate Code § 923 (repealed)

Comment. Former Section 923 is superseded by Section 10952 (account after authority terminated).

Probate Code § 924 (repealed)

Comment. Former Section 924 is restated in Sections 11051(b) (citation) and 11052 (punishment for contempt) without substantive change.

Probate Code § 925 (repealed)

Comment. Former Section 925 is superseded by Section 10901 (production of supporting documents), which extends the voucher procedure to supporting documents generally.

Probate Code § 926 (repealed)

Comment. The first sentence of subdivision (a) of former Section 926 [AB 708] is restated in Section 1285 (clerk to set matter for hearing). The second sentence is restated in Sections 11000(c) (notice of hearing), 11641 (distribution under) [to be drafted]. Subdivisions (b) and (c) are restated in Section 11000 (notice of hearing) without substantive change.

Probate Code § 927 (repealed)

Comment. The first and second sentences of former Section 927 are restated in Sections 11000 (contest of account) and 1043 (response or objection) [to be drafted] without substantive change. The third and fifth sentences are restated in Section 11002(a) (hearing on account) without substantive change. The fourth sentence is restated in Section 11001 (contest of account) without substantive change. The last sentence is not continued because it is no longer necessary.

Probate Code § 928 (repealed)

Comment. Section 928 is not continued. See Section 7200 (trial by jury) [to be drafted].

Probate Code § 929 (repealed)

Comment. Former Section 929 is restated in Section 11004 (settlement of claim not properly made or allowed) without substantive change.

Probate Code § 930 (repealed)

Comment. Former Section 930 is not continued. The voucher procedure was generally not used.

Probate Code § 931 (repealed)

Comment. Former Section 931 is restated in Section 11005 (effect of order settling account) without substantive change.

Probate Code § 932 (repealed)

Comment. Former Section 932 is restated in Section 10953 (account where personal representative dies or becomes incompetent) with changes for internal consistency.

Probate Code § 933 (repealed)

Comment. Former Section 933 is restated in Section 10954 (waiver of accounting) without substantive change.