

## Memorandum 89-83

Subject: Study L-1036/1055 - Compensation of Attorney and Personal Representative (Comments of HALT)

We have received a letter from HALT (letter attached as Exhibit 1) suggesting revisions in the Commission recommended provisions relating to compensation of attorneys and personal representatives. The Commission is planning to urge the Senate Judiciary Committee in January 1990 to approve amendments to AB 831 to add the Commission recommended provisions.

Attached as Exhibit 2 is a copy of the amendments to Assembly Bill 831 that would effectuate the Commission's recommendation concerning compensation of personal representatives and attorneys.

HALT strongly supports the concept of the Commission's recommendation (see page 1 of Exhibit 1) and was able to obtain support of other consumer organizations. However, HALT proposes a number of significant revisions in the recommended legislation. The suggested revisions are discussed below.

**ATTORNEY ACTING AS PERSONAL REPRESENTATIVE**

**EXISTING LAW**

Under existing statutory law, a personal representative who is an attorney may receive the personal representative's compensation, but not compensation for services as estate attorney, unless expressly authorized by the decedent's will. Case law holds that the personal representative who is an attorney may not retain his or her law firm as estate attorney if the personal representative will share in the fee received by the firm.

**COMMISSION RECOMMENDED LEGISLATION**

The Commission recommendation (Section 10804 set out below) would permit an attorney to receive compensation for services in both capacities, even where there is no express authorization in the will, if the court makes an order authorizing compensation for services in both capacities:

10804. Unless expressly authorized by the decedent's will or by court order, a personal representative who is an attorney may receive the personal representative's compensation but not compensation for services as the estate attorney.

It is unclear under Section 10804 whether an attorney-PR may hire another attorney who is associated or affiliated with the PR and share in the compensation paid the other attorney.

The Commission recommendation (subdivision (a) of Section 9680) provides:

9680. (a) Except as restricted or otherwise provided by the will or by court order and subject to subdivision (b) and to Section 10804, the personal representative, acting reasonably for the benefit of the estate and in the best interest of interested persons, may hire persons to advise or assist the personal representative in the administration of the estate, including attorneys, accountants, auditors, technical advisers, investment advisers, or other experts or agents, even if they are associated or affiliated with the personal representative.

#### **HALT SUGGESTIONS**

##### **Background**

HALT is particularly concerned that the Commission recommended legislation will permit "double-dipping--enabling attorney-PR's to collect both PR fees and legal fees for essentially the same work."

HALT would adopt the Uniform Probate Code scheme (reasonable fees for PR as well as estate attorney). In other words, HALT would not retain statutory percentage fees for the personal representative. If statutory percentage fees are retained for the personal representative, HALT believes that the Commission "must more effectively address the problems that arise in situations where an attorney serves as personal representative (PR)."

HALT has several specific objections:

(1) The Commission recommended legislation permits the attorney who is the PR to collect a statutory percentage fee for ordinary PR services and additional compensation for extraordinary PR services, and under the case law the court can take into account legal services rendered by the attorney PR in awarding compensation for the extraordinary PR services.

(2) The Commission recommended legislation permits the attorney-PR to collect both PR fees and legal fees if the attorney obtains court authorization. According to HALT: "This exception, which contains no statutory grounds to guide the court, threatens to swallow the anti-double dipping rule."

(3) The Commission recommended provisions allow an attorney-PR to hire another attorney who can be associated or affiliated with the PR. Both may be paid out of estate funds. According to HALT, the double-dipping can easily occur because nothing in the recommended legislation prohibits an attorney-PR from "hiring" a lawyer from his own firm as the estate attorney and letting the law firm collect both PR and legal fees.

(4) The Commission recommended provisions allow the attorney-PR to hire an estate attorney from outside his own firm. According to HALT, this defeats the likely intent of the testator who was lead to believe he or she could save probate fees because the PR can also handle the legal work. "Although two different firms may get the fees, the estate is likely to incur twice the billings and expense in this arrangement."

Staff recommendations concerning specific HALT suggestions

At a minimum, HALT suggests two revisions in the Commission's recommended legislation:

(1) HALT suggests that the Commission "get rid of the court order' exception to §10804."

(2) HALT urges the Commission to "amend §10801, the extraordinary PR services provision, to exclude from the court's consideration the provision of legal services."

These "minimum" revisions are discussed below.

Elimination of court order exception to Section 10804. A possible revision of Section 10804 is set out below. This revision retains the court order exception in Section 10804 but provides a standard for the exercise of the exception ("If the court determines it is to the advantage of the estate and in the best interest of the persons interested in the estate").

To deal with the HALT concern, *THE STAFF RECOMMENDS* that Section 10804 be revised to read:

10804. (a) Unless expressly authorized by the decedent's will or by court order, a personal representative who is an

attorney may receive the personal representative's compensation but not compensation for services as the estate attorney.

(b) The personal representative may petition the court for an order that the personal representative receive compensation both as personal representative and as estate attorney.

(c) Notice of the hearing on the petition shall be given as provided in Section 1220 to all of the following persons:

(1) Each person listed in Section 1220.

(2) Each known heir whose interest in the estate is affected by the petition.

(3) Each known devisee whose interest in the estate is affected by the petition.

(4) The Attorney General, by mail at the office of the Attorney General in Sacramento, if any portion of the estate is to escheat to the state and its interest in the estate is affected by the petition.

(d) If the court determines it is to the advantage of the estate and in the best interest of the persons interested in the estate, the court may make an order authorizing the personal representative to receive compensation both as personal representative and as estate attorney, subject to any limitations and conditions set out in the order.

This revision will allow the court to make an order where it will result in a saving to the estate and provides specifically for notice to interested persons of the application for the order.

Amend Section 10801 to preclude consideration of legal services provided by personal representative in awarding compensation to the personal representative for extraordinary services. The second of the "minimum" revisions HALT urges is to make clear that the court may not consider the providing of legal services by the PR in determining the compensation to be awarded the PR for extraordinary PR services. Section 10801 reads:

10801. Subject to the provisions of this part, in addition to the compensation provided by Section 10800, the court may allow additional compensation for extraordinary services by the personal representative in an amount the court determines is just and reasonable.

The staff believes that Section 10801 is satisfactory in its present form (since the section is expressly made "subject to the provision of this part"), but *THE STAFF RECOMMENDS* that the last paragraph of the Comment Section 10801 be revised to deal with the concern expressed by HALT:

Under the introductory clause of Section 10801, the section is subject to the provisions of this part. Thus, for example, Section 10801 is subject to Section 10802. Section 10802 provides that, if the decedent's will makes provision for the compensation of the personal representative and the court does not relieve the personal representative from those provisions, the compensation provided by the will shall be the full and only compensation for the services of the personal representative. See also the discussion in the Comment to Section 10802. Likewise, Section 10801 is subject to Section 10804. Section 10804 provides that, unless expressly authorized by the decedent's will or by court order, a personal representative who is an attorney may not receive compensation for services as the estate attorney. Accordingly, in awarding compensation to the personal representative for extraordinary services, the court may not award compensation for legal services rendered by the personal representative except to the extent expressly authorized by the decedent's will or by court order obtained under Section 10804.

Allow attorney-PR to collect legal fee instead of PR percentage fee. HALT also makes other suggestions for Commission consideration. HALT suggests that Section 10804's prohibition on dual compensation be retained but reversed to allow the attorney-PR to collect a legal fee instead of the PR's percentage fee:

In other words, make the attorney-PR's wear only their attorney hats for compensation purposes. This amendment would forbid lawyers from collecting percentage fees through the back door and effectively prevent double-dipping. Because there wouldn't be anyone with whom the attorney-PR must "negotiate" their legal fee, however, it would have to be policed by the heirs. This could be done using the "notice of proposed action" procedure provided in §10585.5(a)(1).

*THE STAFF RECOMMENDS* against adopting this suggestion. The suggestion ignores situations where the attorney is a family member of the decedent or is not engaged in estate practice. It would require addition of provisions to the statute that would greatly complicate it. Moreover, if the decedent has selected the attorney as personal representative, we see no reason to treat the personal representative any differently than any other personal representative.

Require PR to pay attorney for estate administration service out of PR's fee, not out of estate. HALT suggests that the statute require attorney-PR's to pay attorneys they hire to provide

estate administration services out of their own fee, not the estate. Such an amendment would retain the flexibility of allowing PR's to hire affiliated persons and still allow an attorney-PR to hire, for example, a personal injury lawyer to sue for wrongful death and be paid from estate funds. However, the estate would at least be shielded from double-dipping for probate services.

THE STAFF RECOMMENDS against adopting this suggestion for the same reasons given with respect to the suggestion considered immediately above.

#### DEFINITION OF "REASONABLE FEES"

HALT comments:

One glaring flaw in the Commission's reform recommendations is that they contain no definition of what constitutes a "reasonable" fee. Unless "reasonableness" is precisely defined, however, this new requirement has no teeth and adds little to the other requirement that fees also be "negotiated."

It is no answer to rely on the list of criteria in the Rules of Professional Conduct. . . . HALT urges you to adopt statutory standards that, to the extent possible, are capable of being understood by an heir and objectively determined by a court.

The most objective standard would be "documented time spent and work performed." Requiring attorneys to document the time spent and work done and then bill accordingly would pose little hardship for attorneys who routinely do so in other areas of practice. Because a strict requirement to base fees on time would prevent PR's from bargaining for other-than-hourly rates, however, HALT urges you to adopt a statutory presumption in favor of basing fees on the time spent and work done. A presumption would give PR's the flexibility to negotiate a variety of fee arrangements, yet would still permit the heirs to challenge fees that bear little relationship to the work actually done.

In response to the concern expressed by HALT and to clarify the provisions relating to refunds of excessive attorney compensation (another concern expressed by HALT), THE STAFF RECOMMENDS that Section 9684 be revised to read:

9684. (a) On petition of the personal representative or an interested person, the court may shall review the following as requested in the petition:

(1) The propriety of employment by the personal representative of any person under Section 9680 who has been or is to be paid out of funds of the estate.

(2) The reasonableness of the agreed compensation under subdivision (a) of Section 9681 of any person who has been or is to be paid out of funds of the estate.

(b) Notice of the hearing on the petition shall be given as provided in Section 1220 to all of the following persons:

(1) The person whose employment or compensation is in question.

(2) Each person listed in Section 1220.

(3) Each known heir whose interest in the estate is affected by the petition.

(4) Each known devisee whose interest in the estate is affected by the petition.

(5) The Attorney General, by mail at the office of the Attorney General in Sacramento, if any portion of the estate is to escheat to the state and its interest in the estate is affected by the petition.

(c) On hearing the petition, the court shall determine whether the agreed compensation is unreasonable in light of the work actually performed for the estate. In making that determination in case of the attorney for the personal representative, the court shall be guided by Rule 4-200 of the Rules of Professional Conduct of the State Bar of California (fees for legal services). If the court determines that the agreed compensation is unreasonable, the court shall fix a reasonable amount as compensation and ~~may order the person who has received excessive compensation to make an appropriate refund.~~

(d) If the court determines that the attorney for the personal representative has received excessive compensation, the court shall order the attorney to make an appropriate refund. Unless the person ordered to make the refund is If the court determines that a person other than the attorney for the personal representative has received excessive compensation, the an order for the refund of the excessive compensation may be obtained only in a proceeding under Section 9684.5.

~~(d)~~ (e) Except as provided in subdivision ~~(e)~~ (f), nothing in this section limits the right to contest the account of the personal representative under Chapter 3 (commencing with Section 11000) of Part 8.

~~(e)~~ (f) The petitioner and all persons to whom notice of the hearing on the petition was given pursuant to subdivision (b) are bound by the determination of the court under this section.

The revision of Section 9684 set out above provides the basic standard for determining whether the agreed compensation is unreasonable ("unreasonable in light of the work actually performed for the estate") and at the same time makes reference to various factors that may be considered in determining reasonableness (Rule 4-200 of the Rules of Professional Conduct of the State Bar of California). The

revision also makes clear that the court must order the attorney who has received excessive compensation to make a refund and that such order is to be made in the same proceeding.

#### NOTICE AND WAIVER OF OBJECTION PROVISIONS

HALT is concerned that the various forms used in a probate proceeding do not adequately inform interested persons of the consequences of waiving future notices. See the HALT letter (attached as Exhibit 1 at pages 5-6). Most forms used in probate proceedings are prepared by the Judicial Council which is always receptive to suggestions for improvement of the forms. In addition, the concern of HALT appears to be directed to the forms themselves (such as the notice of proposed action form), not just the forms insofar as they relate to the attorney fee recommendation. We do not believe that the forms can contain a detailed statement of the law concerning a particular matter, which seems to be what HALT proposes.

*THE STAFF RECOMMENDS* against any proposing any statutory change in the forms. We think the forms are adequate now. We attach a copy of the relevant Judicial Council forms as Exhibit 3. *THE STAFF RECOMMENDS* that the Commission request the Judicial Council to draft a form for Waiver of Accounting that will adequately inform the person executing the waiver of the consequences of the waiver.

#### SANCTION FOR DELAY

Existing law authorizes the court to reduce the compensation of the personal representative or attorney for the personal representative if administration of the estate exceeds the time allowed by law or the court. The sanction is applied against the personal representative or attorney if the court determines that the excess time taken was within the control of the personal representative or attorney, as the case may be, and that the delay was not in the best interest of the estate or interested persons. HALT objects to the Commission recommended legislation insofar as it would eliminate the sanction against the attorney. See the discussion on pages 6-7 of the HALT letter (attached as Exhibit 1). The staff's recollection is that others (including legislative committee members) have expressed the same concern.

Accordingly, *THE STAFF RECOMMENDS* that the ability of the court to apply the sanction against the attorney be restored to Section 12205, so that the section as it now exists would be amended to make only technical and conforming changes and to improve the form of the section. The amended section would read:

12205. (a) The court may reduce the compensation of the personal representative or the attorney for the personal representative by an amount the court determines to be appropriate if the court makes all of the following determinations:

(1) ~~If the~~ The time taken for administration of the estate exceeds the time required by this chapter or prescribed by the court, the court may, on the hearing for final distribution or for an allowance on the commissions of the personal representative or on the fees of the attorney, reduce the commissions or fees by an amount the court deems appropriate, regardless of whether the commissions or fees otherwise allowable under the provisions of Sections 901 and 910 would be reasonable compensation for the services rendered, if the court determines that

(2) The time taken was within the control of the personal representative or attorney whose commissions or fees are compensation is being reduced, and

(3) The delay was not in the best interest of the estate or interested persons.

(b) An order under this section reducing compensation may be made regardless whether:

(1) The compensation otherwise allowable under Part 7 (commencing with Section 10800) would be reasonable compensation for the services rendered by the personal representative.

(2) The compensation otherwise paid or to be paid to the attorney for the personal representative would be considered reasonable compensation for the services rendered by the attorney.

(c) An order under this section may be made on any of the following hearings:

(1) The hearing for final distribution.

(2) The hearing for an allowance on the compensation of the personal representative.

(3) The hearing under Section 9684 to review the compensation of the attorney for the personal representative.

(d) In making a determination under this section, the court shall take into account any action taken under Section 12202 as a result of a previous delay.

(e) If the court determines that the attorney for the personal representative has received compensation in excess of the reduced amount allowed under this section, the court shall order the attorney to make an appropriate refund.

## TECHNICAL MATTERS

### Report of Administration. HALT notes

the "Report of Administration" referred to in §10900(c) appears to require the attorney to be listed and the one referred to in §10954(c) doesn't. This confusion should be clarified.

The "Report of Administration" referred to in Section 10900(c) is part of the account. The "final report of administration" referred to in Section 10954(c) is a report filed when an account is waived and is required in order to permit the court to compute the compensation of the personal representative. The sections are not inconsistent, but it might be clearer if the contents of the report referred to in Section 10954(c) were more clearly designated and a more distinctive name were given to the report.

Notice of Proposed Action. HALT comments: "Section 10501(a)(7) also is ambiguous in that it appears to mandate use of the Notice of Proposed Action." HALT overlooks subdivision (d) of Section 10501, which provides that subdivision (a) does not apply to the hiring and paying of the attorney for the personal representative and other persons hired to advise or assist the personal representative in the administration of the estate. Accordingly subdivision (a)(7) does not mandate notice of proposed action for compensation of persons hired to advise or assist the personal representative in the administration of the estate.

## OTHER REVISIONS SUGGESTED BY THE STAFF

### Operative Date Provisions

The amendments to AB 831 (attached as Exhibit 2) were drafted on the assumption that the bill would be enacted in 1989 and become operative on January 1, 1990. This did not happen, and the bill, if enacted in the amended form, will become operative on January 1, 1991. Accordingly, in the draft of the amendments attached, "January 1, 1991" should be substituted for "January 1, 1990" in the following:

- (1) Section 9686 (two places) (page 10 of Exhibit 2).
- (2) Section 10406(d) (two places) (top of page 12 of Exhibit 2).
- (3) Section 10850 (three places) (pages 17 and 18 of Exhibit 2).
- (4) Section 27 (three places) (pages 22 and 23 of Exhibit 2).

Amendment of Section 8404

Section 8404 (set out below as proposed to be amended) provides for a statement of duties and liabilities of the office of personal representative. Subdivision (c) of the section sets out the form of statement unless the Judicial Council prescribes the form of the statement, in which case the statement shall be in the form prescribed by the Judicial Council.

The Judicial Council has prescribed the form of the statement, so the statutory statement in subdivision (c) should be omitted. In addition, the Commission has determined that the public administrator should be excepted from the requirement that an acknowledgment of receipt of the statement be filed in the proceeding. Accordingly, the staff recommends that Section 8404 be amended as follows in AB 831:

8404. (a) Before letters are issued, the personal representative, (other than a trust company or a public administrator), shall file an acknowledgment of receipt of a statement of duties and liabilities of the office of personal representative. The statement shall be in the form provided in subdivision (c) or, if the Judicial Council prescribes the form of the statement, in the form prescribed by the Judicial Council.

(b) The court may by local rule require the acknowledgment of receipt to include the personal representative's social security number and driver's license number, if any, provided that the court ensures their confidentiality.

~~(b) (c) The statement of duties and liabilities, whether in the form provided in subdivision (c) or prescribed by the Judicial Council, does not supersede the law on which the statement is based.~~

~~(c) The form for the statement of duties and liabilities of a personal representative is as follows:~~

~~DUTIES AND LIABILITIES OF PERSONAL REPRESENTATIVE~~

~~When you have been appointed as personal representative of an estate by the court, you become an officer of the court and assume certain duties and obligations. An attorney is best qualified to advise you regarding these matters. You should clearly understand the following:~~

~~1. You must manage the estate assets with the care of a prudent person dealing with someone else's property. This means you must be cautious and you may not make any speculative investments. You may deposit estate funds in insured accounts in financial institutions, but you should consult with an attorney before making other investments.~~

~~2. You must keep the money and property in this estate separate from anyone else's, including your own. When you~~

~~open a bank account for the estate, the account name must indicate that it is an estate account and not your personal account. Estate accounts, other than checking accounts intended for ordinary administration expenses, must earn interest. Never deposit estate funds in your personal account or otherwise commingle them with anyone else's property. Securities in the estate must also be held in a name that shows they are estate property and not your personal property.~~

~~3. There are many restrictions on your authority to deal with estate property. You should not spend any of the estate's money until you have received permission from the court or if so advised by an attorney. You may reimburse yourself for official court costs paid by you to the county clerk and for the premium on your bond. You may not pay fees to your attorney, if any, or to yourself without prior order of the court. If you do not obtain the court's permission when it is required, you may be removed as personal representative, or you may have to reimburse the estate from your own personal funds, or both. You should consult with an attorney concerning the legal requirements affecting sales, leases, mortgages, and investments of estate property.~~

~~4. You must attempt to locate and take possession of all the decedent's property to be administered in the estate. You must arrange to have a court appointed referee determine the value of the property unless this is waived by the court. (You, rather than the referee, must determine the value of certain "cash items"; an attorney can advise you as to this procedure.) Within four months after your appointment as personal representative you must file with the court an inventory and appraisal of all the assets in the estate. At the time you file the inventory and appraisal you must also file a change of ownership statement with the county recorder or assessor in each county where the decedent owned real property at the time of death, as provided in Section 480 of the California Revenue and Taxation Code.~~

~~5. You must mail notice of administration to each known creditor of the decedent within four months after your appointment as personal representative. If the decedent received Medi Cal assistance you must notify the State Director of Health Services within 90 days after appointment.~~

~~6. You should determine that there is appropriate and adequate insurance covering the assets and risks of the estate. Maintain the insurance in force during the entire period of the administration.~~

~~7. You must keep complete and accurate records of each financial transaction affecting the estate. You will have to prepare an account of all money and property you have received, what you have spent, and the date of each transaction. You must describe in detail what you have left after the payment of expenses. Your account will be reviewed by the court. Save your receipts because the court may ask to review them. If you do not file your accounts as required, the court will order you to do so. You may be removed as personal representative if you fail to comply.~~

~~This statement of duties and liabilities is a summary and is not a complete statement of the law. Your conduct as a personal representative is governed by the law itself and not by this summary.~~

~~If you have an attorney, you should cooperate with the attorney at all times. You and your attorney are responsible for completing the estate administration as promptly as possible. When in doubt, contact your attorney.~~

Respectfully submitted,

John H. DeMouilly  
Executive Secretary



An Organization Of

# AMERICANS FOR LEGAL REFORM

Memo 89-83

EXHIBIT 1

Study L-1036/1055

October 4, 1989

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

Dear Commissioners:

HALT strongly supports your recommendations for reforming the laws regarding probate fees because we believe they will lower expenses and increase consumer choice. In preparation for the latest Senate Judiciary Committee hearing, HALT representatives personally lobbied committee members, testified in support of these reforms at the hearing, and garnered the endorsements of several consumer groups, including most of those listed at the bottom of this letter.

As you are aware, however, HALT has always had several suggestions for changes, some of which are needed to make the proposal comport with your intent and all of which are needed to make the new system more effective for consumers. We held off making these suggestions because we didn't want to delay the progress of the overall reform bill in the Legislature. Because the bill is being held over and must go back to the Assembly for concurrence anyway, we are now submitting our proposals for fine-tuning.

We urge you to approve our proposals as recommended amendments to the provisions being offered by Assemblyman Harris as part of AB 831.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah Chaffte".

Deborah Chaffte  
Legislative Director

cc: Assemblyman Elihu Harris  
Myra Van Norman, HALT California Coordinator  
Bay Area Advocates for Nursing Home Reform  
Consumer Federation of California  
Center for Public Interest Law  
AARP  
CALJustice  
San Francisco Consumer Action

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An Organization Of

**AMERICANS FOR LEGAL REFORM**

Comments of

Deborah Chalfie, Legislative Director  
for

**HALT — An Organization of Americans for Legal Reform**

Regarding

Proposed Amendments to AB 831  
Compensation of Attorneys and Personal Representatives

Submitted to  
California Law Revision Commission

October 3, 1989

HALT has several suggestions for amendments to the Commission's recommendations concerning probate fees. The first of our proposals would correct an error acknowledged by the staff and make the legislation comport with your intent; the others are needed to make the new system meaningful and effective for consumers. We urge you to approve our proposals as recommended amendments to the provisions being offered by Assemblyman Harris as part of AB 831.

#### **Attorney-Personal Representatives**

In our earlier comments, HALT urged the Law Revision Commission to abolish statutory percentage fees for *both* attorneys and personal representatives. That recommendation still stands. As long as you insist on retaining statutory percentage fees for personal representatives, however, you must more effectively address the problems that arise in situations when an attorney serves as personal representative (PR).

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First, by retaining statutory percentage fees for PR's, the Commission has left open a substantial loophole through which attorney-PR's can routinely collect non-negotiable and unreasonable percentage fees. Moreover, under §10801, attorney-PR's can collect additional compensation for "extraordinary" services. Despite §10804's prohibition on legal fees for attorney-PR's, HALT's understanding is that courts in fact can and do take into account legal services rendered by the attorney-PR in awarding compensation for these extraordinary PR services. This loophole is clearly inconsistent with the Commission's policy judgment *against* letting lawyers collect statutory percentage fees for ordinary services and extra for extraordinary services.

Second, in spite of §10804 and your intent to prevent double-dipping — enabling attorney-PR's to collect both PR fees and legal fees for essentially the same work — the Commission's legislation, as currently drafted, clearly allows it. The most obvious double-dipping loophole is in the anti-double-dipping provision itself. Section 10804 permits attorney-PR's to collect both sets of fees if they can obtain the court's authorization. This exception, which contains no statutory grounds to guide the court, threatens to swallow the anti-double-dipping rule.

The plain language of §§9680 and 10565 constitutes only slightly more subtle sabotage. These sections allow an attorney-PR to hire another attorney who can be associated or affiliated with the PR. *Both* may be paid out of estate funds. The double-dipping can easily occur because nothing in §10804 prohibits an attorney-PR from "hiring" a lawyer from their own firm as the estate attorney and letting the firm collect both PR and legal fees.

In fact, double-dipping is even more likely to occur even in situations where the attorney-PR hires an estate attorney from outside their own firm. Testators are often induced to name an attorney as their personal representative on the basis of efficiency and economy — they are led to believe they will save probate fees because the PR can also handle the legal work. Although two different firms may get the fees, the estate is likely to incur twice the billings and expense in this arrangement.

All of these "attorney-PR" loopholes can be closed and double-dipping can be prevented by making some straightforward amendments. At a minimum, get rid of the "court order" exception to §10804 and amend §10801, the extraordinary PR services provision, to exclude from the court's consideration the provision of legal services.

In addition, keep §10804's prohibition on dual compensation but reverse it to allow the attorney-PR to collect a legal fee instead of the PR's percentage fee. In other words, make attorney-PR's wear *only* their attorney hats for compensation purposes. This amendment would both forbid lawyers from collecting percentage fees through the backdoor and effectively prevent double-dipping. Because there wouldn't be anyone with whom the attorney-PR must "negotiate" their legal fee, however, it would have to be policed by the heirs. This could be done using the "notice of proposed action" procedure provided in §10585.5(a)(1).

Whether you approve this last amendment or not, you should also amend §10565 to require attorney-PR's to pay attorneys they hire to provide *estate administration* services out of their own fee, not the estate. Such an amendment would retain the flexibility of allowing PR's to hire affiliated persons and still allow an attorney-PR to hire, for example, a personal injury lawyer to sue for wrongful

death and be paid from estate funds. However, the estate would at least be shielded from double-dipping for *probate* services.

### Definition of "Reasonable Fees"

One glaring flaw of the Commission's reform recommendations is that they contain no definition of what constitutes a "reasonable" fee. Unless "reasonableness" is precisely defined, however, this new requirement has no teeth and adds little to the other requirement that fees also be "negotiated."<sup>1</sup>

It is no answer to rely on the list of criteria in the Rules of Professional Conduct.<sup>2</sup> Those criteria are largely subjective (e.g., the "reputation and ability" of the lawyer), irrelevant to the consumer (e.g., the extent to which the lawyer was precluded from accepting other employment), or encompassed within more objective criteria (e.g., "novelty" will require more time to be spent and "experience" will be reflected in the attorney's hourly rate). Moreover, you can't expect those most likely to challenge fees — the heirs — to mount effective challenges unless they are informed about the standards by which fees are judged. Consequently, HALT urges you to adopt *statutory* standards that, to the extent possible, are capable of being understood by an heir and *objectively* determined by a court.

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<sup>1</sup> The fact that fees must conform to two separate standards — negotiated *and* reasonable — is confirmed by §9684(c), which posits a situation in which an *agreed* fee is found to be excessive or unreasonable.

<sup>2</sup> The Uniform Probate Code is also no answer; it too neglects to define "reasonable." Experience in states that have adopted the UPC's nondefinition indicates that this "reform" hasn't always fulfilled its promise because lawyers and judges are tempted to continue thinking that a percentage of the estate's value is "reasonable" in the absence of a more precise statutory definition.

The most objective standard would be "documented time spent and work performed."<sup>3</sup> Requiring attorneys to document the time spent and work done and then bill accordingly would pose little hardship for attorneys who routinely do so in other areas of practice. Because a strict requirement to base fees on time would prevent PR's from bargaining for other-than-hourly rates, however, HALT urges you to adopt a statutory *presumption* in favor of basing fees on the time spent and work done. A presumption would give PR's the flexibility to negotiate a variety of fee arrangements, yet would still permit the heirs to challenge fees that bear little relationship to the work actually done.<sup>4</sup>

#### **Notice and Waiver of Objection Provisions**

From a consumer point-of-view, HALT cares more about what is sent to the persons who are interested in the estate than what is filed with the court. Whether supervised by the court or not, all notices and waivers should be required to include: clear and prominent disclosures about the consequences of waiving future notices; the information needed to assess whether to file an objection; the time deadline and manner for doing so; and the legal consequences of failing to object.

For example, §§9684 and 10831(c) talk about who gets notice of a "hearing on petition," but what kind of notice did the heirs receive about the action which leads to calling a hearing? The very first notice of probate allows interested persons to waive their rights to future notices, but does it clearly and adequately inform the heirs of the significance of those later notices? In particular, does it warn them that

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<sup>3</sup> See, e.g., D.C. Code Ann. §20-751 (1981).

<sup>4</sup> This statutory presumption would also serve as an incentive to attorneys to use the optional Notice of Proposed Action procedure when their fees aren't based on time.

they are signing away their rights later to challenge the payment of professional fees and other actions of the PR? What about the waiver of the final accounting, which may be the heirs' only chance to inspect professional fees?<sup>5</sup> Finally, how are the heirs supposed to know whether they've got a legitimate objection and "police" the estate unless the notices inform them of all the statutory bases for challenge?<sup>6</sup> To be fair and effective, the Commission's legislative recommendations concerning notice of proposed actions and waivers of objections need to be beefed-up.

### Court Review

Finally, HALT strongly urges the Commission to approve some amendments to strengthen the judicial review provisions of its recommendations. First, as currently drafted, §9684 (a) and (c) both use the permissive "may." HALT sees no reason for making court review discretionary when someone files an objection and requests a hearing. Resolving disputes is what courts are for. Similarly, if the court "determines that the agreed compensation is unreasonable and shall fix a reasonable amount," HALT can discern no justification for making refunds discretionary. Thus, the permissive "may" in both §9684(a) and (c) should be replaced with "shall."

Second, we urge you to put attorneys *back* in §12205, which addresses sanctions for delay. It is our understanding that the Commission decided to excise attorneys from this provision because court orders regarding attorneys fees are no

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<sup>5</sup> In passing, HALT notes that the "Report of Administration" referred to §10900(c) appears to require the attorney to be listed and the one referred to in §10954(c) doesn't. This confusion should be clarified. Section 10501(a) (7) is also ambiguous in that it appears to mandate use of the Notice of Proposed Action.

<sup>6</sup> When the optional Notice of Proposed Action procedure is used, interested persons receive a copy of the hiring contract and an estimate of fees. Interested persons should also be notified of the standards for determining "reasonableness," the percentage table for PR's, as well as grounds for challenge such as improper hiring, compensation requests that exceed earlier estimates, and penalties for undue delay.

longer needed under the new system. Instead, the Commission's comments indicate that it expects PR's who are sanctioned to turn around and bring a separate action against the dilatory attorney. However, neither of these rationales support letting lawyers off-the-hook from §12205's provisions.

In the event that an heir challenges an attorney's or PR's fee because of undue delay, the court must determine the source and justification for the delay. Under the negotiated, reasonable fee system, it is true that the court will not, as a matter of course, review and fix attorneys fees. But, the Commission shouldn't confuse *resolution of a dispute* with *automatic review*. This sanction provision, like §9684(c) concerning refunds, is wholly compatible with a negotiated fee system that largely dispenses with court review.

Moreover, as long as the court is making such a determination, why not have the court resolve the whole delay matter in one proceeding? By requiring the innocent-but-sanctioned PR to bring a separate action against the estate attorney is wasteful and inefficient because it unnecessarily multiplies lawsuits. Worse, it will probably have the practical effect of insulating attorneys from responsibility for delay altogether because the lawsuit will be uneconomical — the actual amount of the sanction will probably be too low to justify hiring another attorney to bring a reimbursement action against the first.

### **Conclusion**

A negotiated, reasonable fee system relies on interested persons, instead of the courts, to watchdog the personal representative and the estate. To make this self-policing system work effectively, several features are critical. The people expected to challenge abuses need: adequate disclosures about their rights and how to enforce

them, adequate information about what constitutes challengeable behavior, and meaningful recourse to the courts if a dispute arises. The amendments HALT has suggested here are all aimed at giving consumers what they need to make the system work. Please approve them for incorporation into next year's legislation.

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PAGE NO. 1**Substantive****AMENDMENTS TO ASSEMBLY BILL NO. 831  
AS AMENDED IN ASSEMBLY JUNE 1, 1989****Amendment 1**

In line 2 of the title, after "Sections" insert:

7623, 7662, 7666, 8404, 8547, 9651, 10406, 10501, 10900,  
10954, 11000, 11003, 12205,**Amendment 2**In line 3 of the title, strike out "15645" and  
insert:

10404.5, 10565, 10585.5, 15645,

**Amendment 3**In line 3 of the title, after the first comma  
insert:to add Chapter 2.5 (commencing with Section 9680) to Part  
5 of Division 7 of, to add Part 7 (commencing with Section  
10800) to Division 7 of, and to repeal Part 15 (commencing  
with Section 900) of Division 2 of,**Amendment 4**In line 4 of the title, strike out "trusts and  
trustees" and insert:

probate law

**Amendment 5**

On page 3, line 15, after "SEC. 2." insert:

Part 15 (commencing with Section 900) of Division 2 of the  
Probate Code is repealed.SEC. 3. Section 7623 of the Probate Code is  
amended to read:7623. (a) As used in this section, "additional  
compensation" means the difference between the reasonable  
cost of the administration of an compensation of the  
public administrator in administering the estate and the  
commission compensation awarded the public administrator  
under Sections 904 and 902 Chapter 1 (commencing with  
Section 10800) of Part 7.(b) The public administrator may be awarded  
additional compensation if any of the following conditions  
are satisfied:

(1) A person having priority for appointment as personal representative has been given notice under Section 8110 of the public administrator's petition for appointment, and the person has not petitioned for appointment in preference to the public administrator.

(2) The public administrator has been appointed after the resignation or removal of a personal representative.

SEC. 4. Section 7662 of the Probate Code is amended to read:

7662. The public administrator acting under authority of this article shall pay out the money of the estate in the following order:

(a) Costs of administration, including commissions and fees compensation of the public administrator.

(b) Expenses of the decedent's last illness and of disposition of the remains of the decedent.

(c) Claims presented to the public administrator before distribution of the decedent's property pursuant to Section 7663. Claims shall be paid in the order prescribed in Section 11420. A creditor whose claim is paid under this subdivision is not liable for contribution to a creditor whose claim is presented after the payment.

SEC. 5. Section 7666 of the Probate Code is amended to read:

7666. (a) Except as provided in subdivision (b), the commissions compensation payable to the public administrator and the attorney, if any, for the filing of an application pursuant to this article and for performance of any duty or service connected therewith, are those is that set out in Sections 901, 902, and 903 Part 7 (commencing with Section 10800).

(b) The public administrator is entitled to a minimum commission compensation of three hundred fifty dollars (\$350).

SEC. 6. Section 8404 of the Probate Code, as amended by Chapter 21 of the Statutes of 1989, is amended to read:

8404. (a) Before letters are issued, the personal representative, other than a trust company, shall file an acknowledgment of receipt of a statement of duties and liabilities of the office. The statement shall be in the form provided in subdivision (c) or, if the Judicial Council prescribes the form of the statement, in the form prescribed by the Judicial Council. The court may by

local rule require the acknowledgment of receipt to include the personal representative's social security number and driver's license number, if any, provided that the court ensures their confidentiality.

(b) The statement of duties and liabilities, whether in the form provided in subdivision (c) or prescribed by the Judicial Council, does not supersede the law on which the statement is based.

(c) The form for the statement of duties and liabilities of a personal representative is as follows:

#### DUTIES AND LIABILITIES OF PERSONAL REPRESENTATIVE

When you have been appointed as personal representative of an estate by the court, you become an officer of the court and assume certain duties and obligations. An attorney is best qualified to advise you regarding these matters. You should clearly understand the following:

1. You must manage the estate assets with the care of a prudent person dealing with someone else's property. This means you must be cautious and you may not make any speculative investments. You may deposit estate funds in insured accounts in financial institutions, but you should consult with an attorney before making other investments.

2. You must keep the money and property in this estate separate from anyone else's, including your own. When you open a bank account for the estate, the account name must indicate that it is an estate account and not your personal account. Estate accounts, other than checking accounts intended for ordinary administration expenses, must earn interest. Never deposit estate funds in your personal account or otherwise commingle them with anyone else's property. Securities in the estate must also be held in a name that shows they are estate property and not your personal property.

3. There are many restrictions on your authority to deal with estate property. You should not spend any of the estate's money until you have received permission from the court or if so advised by an attorney. You may reimburse yourself for official court costs paid by you to the county clerk and for the premium on your bond. You may not pay fees to your attorney, if any, or to yourself without prior order of the court. If you do not obtain the court's permission when it is required, you may be

removed as personal representative, or you may have to reimburse the estate from your own personal funds, or both. You should consult with an attorney concerning the legal requirements affecting sales, leases, mortgages, and investments of estate property.

4. You must attempt to locate and take possession of all the decedent's property to be administered in the estate. You must arrange to have a court-appointed referee determine the value of the property unless this is waived by the court. (You, rather than the referee, must determine the value of certain "cash items"; an attorney can advise you as to this procedure.) Within four months after your appointment as personal representative you must file with the court an inventory and appraisal of all the assets in the estate. At the time you file the inventory and appraisal you must also file a change of ownership statement with the county recorder or assessor in each county where the decedent owned real property at the time of death, as provided in Section 480 of the California Revenue and Taxation Code.

5. You must mail notice of administration to each known creditor of the decedent within four months after your appointment as personal representative. If the decedent received Medi-Cal assistance you must notify the State Director of Health Services within 90 days after appointment.

6. You should determine that there is appropriate and adequate insurance covering the assets and risks of the estate. Maintain the insurance in force during the entire period of the administration.

7. You must keep complete and accurate records of each financial transaction affecting the estate. You will have to prepare an account of all money and property you have received, what you have spent, and the date of each transaction. You must describe in detail what you have left after the payment of expenses. Your account will be reviewed by the court. Save your receipts because the court may ask to review them. If you do not file your accounts as required, the court will order you to do so. You may be removed as personal representative if you fail to comply.

This statement of duties and liabilities is a summary and is not a complete statement of the law. Your conduct as a personal representative is governed by the law itself and not by this summary.

If you have an attorney, you should cooperate with the attorney at all times. You and your attorney are

responsible for completing the estate administration as promptly as possible. When in doubt, contact your attorney.

SEC. 7. Section 8547 of the Probate Code , as amended by Chapter 21 of the Statutes of 1989, is amended to read:

8547. (a) Subject to the limitations of this section, the court shall fix the commission and allowances compensation of the special administrator and the fees of the attorney of the special administrator.

(b) The commission compensation of the special administrator shall not be allowed until the close of administration, unless the general personal representative joins in the petition for allowance of the special administrator's commission compensation or the court in its discretion so allows. Extra allowances Compensation for extraordinary services of a special administrator may be allowed on settlement of the final account of the special administrator. The total commission compensation paid and extra allowances made to the special administrator and general personal representative shall not, together, exceed the sums provided in this code Part 7 (commencing with Section 10800) for commission and extra allowances compensation for the ordinary and extraordinary services of a personal representative. If the same person does not act as both special administrator and general personal representative, the commission and allowances compensation shall be divided in such proportions as the court deems determines to be just or as may be agreed to by the special administrator and general personal representative.

(c) The total fees paid to the attorneys both of the special administrator and the general personal representative shall not, together, exceed the sums provided in this code as compensation for the ordinary and extraordinary services of attorneys for personal representatives. When the same attorney does not act for both the special administrator and general personal representative, the fees shall be divided between the attorneys in such proportions as the court deems just or as agreed to by the attorneys.

(d) Fees of an attorney for extraordinary services to a special administrator may be awarded in the same manner and subject to the same standards as for extraordinary services to a general personal representative, except that the award of fees to the attorney may be made on settlement of the final account of

the special administrator. Extraordinary services for which the attorney may apply to the court for compensation under this subdivision include those services rendered by any paralegal performing the extraordinary services under the direction and supervision of any attorney. The petition or application for compensation shall set forth the hours spent and services performed by the paralegal.

SEC. 8. Section 9651 of the Probate Code is amended to read:

9651. (a) A personal representative who in good faith takes into his or her possession real or personal property, and reasonably believes that the property is part of the estate of the decedent, is not:

- (1) Criminally liable for so doing.
- (2) Civilly liable to any person for so doing.

(b) The personal representative shall make reasonable efforts to determine the true nature of, and title to, the property so taken into possession.

(c) During his or her possession, the personal representative is entitled to receive all rents, issues, and profits of the property. If the property is later determined not to be part of the estate of the decedent, the personal representative shall deliver the property, or cause it to be delivered, to the person legally entitled to it, together with all rents, issues, and profits of the property received by the personal representative, less any expenses incurred in protecting and maintaining the property and in collecting rents, issues, and profits. The personal representative may request court approval before delivering the property pursuant to this subdivision.

(d) The court may award allow the personal representative and the personal representative's attorney reasonable compensation for services rendered in connection with the duties specified in this section as to property later determined not to be part of the estate of the decedent, if the court makes one of the following findings:

(1) That the The services were of benefit to the estate. In such case If the court makes this finding, the compensation shall be and the expenses and costs of litigation, including attorney's fees of the attorney hired by the personal representative to handle the matter, are a proper expense of administration.

(2) That the The services were essential to preserve, protect, and maintain the property. In such case If the court makes this finding, the court shall

award compensation and the expenses and costs of litigation, including attorney's fees of the attorney hired by the personal representative to handle the matter, as an expense deductible from the rents, issues, and profits received by the personal representative, or, if these are insufficient, as a lien against the property.

SEC. 9. Chapter 2.5 (commencing with Section 9680) is added to Part 5 of Division 7 of the Probate Code, to read:

CHAPTER 2.5. HIRING AND PAYING ATTORNEYS, ADVISERS, AND OTHERS

9680. (a) Except as restricted or otherwise provided by the will or by court order and subject to subdivision (b) and to Section 10804, the personal representative, acting reasonably for the benefit of the estate and in the best interest of interested persons, may hire persons to advise or assist the personal representative in the administration of the estate, including attorneys, accountants, auditors, technical advisers, investment advisers, or other experts or agents, even if they are associated or affiliated with the personal representative.

(b) A provision in the will directing the personal representative to hire a particular person to advise or assist the personal representative in the administration of the estate is not binding on the personal representative, and the personal representative may, but is not required to, hire that person.

9681. (a) The compensation of persons hired under Section 9680, including the attorney for the personal representative, shall be determined by agreement between the personal representative and the person hired, and, except as provided in Section 9684 and in Chapter 3 (commencing with Section 11000) of Part 8, is not subject to approval or review by the court.

(b) Subject to Section 9682, if the decedent's will makes provision for the compensation of a person hired under Section 9680, including the attorney for the personal representative, the compensation provided by the will shall be the full and only compensation for the services of that person.

9682. (a) The personal representative or a person hired under Section 9680, including the attorney for the personal representative, may petition the court to be relieved from a provision of the decedent's will that

provides for the compensation of a person hired under Section 9680 or for relief from some other restriction or other limiting provision of the will on the hiring of persons by the personal representative.

(b) Notice of the hearing on the petition shall be given as provided in Section 1220 to all of the following persons:

(1) Each person listed in Section 1220.

(2) Each known heir whose interest in the estate is affected by the petition.

(3) Each known devisee whose interest in the estate is affected by the petition.

(4) The Attorney General, by mail at the office of the Attorney General in Sacramento, if any portion of the estate is to escheat to the state and its interest in the estate is affected by the petition.

(c) If the court determines that it is to the advantage of the estate and in the best interest of the persons interested in the estate, the court may make an order:

(1) Granting relief from the restriction or other limiting provision of the will upon the terms and conditions the court specifies in the order.

(2) Authorizing compensation for the person hired under Section 9680 in an amount greater than provided in the will.

9683. (a) Except as otherwise provided in this section, the personal representative may pay persons hired under Section 9680 out of funds of the estate as a proper expense of administration.

(b) If a person, including an attorney, is hired to assist the personal representative in the performance of the services of the personal representative for which the personal representative is compensated under Part 7 (commencing with Section 10800), the person hired shall be paid out of the personal representative's own funds and not out of the funds of the estate, except that, at the request of the personal representative, the court may order payment out of the estate directly to the person assisting the personal representative in the performance of these services, the payment to be charged against and deducted from the compensation that otherwise would be paid to the personal representative.

(c) Nothing in subdivision (b) limits the authority of the personal representative to pay out of funds of the estate for services of tax counsel, tax auditors, accountants, or other tax experts hired for the

providing of services in the computation, reporting, or making of tax returns, or in negotiations which may be necessary for the final determination and payment of taxes.

9684. (a) On petition of the personal representative or an interested person, the court may review the following:

(1) The propriety of employment by the personal representative of any person under Section 9680 who has been or is to be paid out of funds of the estate.

(2) The reasonableness of the agreed compensation under subdivision (a) of Section 9681 of any person who has been or is to be paid out of funds of the estate.

(b) Notice of the hearing on the petition shall be given as provided in Section 1220 to all of the following persons:

(1) The person whose employment or compensation is in question.

(2) Each person listed in Section 1220.

(3) Each known heir whose interest in the estate is affected by the petition.

(4) Each known devisee whose interest in the estate is affected by the petition.

(5) The Attorney General, by mail at the office of the Attorney General in Sacramento, if any portion of the estate is to escheat to the state and its interest in the estate is affected by the petition.

(c) If the court determines that the agreed compensation is unreasonable, the court shall fix a reasonable amount as compensation and may order the person who has received excessive compensation to make an appropriate refund. Unless the person ordered to make the refund is the attorney for the personal representative, the order for the refund may be obtained only in a proceeding under Section 9684.5.

(d) Except as provided in subdivision (e), nothing in this section limits the right to contest the account of the personal representative under Chapter 3 (commencing with Section 11000) of Part 8.

(e) The petitioner and all persons to whom notice of the hearing on the petition was given pursuant to subdivision (b) are bound by the determination of the court under this section.

9684.5. (a) Any interested person may commence a proceeding under this section to obtain an order that a person determined by the court to have received excessive

compensation make an appropriate refund. The proceeding under this section may be combined with the proceeding brought to determine whether the compensation is excessive. There shall be no additional filing fee if the petition under this section is combined with the other proceeding.

(b) A proceeding under this section shall be commenced by filing a petition requesting that an order be made under this section and referring to the other proceeding brought to determine whether the compensation is excessive.

(c) Not less than 30 days before the hearing, the petitioner shall do both of the following:

(1) Cause notice of the hearing and a copy of the petition to be mailed to the personal representative and to any other petitioner in the other proceeding to determine whether the compensation is excessive.

(2) Cause a summons and a copy of the petition to be served on the person whose compensation is claimed to be excessive. The summons shall be in the form and shall be served in the manner prescribed in Title 5 (commencing with Section 410.10) of Part 2 of the Code of Civil Procedure.

(d) If the court determines that the person who received excessive compensation should make an appropriate refund, the court shall so order. The order is a judgment that may be enforced against the person ordered to make the refund.

(e) An order that the attorney for the personal representative make an appropriate refund may be made without compliance with the requirements of this section.

9685. Nothing in this chapter limits the right of an attorney to decline to be the attorney for the personal representative or the right of an attorney to withdraw as the attorney for the personal representative, and, in such case, the attorney is entitled to reasonable compensation for the legal services actually provided.

9686. (a) This chapter does not apply in any proceeding for administration of a decedent's estate commenced before January 1, 1990.

(b) The applicable law in effect before January 1, 1990, governing the subject matter of this chapter continues to apply in any proceeding for administration of a decedent's estate commenced before January 1, 1990, notwithstanding its repeal by the act that enacted this section.

SEC. 10. Section 10404.5 is added to the Probate Code, to read:

10404.5. Notwithstanding any provision of the decedent's will, the personal representative is authorized to exercise under the provisions of this part the power granted by Section 10565, whether or not the personal representative has been granted authority to administer the estate under this part.

SEC. 11. Section 10406 of the Probate Code is amended to read:

10406. (a) Subject to subdivision (c), this part applies in all of the following cases:

(1) Where authority to administer the estate is granted under this part.

(2) Where authority to administer the estate was granted under former Sections 591.1 to 591.9, inclusive, of the Probate Code on a petition filed after January 1, 1985.

(3) Where authority was granted prior to January 1, 1985, to administer the estate under the Independent Administration of Estates Act and one of the following requirements is satisfied:

(A) A petition was filed under former Section 591.1 of the Probate Code after January 1, 1985, requesting that the personal representative be authorized to administer the estate under the Independent Administration of Estates Act in effect at the time the petition was filed, and the petition was granted.

(B) A petition is filed under this part requesting that the personal representative be authorized to administer the estate under this part, and the petition is granted.

(b) Except as provided in paragraph (3) of subdivision (a), a personal representative who was granted authority prior to January 1, 1985, to administer the estate under the Independent Administration of Estates Act shall continue to administer the estate under the provisions of the Independent Administration of Estates Act that were applicable at the time the petition was granted.

(c) If the personal representative was granted independent administration authority prior to July 1, 1988, the personal representative may use that existing authority on and after July 1, 1988, to borrow money on a loan secured by an encumbrance upon real property, whether or not that existing authority includes the authority to sell real property.

(d) Sections 10404.5, 10565, and 10585.5 as enacted by the act that added this subdivision, and

Section 10501 as amended by the act that added this subdivision, do not apply to any proceeding for administration of a decedent's estate commenced before January 1, 1990. Section 10501, as that section existed prior to its amendment by the act that added this subdivision, continues to apply in any proceeding for administration of a decedent's estate commenced before January 1, 1990, notwithstanding its amendment by the act that added this subdivision.

SEC. 12. Section 10501 of the Probate Code is amended to read:

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

- (1) Allowance of the personal representative's commissions compensation.
- (2) ~~Allowance of attorney's fees.~~
- (3) ~~Settlement of accountings accounts.~~
- (4) ~~discharge.~~
- (5) Preliminary and final distributions and discharge.
- (6) ~~discharge.~~
- (7) Sale of property of the estate to the personal representative or to the attorney for the personal representative.
- (8) ~~discharge.~~
- (9) Exchange of property of the estate for property of the personal representative or for property of the attorney for the personal representative.
- (10) ~~discharge.~~
- (11) Grant of an option to purchase property of the estate to the personal representative or to the attorney for the personal representative.
- (12) ~~discharge.~~
- (13) Allow, pay, or compromise a claim of the personal representative, or the attorney for the personal representative, against the estate.
- (14) ~~discharge.~~
- (15) Compromise or settle a claim, action, or proceeding by the estate against the personal representative or against the attorney for the personal representative.
- (16) ~~discharge.~~

(9) Extend, renew, or modify the terms of a debt or other obligation of the personal representative, or the attorney for the personal representative, owing to or in favor of the decedent or the estate.

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

- (1) Sale of real property.
- (2) Exchange of real property.
- (3) Grant of an option to purchase real property.

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

(c) Paragraphs ~~(5)~~ (4) to ~~(10)~~ (9), inclusive, of subdivision (a) do not apply to a transaction between the personal representative as such and the personal representative as an individual where all of the following requirements are satisfied:

(1) Either (A) the personal representative is the sole beneficiary of the estate or (B) all the known heirs or devisees have consented to the transaction.

(2) The period for filing creditor's claims has expired.

(3) No request for special notice is on file or all persons who filed a request for special notice have consented to the transaction.

(4) The claim of each creditor who filed a claim has been paid, settled, or withdrawn, or the creditor has consented to the transaction.

(d) Subdivision (a) does not apply to the hiring and paying of persons, including the attorney for the personal representative, hired under Section 9680 to advise or assist the personal representative in the administration of the estate.

SEC. 13. Section 10565 is added to the Probate Code, to read:

10565. (a) Subject to Section 10804, the personal representative has the power to hire persons to advise or assist in the administration of the estate, including attorneys, accountants, auditors, technical advisors, investment advisers, or other experts or agents, even if they are associated or affiliated with the personal representative.

(b) The personal representative has the power to agree to and pay the compensation of the persons described

in subdivision (a) out of funds of the estate unless the person is hired to assist the personal representative in the performance of services of the personal representative for which the personal representative is compensated under Part 7 (commencing with Section 10800).

SEC. 14. Section 10585.5 is added to the Probate Code, to read:

10585.5. (a) If, pursuant to subdivision (b) of Section 10580, the personal representative gives notice of proposed action with respect to the exercise of the powers granted by Section 10565 (hiring and paying attorneys, advisers, and others to advise or assist in the administration of the estate):

(1) The notice of proposed action shall include, in addition to the information required by Section 10585, an estimate of the total amount of compensation to be paid to the person hired.

(2) If the person hired is an attorney, each person given notice of proposed action shall also be provided with a copy of the written fee contract made pursuant to Section 6148 of the Business and Professions Code.

(3) If the person hired is not an attorney, each person given notice of proposed action shall also be provided with a copy of the written contract, if any, governing the hiring and compensation.

(b) If it appears that the total amount of compensation to be paid to the person hired will exceed the amount of the last previous estimate given in a notice of proposed action, the personal representative may give another notice of proposed action stating a new estimate of the total amount of compensation to be paid to the person.

(c) Section 10590 does not apply to the extent that the compensation paid or to be paid exceeds the amount of the estimate contained in the notice of proposed action most recently given.

SEC. 15. Part 7 (commencing with Section 10800) is added to Division 7 of the Probate Code, to read:

PART 7. COMPENSATION OF PERSONAL REPRESENTATIVE  
CHAPTER 1. AMOUNT OF COMPENSATION

10800. (a) Subject to the provisions of this part, for ordinary services the personal representative shall receive compensation based on the value of the estate accounted for by the personal representative, as

follows:

(1) Four percent on the first fifteen thousand dollars (\$15,000).

(2) Three percent on the next eighty-five thousand dollars (\$85,000).

(3) Two percent on the next nine hundred thousand dollars (\$900,000).

(4) One percent on the next nine million dollars (\$9,000,000).

(5) One-half of 1 percent on the next fifteen million dollars (\$15,000,000).

(6) For all above twenty-five million dollars (\$25,000,000), a reasonable amount to be determined by the court.

(b) For the purposes of this section, the value of the estate accounted for by the personal representative is the total amount of the appraisal of property in the inventory, plus gains over the appraisal value on sales, plus receipts, less losses from the appraisal value on sales, without reference to encumbrances or other obligations on estate property.

10801. Subject to the provisions of this part, in addition to the compensation provided by Section 10800, the court may allow additional compensation for extraordinary services by the personal representative in an amount the court determines is just and reasonable.

10802. (a) Except as otherwise provided in this section, if the decedent's will makes provision for the compensation of the personal representative, the compensation provided by the will shall be the full and only compensation for the services of the personal representative.

(b) The personal representative may petition the court to be relieved from a provision of the will that provides for the compensation of the personal representative.

(c) Notice of the hearing on the petition shall be given as provided in Section 1220 to all of the following persons:

(1) Each person listed in Section 1220.

(2) Each known heir whose interest in the estate is affected by the petition.

(3) Each known devisee whose interest in the estate is affected by the petition.

(4) The Attorney General, by mail at the office of the Attorney General in Sacramento, if any portion of the estate is to escheat to the state and its interest in

the estate is affected by the petition.

(d) If the court determines that it is to the advantage of the estate and in the best interest of the persons interested in the estate, the court may make an order authorizing compensation for the personal representative in an amount greater than provided in the will.

10803. An agreement between the personal representative and an heir or devisee for higher compensation than that provided by this part is void.

10804. Unless expressly authorized by the decedent's will or by court order, a personal representative who is an attorney may receive the personal representative's compensation but not compensation for services as the estate attorney.

10805. If there are two or more personal representatives, the personal representative's compensation shall be apportioned among the personal representatives by the court according to the services actually rendered by each personal representative or as agreed to by the personal representatives.

## CHAPTER 2. ALLOWANCE OF COMPENSATION BY COURT

10830. (a) At any time after four months from the issuance of letters, the personal representative may file a petition requesting an allowance on the compensation of the personal representative.

(b) Notice of the hearing on the petition shall be given as provided in Section 1220 to all of the following:

- (1) Each person listed in Section 1220.
- (2) Each known heir whose interest in the estate is affected by the payment of the compensation.
- (3) Each known devisee whose interest in the estate is affected by the payment of the compensation.
- (4) The Attorney General, by mail at the office of the Attorney General in Sacramento, if any portion of the estate is to escheat to the state and its interest in the estate is affected by the petition.

(c) On the hearing, the court may make an order allowing the portion of the compensation of the personal representative on account of services rendered up to that time, that the court determines is proper. The order shall authorize the personal representative to charge against the estate the amount allowed.

10831. (a) At the time of the filing of the

final account and petition for an order for final distribution, the personal representative may petition the court for an order fixing and allowing the personal representative's compensation for all services rendered in the estate proceeding.

(b) The request for compensation may be included in the final account or the petition for final distribution or may be made in a separate petition.

(c) Notice of the hearing on the petition shall be given as provided in Section 1220 to all of the following:

- (1) Each person listed in Section 1220.
- (2) Each known heir whose interest in the estate is affected by the payment of the compensation.
- (3) Each known devisee whose interest in the estate is affected by the payment of the compensation.
- (4) The Attorney General, by mail at the office of the Attorney General in Sacramento, if any portion of the estate is to escheat to the state and its interest in the estate is affected by the petition.

(d) On the hearing, the court shall make an order fixing and allowing the compensation for all services rendered in the estate proceeding by the personal representative. The order shall authorize the personal representative to charge against the estate the amount allowed, less any amount previously charged against the estate pursuant to Section 10830.

10832. Notwithstanding Sections 10830 and 10831, the court may allow compensation to the personal representative for extraordinary services before final distribution when any of the following requirements is satisfied:

(a) It appears likely that administration of the estate will continue, whether due to litigation or otherwise, for an unusually long time.

(b) Present payment will benefit the estate or the beneficiaries of the estate.

(c) Other good cause is shown.

### CHAPTER 3. APPLICATION OF PART

10850. (a) This part does not apply in any proceeding for administration of a decedent's estate commenced before January 1, 1990.

(b) The applicable law in effect before January 1, 1990, governing the subject matter of this part continues to apply in any proceeding for administration of

a decedent's estate commenced before January 1, 1990, notwithstanding its repeal by the act that enacted this section.

SEC. 16. Section 10900 of the Probate Code is amended to read:

10900. (a) An account shall include both a financial statement as provided in subdivision (b) and a report of administration as provided in subdivision (c).

(b) The financial statement shall include 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 on hand.

(c) The report of administration shall state the liabilities of the estate, including creditor claims, the hiring and payment of any persons under Section 9680 who have been or are to be paid out of funds of the estate, and all other matters necessary to show the condition of the estate. The statement of liabilities shall include the following information:

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

(2) Creditor claims filed, including the date of filing the claim, the name of the claimant, the amount of the claim, and the action taken on the claim.

(3) Creditor claims not paid, satisfied, or adequately provided for. As to each such claim, the statement shall indicate whether the claim is due and the date due, the date any notice of rejection was given, and whether the creditor has brought an action on the claim. The statement shall identify any real or personal property that is security for the claim, whether by mortgage, deed of trust, lien, or other encumbrance.

SEC. 17. Section 10954 of the Probate Code is amended to read:

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 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 as follows:

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

(2) If the person entitled to distribution is a minor, by a person authorized to receive money or property belonging to the minor. If the waiver or acknowledgment is executed by a guardian of the estate of the minor, the waiver or acknowledgment 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 distribution is a conservatee, by the conservator of the estate of the conservatee. The waiver or acknowledgment 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 distribution is a trust, by the trustee, but only if the named trustee's written acceptance of the trust is filed with the court. In the case of a trust that is subject to the continuing jurisdiction of the court pursuant to Chapter 4 (commencing with Section 17300) of Part 5 of Division 9, the waiver or acknowledgment may be executed without the need to obtain approval of the court.

(5) If the person entitled to distribution is an estate, by the personal representative of the estate. The waiver or acknowledgment may be executed without the need to obtain approval of the court in which the estate is being administered.

(6) If the person entitled to 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 distribution, by the guardian ad litem.

(7) If the person entitled to distribution has designated an attorney in fact who has the power under the power of attorney to execute the waiver or acknowledgment,

by either of the following:

(A) The person entitled to distribution if an adult and competent.

(B) The attorney in fact.

(c) Notwithstanding subdivision (a):

(1) 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 compensation paid or payable to the personal representative and to the attorney and shall set forth the basis for determining the amount.

(2) A creditor whose interest has not been satisfied may petition under Section 10950 for an account.

SEC. 18. Section 11000 of the Probate Code is amended to read:

11000. (a) The personal representative shall give notice of the hearing as provided in ~~Section 4220~~

~~(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) The person listed in Section 1220.

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

~~(2)~~

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

~~(3)~~

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

~~(4)~~

(5) If the estate is insolvent, each creditor who has filed a claim that is allowed or approved but is unpaid in whole or in part.

~~(c)~~

(b) If the petition for approval of the account requests fees allowance of all or a portion of the compensation of the personal representative, the notice of hearing shall so state.

~~(d)~~

(c) 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.

SEC. 19. Section 11003 of the Probate Code is amended to read:

11003. (a) If the court determines that the contest was without reasonable cause and in bad faith, the court may award against the contestant the fees, commissions, compensation and costs of the personal representative and other expenses and costs of litigation, including attorney's fees, incurred to defend the account. The amount awarded is a charge against any interest of the contestant in the estate and the contestant is personally liable for any amount that remains unsatisfied.

(b) If the court determines that the opposition to the contest was without reasonable cause and in bad faith, the court may award the contestant the costs of the contestant and other expenses and costs of litigation, including attorney's fees, incurred to contest the account. The amount awarded is a charge against the fees and commission compensation or other interest of the personal representative in the estate and the personal representative is liable personally and on the bond, if any, for any amount that remains unsatisfied.

SEC. 20. Section 12205 of the Probate Code is amended to read:

12205. If the time taken for administration of the estate exceeds the time required by this chapter or prescribed by the court, the court may, on the hearing for final distribution or for an allowance on the commissions compensation of the personal representative or on the fees of the attorney, reduce the commissions or fees compensation by an amount the court deems determines to be appropriate, regardless of whether the commissions or fees compensation otherwise allowable under the provisions of Sections 90+ and 9+0 Part 7 (commencing with Section 10800) would be reasonable compensation for the services rendered, if the court determines that the time taken was within the control of the personal representative or attorney whose commissions or fees are being reduced and that the delay was not in the best interest of the estate or interested persons. In making a determination under this section, the court shall take into account any action taken under Section 12202 as a result of a previous delay.

SEC. 21.

Amendment 6

On page 4, line 1, strike out "SEC. 3." and insert:

SEC. 22.

Amendment 7  
insert: On page 4, line 28, strike out "SEC. 4." and  
SEC. 23.

Amendment 8  
insert: On page 5, line 20, strike out "SEC. 5." and  
SEC. 24.

Amendment 9  
insert: On page 6, line 14, strike out "SEC. 6." and  
SEC. 25.

Amendment 10  
insert: On page 6, line 33, strike out "SEC. 7." and  
SEC. 26.

Amendment 11  
On page 8, below line 12, insert:

SEC. 27. (a) The following sections of the Probate Code, as amended by this act, do not apply in any proceeding for administration of a decedent's estate commenced before January 1, 1990:

- (1) Section 7623.
- (2) Section 7662.
- (3) Section 7666.
- (4) Section 8547.
- (5) Section 9651.
- (6) Section 10900.
- (7) Section 10954.
- (8) Section 11003.
- (9) Section 12205.

(b) The sections listed in subdivision (a), as those sections existed prior to their amendment by this act, continue to apply in any proceeding for administration of a decedent's estate commenced before January 1, 1990, notwithstanding their amendment by this act.

(c) Sections 900, 901, 902, 903, 904, 910, and

72932

RECORD # 630 BF:

89205 12:01  
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911 of the Probate Code continue to apply in any proceeding for administration of a decedent's estate commenced before January 1, 1990, notwithstanding their repeal by this act.

- 0 -

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):	TELEPHONE NO.:	FOR COURT USE ONLY
ATTORNEY FOR (Name):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
ESTATE OF (NAME):		CASE NUMBER:
DECEDENT		
NOTICE OF HEARING (Probate)		

This notice is required by law. This notice does not require you to appear in court, but you may attend the hearing if you wish.

1. NOTICE is given that (name):

(representative capacity, if any):

has filed (specify):\*

2. You may refer to the filed documents for further particulars. (All of the case documents filed with the court are available for examination in the case file kept by the court clerk.)

3. A HEARING on the matter will be held as follows:

Date:	Time:	Dept.:	Room:
Address of court <input type="checkbox"/> shown above <input type="checkbox"/> is:			

.....  Attorney or party \_\_\_\_\_ (SIGNATURE)  
(TYPE OR PRINT NAME)

Date:  Clerk, by \_\_\_\_\_, Deputy

4. This notice was mailed on (date): \_\_\_\_\_ at (place): \_\_\_\_\_

(Continued on reverse)

ESTATE OF (NAME):  _____	CASE NUMBER:  _____
DECEDENT	

**CLERK'S CERTIFICATE OF  POSTING  MAILING**

I certify that I am not a party to this cause and that a copy of the foregoing Notice of Hearing (Probate)

1.  was posted at (address):

on (date):

2.  was served on each person named below. Each notice was enclosed in an envelope with postage fully prepaid. Each envelope was addressed to a person whose name and address is given below, sealed, and deposited with the United States Postal Service at (place): \_\_\_\_\_, California,

on (date):

Date:

Clerk, by \_\_\_\_\_, Deputy

**PROOF OF SERVICE BY MAIL**

1. I am over the age of 18 and not a party to this cause. I am a resident of or employed in the county where the mailing occurred.
2. My residence or business address is (specify):

3. I served the foregoing Notice of Hearing (Probate) on each person named below by enclosing a copy in an envelope addressed as shown below AND

- a.  depositing the sealed envelope with the United States Postal Service with the postage fully prepaid.
- b.  placing the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

4. a. Date mailed:

b. Place mailed (city, state):

5.  I served with the Notice of Hearing (Probate) a copy of the petition or other document referred to in the notice.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

.....  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(SIGNATURE OF DECLARANT)

**NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED**

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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):  _____  ATTORNEY FOR (Name): <b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	TELEPHONE NO.:	FOR COURT USE ONLY
ESTATE OF (NAME):  <div style="text-align: right;">DECEDENT</div>		CASE NUMBER:
<b>NOTICE OF PETITION TO ADMINISTER ESTATE</b> OF (name):		

1. To all heirs, beneficiaries, creditors, contingent creditors, and persons who may otherwise be interested in the will or estate, or both, of (specify all names by which decedent was known):

2. A PETITION has been filed by (name of petitioner):  
 in the Superior Court of California, County of (specify):

3. THE PETITION requests that (name):  
 be appointed as personal representative to administer the estate of the decedent.

4.  THE PETITION requests the decedent's WILL and codicils, if any, be admitted to probate. The will and any codicils are available for examination in the file kept by the court.

5.  THE PETITION requests authority to administer the estate under the Independent Administration of Estates Act. (This authority will allow the personal representative to take many actions without obtaining court approval. Before taking certain very important actions, however, the personal representative will be required to give notice to interested persons unless they have waived notice or consented to the proposed action.) The independent administration authority will be granted unless an interested person files an objection to the petition and shows good cause why the court should not grant the authority.

6.  A PETITION for determination of or confirmation of property passing to or belonging to a surviving spouse under California Probate Code section 13650 IS JOINED with the petition to administer the estate.

7. A HEARING on the petition will be held

on (date):	at (time):	in Dept.:	Room:
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located at (address of court):

8. IF YOU OBJECT to the granting of the petition, you should appear at the hearing and state your objections or file written objections with the court before the hearing. Your appearance may be in person or by your attorney.

9. IF YOU ARE A CREDITOR or a contingent creditor of the deceased, you must file your claim with the court and mail a copy to the personal representative appointed by the court within four months from the date of first issuance of letters as provided in section 9100 of the California Probate Code. The time for filing claims will not expire before four months from the hearing date noticed above.

10. YOU MAY EXAMINE the file kept by the court. If you are a person interested in the estate, you may file with the court a formal Request for Special Notice of the filing of an inventory and appraisal of estate assets or of any petition or account as provided in section 1250 of the California Probate Code. A Request for Special Notice form is available from the court clerk.

11.  Petitioner  Attorney for petitioner (name):

(address):

▶  
 (SIGNATURE OF  PETITIONER  ATTORNEY FOR PETITIONER)

12. This notice was mailed on (date):

at (place): \_\_\_\_\_, California.  
 (Continued on reverse)

NOTE: If this notice is published, print the caption, beginning with the words NOTICE OF PETITION, and do not print the information from the form above the caption. The caption and decedent's name must be printed in at least 8-point type and the text in at least 7-point type. Print the case number as part of the caption. Print items preceded by a box only if the box is checked. Do not print the italicized instructions in parentheses, the paragraph numbers, the mailing information, or the material on the reverse.

ESTATE OF (NAME):  DECEDENT	CASE NUMBER:
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**PROOF OF SERVICE BY MAIL**

1. I am over the age of 18 and not a party to this cause. I am a resident of or employed in the county where the mailing occurred.  
 2. My residence or business address is *(specify)*:

3. I served the foregoing **Notice of Petition to Administer Estate** on each person named below by enclosing a copy in an envelope addressed as shown below AND
- a.  depositing the sealed envelope with the United States Postal Service with the postage fully prepaid.  
 b.  placing the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

4. a. Date of deposit: \_\_\_\_\_ b. Place of deposit *(city and state)*: \_\_\_\_\_

5.  I served with the Notice of Petition to Administer Estate a copy of the petition and other documents referred to in the notice.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: \_\_\_\_\_

.....  
 (TYPE OR PRINT NAME)

▲  
 \_\_\_\_\_  
 (SIGNATURE OF DECLARANT)

**NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):	TELEPHONE NO.:	FOR COURT USE ONLY
ATTORNEY FOR (Name): <b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
ESTATE OF (NAME):		
DECEDENT		
<b>REQUEST FOR SPECIAL NOTICE</b>		CASE NUMBER:

To the personal representative:

1. I am a person interested in the estate of (name):

2. I REQUEST SPECIAL NOTICE of (complete only a or b)

a.  the following matters (specify):

b.  the following matters (check applicable boxes):

- (1)  all the matters listed in Probate Code section 1250(c) (Do not check boxes (2)-(8).)
- (2)  inventories and appraisals of property, including supplements
- (3)  accountings by the personal representative
- (4)  reports of the status of administration
- (5)  objections to an appraisal
- (6)  petitions for the sale of property
- (7)  Spousal Property Petition (Probate Code, § 13650)
- (8)  other petitions:  all petitions  the following petitions (specify):

3. SEND THE NOTICES TO

a.  me at the following address (specify):

b.  my attorney at the following address (specify):

Date:

.....  
(TYPE OR PRINT NAME)

▶ \_\_\_\_\_  
(SIGNATURE)

Attorney for person requesting special notice (client's name):

(Continued on reverse)

ESTATE OF (NAME):   <b>DECEDENT</b>	CASE NUMBER:   
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**NOTE:** A formal proof of service or a written admission of service must accompany this Request for Special Notice when it is filed with the court.

You must have your request served on either the personal representative or the attorney for the personal representative or obtain a signed Admission of Service (*see below*).

**PROOF OF  MAILING  PERSONAL DELIVERY TO PERSONAL REPRESENTATIVE**

1. I am not a party to this proceeding. At the time of mailing or delivery I was at least 18 years of age.
2. My residence or business address is (*specify*):

3. I mailed or delivered a copy of this Request for Special Notice to the

- personal representative
- attorney for the personal representative

as follows (*check either a or b*):

a.  **First-class mail.** I deposited a copy of the request with the United States Postal Service, in a sealed envelope with postage fully prepaid. I used first-class mail. I am a resident of or employed in the county where the mailing occurred. The envelope was addressed and mailed as follows:

- (1) Name of person served:
- (2) Address on envelope:

- (3) Date of mailing:
- (4) Place of mailing (*city and state*):

b.  **Personal delivery.** I personally delivered a copy of the request as follows:

- (1) Name of personal representative or attorney served:
- (2) Address where delivered:

- (3) Date delivered:
- (4) Time delivered:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

..... (TYPE OR PRINT NAME) ▶ \_\_\_\_\_ (SIGNATURE OF DECLARANT)

**ADMISSION OF SERVICE**

1. I am the  personal representative  attorney for the personal representative.

2. I ACKNOWLEDGE that I was served a copy of the foregoing Request for Special Notice.

Date:

..... (TYPE OR PRINT NAME) ▶ \_\_\_\_\_ (SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):	TELEPHONE NO.:	FOR COURT USE ONLY
ATTORNEY FOR (Name):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
ESTATE OF (NAME):		
DECEDENT		
NOTICE OF PROPOSED ACTION Independent Administration of Estates Act Objection—Consent		CASE NUMBER:

**NOTICE:** If you do not object in writing or obtain a court order preventing the action proposed below, you will be treated as if you consented to the proposed action and you may not object after the proposed action has been taken. If you object, the personal representative may take the proposed action only under court supervision. An objection form is on the reverse. If you wish to object, you may use the form or prepare your own written objection.

- The personal representative (executor or administrator) of the estate of the deceased is (names):
- The personal representative has authority to administer the estate without court supervision under the Independent Administration of Estates Act (Probate Code section 10400 et seq.)
  - with full authority under the act.
  - with limited authority under the act (there is no authority, without court supervision, to (1) sell or exchange real property or (2) grant an option to purchase real property or (3) borrow money with the loan secured by an encumbrance upon real property).
- On or after (date): , the personal representative will take the following action without court supervision (describe in specific terms here or in Attachment 3):
  - The proposed action is described in an attachment labeled Attachment 3.
- Real property transaction (Check this box and complete item 4b if the proposed action involves a sale or exchange or a grant of an option to purchase real property.)
  - The material terms of the transaction are specified in item 3, including any sale price and the amount of or method of calculating any commission or compensation to an agent or broker.
  - \$ \_\_\_\_\_ is the value of the subject property in the probate inventory.  No inventory yet.

**NOTICE:** A sale of real property without court supervision means that the sale will NOT be presented to the court for confirmation at a hearing at which higher bids for the property may be presented and the property sold to the highest bidder.

(Continued on reverse)

ESTATE OF (NAME):  _____	CASE NUMBER:  _____
<b>DECEDENT</b>	

**5. If you OBJECT to the proposed action**

a. Sign the objection form below and deliver or mail it to the personal representative at the following address (specify name and address):

-OR-

b. Send your own written objection to the address in item 5a. (Be sure to identify the proposed action and state that you object to it.)

-OR-

c. Apply to the court for an order preventing the personal representative from taking the proposed action without court supervision.

d. **NOTE:** Your written objection or the court order must be received by the personal representative before the date in the box in item 3, or before the proposed action is taken, whichever is later. If you object, the personal representative may take the proposed action only under court supervision.

**6. If you APPROVE the proposed action, you may sign the consent form below and return it to the address in item 5a. If you do not object in writing or obtain a court order, you will be treated as if you consented to the proposed action.**

**7. If you need more INFORMATION, call (name):**  
(telephone): (        )

Date:

(TYPE OR PRINT NAME)	(SIGNATURE OF PERSONAL REPRESENTATIVE OR ATTORNEY)
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**OBJECTION TO PROPOSED ACTION**

I OBJECT to the action proposed above in item 3.

**NOTICE:** Sign and return this form (both sides) to the address in item 5a. The form must be received before the date in the box in item 3, or before the proposed action is taken, whichever is later. (You may want to use certified mail, with return receipt requested. Make a copy of this form for your records.)

Date:

(TYPE OR PRINT NAME)	(SIGNATURE OF OBJECTOR)
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**CONSENT TO PROPOSED ACTION**

I CONSENT to the action proposed above in item 3.

**NOTICE:** You may indicate your consent by signing and returning this form (both sides) to the address in item 5a. If you do not object in writing or obtain a court order, you will be treated as if you consented to the proposed action.

Date:

(TYPE OR PRINT NAME)	(SIGNATURE OF CONSENTER)
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ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name and Address)</i> :  _____	TELEPHONE NO.:	FOR COURT USE ONLY
ATTORNEY FOR <i>(Name)</i> : <b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b>  STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
ESTATE OF (NAME):   <div style="text-align: right;">DECEDENT</div>		
<b>WAIVER OF NOTICE OF PROPOSED ACTION</b> (Probate Code section 10600) (Revocation of Waiver)		CASE NUMBER:

**WARNING**  
**READ BEFORE YOU SIGN**

A. The law requires the personal representative to give you notice of certain actions he or she proposes to take to administer the estate. If you sign this form, the personal representative will NOT have to give you notice.

B. You have the right (1) to object to a proposed action and (2) to require the court to supervise the proposed action. If you do not object before the personal representative acts, you lose your right and you cannot object later.

C. IF YOU SIGN THIS FORM, YOU GIVE UP YOUR RIGHT TO RECEIVE NOTICE. This means you give the personal representative the right to take actions concerning the estate without first giving you the notice otherwise required by law. You cannot object after the action is taken.

D. You have the right to revoke (cancel) this waiver at any time. Your revocation must be in writing and is not effective until it is actually received by the personal representative. *(A form to revoke your waiver is on the reverse. You may want to revoke this waiver later. Keep a copy of this form so you can.)*

E. If you do not understand this form, ask a lawyer to explain it to you.

**WAIVER OF RIGHT TO NOTICE**

1. I understand that the **personal representative** named here has authority to administer the estate of the decedent without court supervision under the Independent Administration of Estates Act (California Probate Code sections 10400-10600).

a. *(name)*:  
 b. *(address)*:

*(Mail or deliver notices to the personal representative at this address.)*

2. I understand I have the right to receive notice of certain actions the personal representative may propose to take. I understand that those actions may affect my interest in the estate.

3. I understand that by signing this waiver form I give up my right to receive notices from the personal representative of actions he or she may decide to take.

(Continued on reverse)

ESTATE OF (NAME):

CASE NUMBER:

DECEDENT

4. By signing below, I **WAIVE MY RIGHT** to receive prior notice of *(CHECK ONLY ONE BOX to indicate your choice)*:

- a.  Any and all actions the personal representative is authorized to take under the Independent Administration of Estates Act.
- b.  Any of the kinds of transactions I have listed below that the personal representative is authorized to take under the Independent Administration of Estates Act *(specify which actions you are waiving your right to receive notice of)*:

Date:

.....  
(TYPE OR PRINT NAME)



(SIGNATURE)

My address is *(type or print)*:

*(Keep a copy for your records.)*

**REVOCATION OF WAIVER OF NOTICE OF PROPOSED ACTION**

1. I previously signed a waiver of my right to receive notices of proposed actions by the personal representative under the Independent Administration of Estates Act.
2. I **revoke** (cancel) any previous waiver of my right to receive notices of proposed actions by the personal representative of the estate of the decedent.
3. I request the personal representative to send me all notices required by law.

Date:

.....  
(TYPE OR PRINT NAME)



(SIGNATURE)

My address is *(type or print)*:

*(Mail or deliver this revocation to the personal representative at the address in item 1 on the reverse. You may want to make a copy for your records.)*