

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

FROM: Probate and Mental Health Advisory Committee
Hon. Don Edward Green, Chair
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DATE: September 10, 2008

SUBJECT: Probate—Decedents' Estates: Advice to Creditors
of Decedents Concerning Rejected Claims
(revise form DE-174) (Action Required)

Issue Statement

The personal representative of a decedent's estate must use a mandatory Judicial Council form to give notice to a creditor of the decedent of the representative's allowance or rejection of the creditor's claim. The form used for this purpose, *Allowance or Rejection of Creditor's Claim* (form DE-174), last revised in 2000, contains advice to the creditor concerning a rejected claim that may be misleading in some situations.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2009, revise the *Allowance or Rejection of Creditor's Claim* (form DE-174) to clarify the advice given to creditors of decedents with rejected claims.

A copy of revised form DE-174 is attached at pages 6 and 7.

Rationale for Recommendation

Form DE-174 should be revised in response to the following criticism of the form in a recent appellate opinion in *Stewart v. Seward* (2007) 148 Cal.App.4th 1513, at page 1524, footnote 7:

We recognize there is nothing on the mandatory Judicial Council form for “Allowance or Rejection of Creditor’s Claim,” Form DE-174, to indicate why . . . [the creditor’s] claim was rejected, and the form does not apprise a claimant whether the claim was rejected on the ground the claimant does not qualify as a creditor. In the event a claimant is not a creditor for purposes of [Code of Civil Procedure] section 366.2, the advisement on Form DE-174 that the claimant has three months to file a lawsuit can be a trap for the unwary.

The current form has a text box containing advice to creditors with rejected claims. They are advised that they must act on their claims (by filing a lawsuit) within three months of the date that notice of rejection is given if the claim is due, or within three months from its due date if it is not yet due. This advice conforms to Probate Code section 9353(a), which says that a rejected claim against a decedent’s estate is barred if an action is not commenced on the claim or referred to arbitration within 90 days after notice of rejection of the claim is given, if the claim is due, or within 90 days after the date the claim becomes due, regardless of any statute of limitations otherwise applicable to the claim.¹

Code of Civil Procedure section 366.2, cited by the *Stewart* court in the above quote, also supports this advice. It provides that the limitations period on a cause of action against a decedent that has survived his or her death is tolled as provided in the creditor’s claims provisions of the Probate Code pertaining to decedents’ estates (including section 9353).

The *Stewart* case presented a rejected creditor’s claim that is not tolled under those provisions. The creditor in that case was a stepdaughter of the decedent. She filed a creditor’s claim in her stepfather’s estate in which she contended that the decedent had orally promised her mother, the decedent’s predeceased spouse, to leave a partial interest in a piece of real property to his stepdaughter in exchange for her mother’s promise to permit the property to pass to the decedent on her death. After his wife’s death, the decedent executed a will leaving this property to others.²

¹ “Three months” was replaced with “90 days” in the Probate Code creditors’ claims provisions, including section 9353 and section 9250(c)(8), by legislation enacted in 2007, effective on January 1, 2008 (Stats. 2007, ch. 159 (Assem. Bill 341), §§ 6, 7). Section 9250(c)(8) specifies the contents of the statement about the limitations period that must be included in the notice of allowance or rejection. This proposal would modify form DE-174 to conform to the 2007 legislation by replacing “three months” with “90 days” throughout the form.

² See 148 Cal.App.4th at page 1516.

The claim was rejected by the decedent's personal representative and a notice of rejection, on form DE-174, was mailed to the creditor. She filed an action on her rejected claim within three months of the date that the notice of rejection was mailed but more than one year after the decedent's death. The complaint was dismissed on the estate's demurrer on the ground that the claim was barred by the statute of limitations under Code of Civil Procedure section 366.3. (See 148 Cal.App.4th at page 1517.) The unsuccessful claimant appealed.

Section 366.3 is an exception to the general rule of tolling under section 366.2. It provides that an action to enforce a promise of a decedent to provide for a distribution from his or her estate is subject to a limitations period of one year from the decedent's death, and that this period is not tolled or extended for any reason (with exceptions not here material), including the 90-day period for filing an action after rejection of a creditor's claim under Probate Code section 9353.

The Court of Appeal affirmed the trial court's action in the face of the appellant's contention that the advice to her on form DE-174 that she had three months to file her action was the personal representative's waiver of the bar of section 366.3. The court concluded that the personal representative's use of the mandatory form to show rejection of the creditor's claim was not an intentional, knowing relinquishment of the right to rely on section 366.3 that would support the waiver claim, despite the potentially misleading advice contained in the form. (See 148 Cal.App.4th at page 1524.)

The proposed revision would modify the advice text box by titling it "Notice to Creditor on Rejected Claim" and adding the following caution below the existing text:

The 90-day period mentioned above may not apply to your claim because some claims are not treated as creditors' claims or are subject to special statutes of limitations, or for other legal reasons. You should consult with an attorney if you have any questions about or are unsure of your rights and obligations concerning your claim.

The text below the judicial officer's signature would be changed to refer to him or her as a judicial officer, not a judge or commissioner, in accordance with current policy for judicial signature lines in council forms. The reference at the bottom of page 1 to the material on page 2 would also be changed to conform to the title of the latter page.

Alternative Actions Considered

In response to the *Stewart* court's above-quoted statement that form DE-174 does not indicate why a claim is rejected, the advisory committee considered adding a requirement that one or more reasons for rejection be given. The committee decided against this action because a reason for rejection of the claim is not required by Probate Code section 9250(c), which lists the required contents of the written notice of allowance or rejection.

Comments From Interested Parties

This proposal was circulated for comment to a list of judicial officers, probate examiners and attorneys, other court staff interested in probate matters, court self-help center representatives, probate-interest sections of the State Bar and local bar associations, and representatives of other organizations interested in probate matters. It was also circulated to court executive officers, presiding judges, individuals, and organizations with a more general interest in court-related issues.

Seven comments were received concerning the proposal. A chart showing the comments received and the advisory committee's responses is attached at pages 8–9.

Six commentators approved of the proposal without additional comment. The Trusts and Estates Section of the State Bar of California approved of the proposal, with two proposed changes. The first recommendation is to substitute the following language for the caution quoted above:

In some circumstances you may have more, or less, than 90 days to act on your claim. You should consult with an attorney if you have any questions about or are unsure of your rights and obligations concerning your claim.

The advisory committee decided against making the change recommended by the Trusts and Estates Section. The committee believes that its proposed text addresses the specific concerns about the form expressed in the *Stewart* opinion more closely than the above-quoted language. Moreover, the Trusts and Estates Section's text suggests that a creditor may have more, not less, than 90 days from service of the notice of rejection to act on a rejected claim. Although that suggestion may be true in some situations, such advice might in many instances be more misleading and injurious to a legitimate creditor than the text proposed by the advisory committee.

The Trusts and Estates Section's second recommendation is for extra space to be added to the proof of service on page 2 of the form to permit the creditor's attorney to be named as an additional recipient of the form. The advisory

committee also declined to make this change. Probate Code section 9250(b) requires that notice be given to the creditor, not also to the creditor's attorney.³ The committee notes, however, that if a creditor's claim identifies an attorney's address as the appropriate address for communications to the creditor about the claim, the attorney's address would be the one filled in on the proof of service.

Implementation Requirements and Costs

Revision of form DE-174 will result in the usual costs associated with the revision or adoption of any Judicial Council form.

³ Probate Code section 1214, one of the sections included in the code provisions referenced in section 9250(b), provides that if a person to whom notice is required or may be given is represented by an attorney *of record*, a copy of the notice or other paper must also be sent to the attorney. A creditor filing a claim in an estate is not a party to the proceeding, entitled to notice of subsequent events (other than notice of the personal representative's action on the creditor's claim). His or her attorney is not, therefore, "of record" in the ordinary sense. Such a creditor could become entitled to notice of all subsequent filings in the estate and could specify his or her attorney's address as the place for notices and other papers to be sent by filing and serving on the personal representative a request for special notice under Probate Code sections 1250–1252. In that event, the attorney's address would be the only address to be filled in on the proof of service of form DE-174.

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i> TELEPHONE NO.: _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____ ATTORNEY FOR <i>(Name):</i> _____	FOR COURT USE ONLY <h2 style="margin: 0;">Draft 7</h2> <h2 style="margin: 0;">08/17/08</h2> <h2 style="margin: 0;">Not Approved by the Judicial Council</h2>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
ESTATE OF _____ <i>(Name):</i> _____	
DECEDENT	
ALLOWANCE OR REJECTION OF CREDITOR'S CLAIM	CASE NUMBER: _____

NOTE TO PERSONAL REPRESENTATIVE

Attach a copy of the creditor's claim to this form. If approval or rejection by the court is not required, do not include any pages attached to the creditor's claim.

PERSONAL REPRESENTATIVE'S ALLOWANCE OR REJECTION

1. Name of creditor *(specify):*
2. The claim was filed on *(date):*
3. Date of first issuance of letters:
4. Date of *Notice of Administration:*
5. Date of decedent's death:
6. Estimated value of estate: \$
7. Total amount of the claim: \$
8. Claim is allowed for: \$
9. Claim is rejected for: \$
10. Notice of allowance or rejection given on *(date):*
11. The personal representative is authorized to administer the estate under the Independent Administration of Estates Act.

(The court must approve certain claims before they are paid.)

*(A creditor has 90 days to act on a rejected claim. * See box below.)*

Date: _____

(TYPE OR PRINT NAME OF PERSONAL REPRESENTATIVE)	(SIGNATURE OF PERSONAL REPRESENTATIVE)
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NOTICE TO CREDITOR ON REJECTED CLAIM

From the date that notice of rejection is given, you must act on the rejected claim (e.g., file a lawsuit) as follows:

1. **Claim due:** within 90 days* after the notice of rejection.
2. **Claim not due:** within 90 days* after the claim becomes due.

*** The 90-day period mentioned above may not apply to your claim because some claims are not treated as creditors' claims or are subject to special statutes of limitations, or for other legal reasons. You should consult with an attorney if you have any questions about or are unsure of your rights and obligations concerning your claim.**

COURT'S APPROVAL OR REJECTION

12. Approved for: \$
13. Rejected for: \$

Date: _____

	SIGNATURE OF JUDICIAL OFFICER
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14. Number of pages attached: _____ SIGNATURE FOLLOWS LAST ATTACHMENT

(Proof of Mailing or Personal Delivery on reverse)

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All comments are verbatim unless indicated by an asterisk. (*).

	Commentator	Position	Comment	Advisory Committee Response
1.	Ms. Patricia Lewin Supervisor, Civil Division Superior Court of Sonoma County Santa Rosa	A	Agree with proposed changes.	No response necessary.
2.	Orange County Bar Association Ms. Cathrine Castaldi President Newport Beach	A	Agree with proposed changes.	No response necessary.
3.	Staff Counsel Services and Self-Help Division Superior Court of San Bernardino County Ms. Debra Meyers, Director San Bernardino	A	Agree with proposed changes.	No response necessary.
4.	State Bar of California, Trusts and Estates Section Mr. Edward J. Corey, Jr., Advisor Sacramento	AM	Agree with proposed changes if modified. 1. Amend the proposed language in the block under the section entitled “Notice to Creditors on Rejected Claim” to read: “*In some circumstances you may have more, or less, than 90 days to act on your claim. You should consult with an attorney if you have any questions about or are unsure of your rights and obligations concerning your claim.”	1. The language proposed by the advisory committee more closely than the language proposed by the Trusts and Estates Section addresses the concerns about the form expressed in <i>Stewart v. Seward</i> (2007) 148 Cal.App.4th 1513, at 1524, footnote7, the decision that led to this proposal. Moreover, the recommended text suggests that a creditor may have <i>more</i> , not less, than 90 days to act on a claim. Although this suggestion may be true in some situations, such advice to a creditor might in other circumstances be more misleading and injurious to a legitimate

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	Commentator	Position	Comment	Advisory Committee Response
			<p>The Trusts and Estates Section believes the proposed language, as drafted, is confusing, unclear and ambiguous as a result, this could lead to the very same confusion the proposed amendment is intended to correct.</p> <p>2. On the Proof of Mailing add an extra space for mailing to an attorney to item 3(a)(2) and 3(b)(2). DISCLAIMER This position is only that of the TRUSTS & ESTATES SECTION of the State Bar of California. This position has not been adopted by either the State Bar's Board of Governors or overall membership, and is not to be construed as representing the position of the State Bar of California.</p>	<p>creditor than the language proposed by the advisory committee.</p> <p>2. If a creditor has identified an attorney’s address in the creditor’s claim as appropriate for notice to the creditor, the address of the creditor to be filled in on the proof of service would be the address of the attorney. The creditor could also ensure that his or her attorney receives notices by filing and serving a request for special notice under Probate Code sections 1250–1252 that specifies the attorney’s address as the proper address for all notices to the creditor.</p>
5.	Superior Court of Los Angeles County Los Angeles	A	Agree with proposed changes.	No response necessary.
6.	Superior Court of San Diego County Mr. Michael Roddy, Chief Executive Officer San Diego	A	Agree with proposed changes.	No response necessary.
7.	Superior Court of Sacramento County Mr. Ed Pollard Chief Deputy Court Executive Officer Sacramento	A	We agree with this proposal as written.	No response necessary.