

Memorandum 89-12

Subject: Study L-2010 - 1989 Probate Cleanup Bill (Suggestions Received)

Attached to this memorandum are letters we have received with suggestions for provisions to be included in the 1989 probate cleanup bill. The suggestions are analyzed below.

Probate Code § 215. Reporting fact of death

Susan House (Exhibit 1), writing on behalf of the Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association, complains about legislation enacted in 1988 that would impose a duty on the attorney of record in the estate proceeding to inform the Department of Health Services of the estate proceedings if the decedent received or may have received Medi-Cal benefits. See 1988 Cal. Stats. ch. 1051 (SB 2308). Ms. House states that "This provision will necessarily lead in all probates to the giving a notice to the Director of Health Services regardless of its applicability."

The staff advises the Commission against taking any action on this matter. The 1988 legislation was enacted over the opposition of probate practitioners and for the sole purpose of imposing this duty on the estate attorney. The Legislature has just spoken on this issue, the law takes effect January 1, and the Commission should stand back at least until the law has been in effect for awhile.

Probate Code § 8404. Statement of duties and liabilities

Chuck Collier (Exhibit 2) correctly points out that the statement of duties and liabilities of the personal representative was not amended to reflect the four-month period for filing an inventory and appraisal. We have been aware of this problem and have already included corrective language in the cleanup bill. We have also alerted the Judicial Council to the problem so that any form they produce will be correct.

Probate Code § 8405. Form of letters

Chuck Collier (Exhibit 2) notes that the listing of limited authority powers under Independent Administration in Section 8405 is incomplete:

8405. Letters shall be signed by the clerk under the seal of the court and shall include:

(a) The county from which the letters are issued.

(b) The name of the person appointed as personal representative and whether the personal representative is an executor, administrator, administrator with the will annexed, or special administrator.

(c) A notation whether the personal representative is authorized to act under the Independent Administration of Estates Act, and whether the authority includes or excludes sale, exchange, ~~or~~ granting an option to purchase, or borrowing money with the loan secured by an encumbrance upon, real property under the act.

Comment. Subdivision (c) of Section 8405 is amended for completeness. See Section 10403 (limited authority) and former subdivision (c) of Section 10452 (endorsement on letters).

In this connection, a duplicative provision should be deleted from Probate Code Section 10452:

10452. (a) Any interested person may object to the granting of authority to administer the estate under this part by filing at or before the hearing a written statement setting forth the objection or by appearing at the hearing and making the objection.

(b) Unless the court determines that the objecting party has shown good cause why the authority requested in the petition should not be granted, the court shall grant the requested authority. If the objecting party has shown good cause why only limited authority should be granted, the court shall grant only limited authority.

~~(c) The letters shall be endorsed to the effect that the letters are issued under this part and, if the authority granted is limited authority, the endorsement shall include a statement that the personal representative has all of the powers granted by this part except the power to do any of the following:~~

~~(1) Sell real property.~~

~~(2) Exchange real property.~~

~~(3) Grant an option to purchase real property.~~

~~(4) Borrow money with the loan secured by an encumbrance upon real property.~~

Comment. Subdivision (c) is deleted from Section 10452 because it duplicates subdivision (c) of Section 8405 (form of letters).

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

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DEC 05 1988

RECEIVED

Nathaniel Sterling, Esq.
 Assistant Executive Secretary
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Dear Nat:

By way of follow-up to my letter of October 19, 1988, on behalf of the Executive Committee of the L. A. County Bar Probate and Trust Law Section, I am enclosing a copy of a notice which I just received, as a practitioner, from the Department of Health Services. This notice accompanied a Creditor's Claim for Medi-Cal payments on behalf of the Department of Health Services.

You will see that the notice refers to SB 2308 and points out the fact that as of January 1, 1989, a duty will be imposed upon attorneys of record to notify the Department of Health Services of estate proceedings whenever there is a deceased Medi-Cal beneficiary. Attached to this letter is a copy of SB 2308 which clearly imposes such a duty on the estate attorney in both Sections 215 and 9202.

In view of the concern we previously expressed and to which the Law Revision Commission responded in their Tentative Recommendation currently out for comment, we are wondering whether some attention could be given to relieving the estate attorney of this duty with regard to Medi-Cal in the same way that we eliminated the reference to the estate attorney in Probate Code Section 9053.

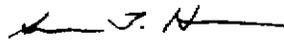
While I do not know the legislative history behind SB

Nathaniel Sterling, Esq.
December 2, 1988
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2308, I am wondering whether the inclusion of the duty placed on the estate attorney was the result of the then existing language in 9053. This provision will necessarily lead in all probates to the giving a notice to the Director of Health Services regardless of its applicability. I wonder whether this result is truly the goal of the sponsors of this bill.

As always, thank you for your careful attention to the suggestions you receive.

Very truly yours,



Susan T. House
of HAHN & HAHN

STH:mc
Enclosure
5266L

cc: Richard L. Stack, Esq.
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Marshal A. Oldman, Esq.
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This notice is to inform all interested parties of the recent passage of SB 2308. This bill amends Section 215 and 9202 of the Probate Code, which will expand reporting requirements to include the attorneys of record who would be personally responsible to notify the Department of Health Services of estate proceedings involving deceased Medi-Cal beneficiaries. This notification should include a copy of the death certificate. This amendment will become law January 1, 1989.

In addition, proof of payment from this Department will be expedited if an unsigned receipt, indicating the paid amount, is provided by your office.

If you have any questions, please contact the Recovery Branch of the Department of Health Services at 1-916-322-2280.

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DEC 07 1988

R E C E I V E D

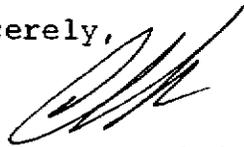
Re: AB-2841 - Technical Corrections

Dear John:

In preparing for a CEB Panel on Recent Developments, I have been reviewing the provisions of AB-2841. The statement of "duties and liabilities of personal representative" in Section 8404, paragraph 4, was not corrected to refer to filing an inventory within four months. It states that the inventory must be filed within three months and an appraisal within six months. This should be corrected.

Also, in Section 8405(c), I believe there should be some reference to borrowing of funds on real property.

Sincerely,



Charles A. Collier, Jr.

CAC:vjd