

Memorandum 91-30

Subject: Study L-1048 - Legislative Program -- SB 896 (Urgency Bill)
(Shortening Time for Notice under Probate Code Section 1203)

We have been alerted to a technical problem with regard to shortening the time for giving notice under Section 1203 in the general provisions of the Probate Code. Mr. Charles Collier, Jr., called to inform us of the need to clarify this section so that the practice of shortening notice will not be altered when the new Probate Code goes into effect on July 1. The staff believes the clarification should be included in SB 896, the probate urgency clean-up bill.

Section 1203, operative July 1, reads as follows:

§ 1203. Order shortening time

1203. (a) Subject to subdivision (b), unless the particular provision governing the notice of hearing otherwise provides, the court may, for good cause, shorten the time for giving a notice of hearing.

(b) Unless the particular provision governing the publication of notice of hearing otherwise provides, the court may not shorten the time for publication of notice of hearing.

The concept of subdivision (a) is that a court may shorten time unless a particular section makes the general rule inapplicable. Accordingly, Section 8003 provides in part that the "court may not shorten the time for giving the notice of hearing under this section" which deals with commencement of probate. The general shortening time rule does apply, however, to sections without the restrictive language, even though they provide a particular time for giving notice. Thus, Section 17203 in the Trust Law provides for 30 days' notice, but since it does not provide an explicit exception to the shortening time rule, that period may be shortened. Apparently, at least one court is reading the statement of the 30-day notice in Section 17203 as an exception that makes the general language of Section 1203(a) inapplicable.

The general rules in Division 3 of the Probate Code were codifications and generalizations from the various procedural rules in several other sections of the Probate Code. These revisions were made

as a technical matter. Stating one rule in general is preferable to differently phrased rules applicable to trusts, decedents' estates, guardianships, conservatorships, and all the other proceedings under the code. Naturally, as a conforming change, provisions such as Section 17106 in the Trust Law ("The court may for good cause shorten the time for giving a notice.") were repealed, since they were superseded by the general rule. There was no intention to change the substance of the law unless otherwise noted. The Comment to the repeal of Section 17106 states that it was omitted because it was unnecessary, citing Section 1203. The general notice provisions are explicitly made applicable to trust proceedings by Section 17100 in the Trust Law. The Commission's recommendation characterizes this revision process as the "omission of a number of provisions . . . of the existing code that duplicate general notice provisions." See *Recommendation Proposing New Probate Code*, 20 Cal. L. Revision Comm'n Reports 1001, 1036 (1990).

To clarify the matter, the staff proposes to amend Section 1203 as follows:

Prob. Code § 1203 (technical amendment). Order shortening time 1203. (a) Subject to subdivision (b), unless the particular provision governing the notice of hearing otherwise provides that the time for giving notice may not be shortened, the court may, for good cause, shorten the time for giving a notice of hearing.

(b) Unless the particular provision governing the publication of notice of hearing otherwise provides, the court may not shorten the time for publication of notice of hearing.

Comment. Subdivision (a) of Section 1203 is amended to make clear that the general rule permitting shortening of time applies unless the general rule is made inapplicable by a provision to that effect in a particular statute. This is a technical, nonsubstantive change.

If this amendment is approved, we will add the amendment to SB 896 at the earliest opportunity.

Respectfully submitted,

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