

First Supplement to Memorandum 83-57

Subject: Study L-653 - Notice of Will

The Commission's Tentative Recommendation Relating to Notice of Will was distributed to interested persons and organizations for review and comment. A copy of the tentative recommendation is attached to Memorandum 83-57 (sent August 9, 1983).

You will recall that the Executive Committee of the Estate Planning, Trust and Probate Law Section of the State Bar was strongly opposed to this recommendation. It was deleted from Assembly Bill 25 so that it could be presented to the Legislature as a separate proposal should the Commission determine that it wished to continue its effort to secure the enactment of the provisions for filing notice of will with the Secretary of State.

We did not receive much in the way of comment on the tentative recommendation. Exhibit 1 (Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association) supports the proposal but suggests a revision in Section 6364 of the tentative recommendation. The suggested revision appears to be based on a misconception of the purpose of the section. The section has no effect on will contests or the offering of a will after a probate proceeding has been commenced. It is a section that applies to one who commences a probate proceeding. It is included in the proposed legislation so that a person who offers a will for probate or seeks to probate an estate when there is no will must show the content of the records of the Secretary of State relating to wills.

Exhibit 2 (Charles A. Dunkel, Vice President and Trust Officer, Crocker National Bank) opposes the tentative recommendation. He does not believe the procedure will result in a significant change in finding wills and that the cost of the procedure outweighs any benefit.

Exhibit 3 (Henry Angerbauer) approves the tentative recommendation.

Lawrence R. Tapper, Deputy Attorney General, whose primary concern is charitable trusts, comments:

Over the years I have handled a number of cases on behalf of the Attorney General wherein I suspected but could not prove the existence of a will that would have been favorable to charity. Your proposal for a voluntary will registration should both aid in the

location of such wills and act as a deterrent to those persons who might otherwise secrete or destroy them. A few minor points: (1) the requirement under section 6360 that persons list their social security numbers may be violative of current privacy laws; if so, you may want to move that item into the optional list under subsection (c); and, (2) in section 6363 you may want to consider making this information available not only upon the death but also the incapacity or disappearance of the testator. This would require not only some additional language under (a), but also expanding subparagraph (b) to include conservatorships and missing persons.

The staff is not in agreement whether a recommendation should be submitted to the 1984 legislative session on this matter.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

1st Supp Memo 83-57 Exhibit 1
Los Angeles County
Bar Association

Probate and Trust Law Section

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September 6, 1983

Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94306

Re: Tentative Recommendations L-641, L-651,
L-653, L-810 and L-826; July 22, 1983
Request for Survey of Views

Dear Sirs:

Speaking on behalf of the Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association, we wish to comment on these Tentative Recommendations and respond to the Request for Survey of Views as follows:

L-653, Notice of Will

The tentative recommendations recommend the enactment of Chapter 10, commencing with §§ 6360, Part 1 of Division 6 of the Probate Code. A.B. 25 originally contained a version of Chapter 10 regarding filing Notice of Will, which was deleted during the legislative process. The revisions to the sections indicate that the legislation has been improved and that the Law Revision Commission has recognized the concern of the legislature with the possible cost of setting up a new system.

Anyone who has spent hours and hours of time searching for a will which is believed to exist but which cannot be found will recognize the importance and practical help that a voluntary system of filing notices of wills might create. That such a system exists in other jurisdictions and works well should lead us to implement such a system.

However, we would recommend further change to §6364(a)(1). In existing Probate Code §380, contests after the probate of a will are limited to 120 days after the will is entered into probate. Assuming that there is no period of administration prior to the admission of a will to probate, this time period is roughly the same as the time period for filing creditors' claims. However, in situations where there is administration of

an estate prior to the admission of a will to probate, the periods are not co-existent and the time for contesting a will may expire after the time for filing claims. Furthermore, existing Probate Code §385 states that failure to contest a will does not preclude a subsequent probate of another will of decedent. Given the possibility that such a certificate issued by the Secretary of State may lead to the probate of a later valid will, it seems inappropriate to limit the time period to the earlier of before the time for filing creditors' claims expires or before any distribution is made. We recommend changing the last word of this sentence from "earlier" to "later".

The normal procedure for the probate administration of an estate involves allowing the expiration of the period for creditors to file their claims prior to making any distribution of the estate assets. Therefore, in general, the relevant period will be after the creditors' claim period has expired and prior to distribution of assets. The introduction of evidence of a later valid will during that period of time will not prejudice any party who is a beneficiary of the estate. Furthermore, it is not clear what the consequences of failure to file with the court during the time period may be. The mandatory language of §6364 may not preclude a probate court from admitting into evidence a certified copy of a certificate of the Secretary of State after the time period in subsection (b) expires. The recommended change would also conform to the requirements regarding petitions under Probate Code §1080, which require the filing of petitions to determine who is entitled to distribution of the estate after the commencement of the time for filing or presenting claims and prior to the time a Petition for Final Distribution has been filed. Despite the longer time involved in §1080, we approve of limiting the filing of a certificate to the time before any distribution is made in order to shield a personal representative from potential liability in making a distribution in reliance upon a valid will admitted to probate or the intestate succession laws. Although distribution is sometimes possible prior to the expiration of the period for creditors' claims, that is only true if a bond is posted; therefore, there is an inherent protection of the estate.

We would like you to carefully examine our comments when revising your recommendations. Our comments represent the practical experience of probate practitioners who regularly deal with the probate courts. We support those changes we believe to be true improvements. We can not support those changes we believe would adversely affect the rights of estate beneficiaries or that would make the probate process worse rather than better.

Executive Committee

By _____
Valerie J. Merritt
Secretary - Treasurer

 The Crocker Bank

Charles A. Dunkel
Vice President
Trust Officer

August 19, 1983

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94306

Re: L-653: Notice of Will

Gentlemen:

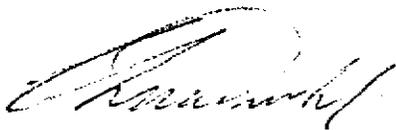
Your tentative recommendation relating to Notice of Will does not meet with my approval.

Before such a system should be considered, a cost study should be made to determine whether the system will be self-supporting. This would include projected cost by the Secretary of State's office based on various volume levels of filing of notices.

I do not believe that this procedure will result in a significant change in finding Wills. A person who would take the time, trouble and expense of using this system is a person who would take the trouble to notify a lawyer, family member, or friend of the location of the Will. The people who would not use this system are the very ones whose Wills are sometimes not found.

In summary, this recommendation would create an additional bureaucracy within the Secretary of State's office and would not achieve its intended result.

Sincerely,



Charles A. Dunkel
Vice President and Trust Officer
(415) 477-2756

CAD:BW:2396

HENRY ANGERBAUER, CPA
4401 WILLOW GLEN CT.
CONCORD, CA 94521

California Law Revision Commission

8/18/83

Gentlemen:

I agree with the conclusions and
recommendations of the Commission regarding
the Staff Draft relating to Notice of Will.

Best regards

Sincerely

