

First Supplement to Memorandum 88-50

Subject: Study L-1026 - Probate Code (Payment of Debts--comments of bar associations)

At the July meeting the Commission received the attached letter from the State Bar concerning issues raised by Estate of Sturm. See discussion in Memorandum 88-50. The commission deferred decision on this matter, requesting the views of the Los Angeles County Bar Association and Beverly Hills Bar Association for the September meeting. As of this writing, we have not received any communication concerning their views.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

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PROBATE LAW SECTION
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July 11, 1988

ESTATE REV. COMMISSION

JUL 13 1988

RECEIVED

Mr. Nathaniel Sterling
Assistant Executive Secretary
Law Revision Commission
4000 Middlefield Road; Suite D-02
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Re: Clarification of the Impact of Estate of
Sturm on Sections 929 and 9154

Dear Nat:

The following is the recommendation of the Special Creditors's Claim Team appointed by the Executive Committee regarding the impact of the Sturm holding on Sections 929 and 9154:

In Estate of Sturm, the Second Appellate District of the California Court of Appeals held that the partial payment of a debt within the time limits of Section 707 verifies the existence and knowledge of the debt and justifies payment of its balance after the expiration of the fourth-month claims period. The question has arisen as to whether the holding in Sturm, or the policy considerations supporting that holding, should be codified in Sections 9154 and 929 (the substance of which will be in proposed substitute Section 11005).

1. Section 9154 allows the personal representative to elect to pay debts of the decedent without the submission of a formal claim if the following conditions are satisfied:

- (a) The creditor submits a written demand within the claim period;
- (b) The payment is made within thirty (30) days of the close of the claims period;
- (c) The debt was justly due;

- (d) The debt was paid in good faith;
- (e) The amount paid was accurate; and
- (f) The estate is solvent.

The Sturm holding raises the question as to whether a partial payment prior to the expiration of the 30 day period would be sufficient validation of the entire amount due. The team concluded that the impact of the Sturm holding on the requirements of Section 9154 is unclear and that clarification within the statutory provisions is desirable for the efficient administration of estates, including the determination of the validity of the payment of debts and the deductibility of debts for federal estate tax purposes. The Team further concluded that a primary purpose of the creditor's filing requirements is to assure that the personal representative has knowledge of the existence of the debt. Consequently, the requirement that a written demand be received by the personal representative within the four-month claims period was sufficient to satisfy this purpose, and the further requirement that the claim be paid within a specified time was unwarranted in light of the consequences to the estate and the confusion which could result in judicial responses to situations such as partial payment, installment payments, and similar circumstances.

Based on the above, the Team recommends the following amendments to Section 9154:

Notwithstanding any other provision of this part, if a creditor makes a written demand for payment within four (4) months after the date letters are first issued to a general personal representative, the personal representative may waive formal defects and elect to treat the demand as a claim that is filed and established under this part by paying the amount demanded either before or after the expiration of ~~thirty (30) days after~~ the four-month period if all of the following conditions are satisfied:

(a) The debt was justly due at the date of death or as either a last illness or funeral expense of the decedent;

(b) The debt was paid in good faith;

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(c) The amount paid was the true amount of the indebtedness over and above all payments and offsets;

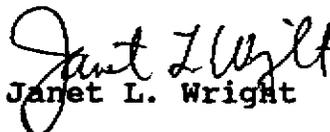
(d) The estate is solvent.

2. Section 929 provides for the allowance of certain debts in settling an account even though formal claims were not filed or approved. It is the Team's opinion that the debts subject to allowance under this section should include all debts which can be validly paid under Section 9154. The Team recommends that Section 929 (as well as proposed substitute Section 11055) be amended as follows:

If it appears that debts of the decedent have been paid without verified claims having been filed or presented and allowed and approved, and it shall be proven that such debts were validly paid pursuant to Section 9154, justly due, were paid in good faith, that the amount paid was the true amount of such indebtedness over and above all payments or set-offs, and that the estate is solvent, the court in settling the account, shall allow the sums so paid.

The Team is aware of the position taken by the Executive Committee regarding Section 11005 as outlined in the letter to you from Kathryn A. Ballsun dated May 3, 1988. As is noted in the letter, the Executive Committee voted 13 to 10 for the proposition that "for payment of an informal claim to be considered justly due, the payment must be made within the creditor's claim period." It was the Team's opinion that the consideration raised by the holding in Sturm justified a reconsideration of the issue by the full Executive Committee. This occurred on July 9, 1988, at which time the Executive Committee adopted the view herein expressed.

Very truly yours,


Janet L. Wright

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