

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT

LEG11-02

Title	Action Requested
Probate: Notice to Creditors in Decedents' Estates	Review and submit comments by June 20, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Probate Code sections 8100 and 9052	January 1, 2013
Proposed by	Contact
Probate and Mental Health Advisory Committee	Douglas C. Miller
Hon. Mitchell L. Beckloff, Chair	douglas.miller@jud.ca.gov 818-558-4178

Summary

Advice to creditors of decedents' estates in two Judicial Council form notices is incorrect under some circumstances and potentially misleading. However, statutes mandate the incorrect advice given in the forms. The Probate and Mental Health Advisory Committee proposes to resolve this problem by recommending Judicial Council sponsorship of legislation to amend the statutes.

Discussion

The *Notice of Petition to Administer Estate* (form DE-121) must be used by a petitioner for the appointment of a personal representative of a decedent's estate to give notice to persons interested in the estate that a petition to administer the estate has been filed and the date, time, and place of the court hearing on the petition. This notice must be mailed before the hearing to the decedent's heirs known or ascertainable by the petitioner and each devisee, executor, and alternate executor named in any will of the decedent offered for probate.¹

¹ Prob. Code, § 8110. A devisee is a beneficiary of real or personal property under a will. An executor is a person nominated in a will for appointment by the court as personal representative of the estate. (See Prob. Code, §§ 32, 33, and 8420.)

Although this notice is not mailed to the decedent's creditors who are not also heirs or beneficiaries, it is addressed in part to those creditors. Some creditors will become aware of the contents of this notice because the notice must also be published in advance of the hearing in a newspaper of general circulation where the decedent was domiciled or, in certain cases, where he or she held property.²

The contents of the notice are specified in detail by Probate Code section 8100. That section requires the portion of the notice addressed to creditors to state substantially the following:

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 date of the hearing noticed above.* (Italics added.)

Item 8 of form DE-121 contains the language required by section 8100, as follows:

If you are a creditor or a contingent creditor of the decedent, 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 Probate Code section 9100. *The time for filing claims will not expire before four months from the hearing date noticed above.* (Italics added.)

In addition to the notice they may have received from the publication mentioned above, creditors of a decedent known or reasonably ascertainable by the estate's personal representative must be given a specific mailed notice of the estate administration within the later of four months after the date letters of administration were first issued in the estate or 30 days after the personal representative first has knowledge of the creditor.³ The content of the required mailed notice to creditors is specified in Probate Code section 9052, in material part, as follows:

You must file your claim with the court and mail or deliver a copy to the personal representative within the last to occur of four months after ____ (the date letters were issued to the personal representative), or 60 days after the date this notice was mailed to you or, in the case of personal delivery, 60 days after the date this notice was delivered to you, as provided in Section 9100 of the California Probate Code.

The *Notice of Administration to Creditors* (form DE-157) is the form used to give creditors of estates mailed notice under section 9052. Item 3 of the form says:

² Prob. Code, §§ 8120 and 8121.

³ Prob. Code, § 9051.

You must FILE YOUR CLAIM with the court clerk (address in item 2a) AND mail or deliver a copy to the personal representative before the later of the following times as provided in Probate Code section 9100:

- a. **four months** after (*date*): _____, the date letters (authority to act for the estate) were first issued to the personal representative, OR
- b. **sixty days** after (*date*): _____, the date this notice was mailed or personally delivered to you.

Section 9100 of the Probate Code, referenced in both forms and in Probate Code section 9052, provides, in material part, as follows:

9100. (a) A creditor shall file a claim before expiration of the later of the following times:
- (1) Four months after the date letters are first issued to a *general personal representative*. (Italics added)
 - (2) Sixty days after the date notice of administration is mailed or personally delivered to the creditor.

The final sentence quoted above from Probate Code section 8100 and form DE-121, “[t]he time for filing claims will not expire before four months from the hearing date noticed above,” could be incorrect if a special administrator with general powers (under Probate Code section 8545) has been appointed in the estate because a special administrator with general powers is defined as a general personal representative in Probate Code section 58(b). Four months from the appointment of such a special administrator could pass before the hearing date on the petition for appointment of a personal representative. As noted above, section 9100 refers to the date of the first appointment of a general personal representative in the estate as the start of one of the two time periods for filing a creditor’s claim.

The notice forms cannot simply be revised; their relevant statements are mandated by Probate Code sections 8100 (form DE-121) and 9052 (form DE-157). These code sections must be amended before the forms can be revised.⁴

Proposed amendments to Probate Code sections 8100 and 9052 follow this invitation to comment. These amendments would make the required statements to creditors conform to section 9100 and would clarify what the latter section means when it refers to a general personal representative. The amended portion of section 8100 would read as follows:

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

⁴ If the Judicial Council sponsors legislation in 2012 as here proposed, the advisory committee will recommend revision of forms DE-121 and DE-157 in 2012, to be effective on January 1, 2013, the same date the legislation, if enacted, would become effective.

within the later of (1) four months from the date of first issuance of letters to a general personal representative (as defined in Section 58(b) of the California Probate Code), or (2) 60 days from the date of mailing or personal delivery of a notice to you under Section 9052 of the California Probate Code.

The amended portion of section 9052 would read as follows:

You must file your claim with the court and mail or deliver a copy to the personal representative within the last to occur of four months after _____ (the date letters were first issued to a general personal representative (as defined in Section 58(b) of the California Probate Code)), or 60 days after the date this notice was mailed to you or, in the case of personal delivery, 60 days after the date this notice was delivered to you.

The references to section 9100 in both of these provisions would be deleted as unnecessary.

Legislative Proposal

Probate Code sections 8100 and 9052 would be amended, effective January 1, 2013, to read:

1 8100. The notice of hearing of a petition for administration of a decedent's estate, whether
2 served under Article 2 (commencing with Section 8110) or published under Article 3
3 (commencing with Section 8120), shall state substantially as follows:

4 5 NOTICE OF PETITION TO ADMINISTER

6
7 ESTATE OF _____, ESTATE NO. _____
8

9 To all heirs, beneficiaries, creditors, and contingent creditors of _____ and persons
10 who may be otherwise interested in the will or estate, or both:

11
12 A petition has been filed by _____ in the Superior Court of California,
13 County of _____, requesting that _____ be appointed as personal
14 representative to administer the estate of _____ [and for probate of the
15 decedent's will, which is available for examination in the court file].

16
17 [The petition requests authority to administer the estate under the Independent
18 Administration of Estates Act. This will avoid the need to obtain court approval for many actions
19 taken in connection with the estate. However, before taking certain actions, the personal
20 representative will be required to give notice to interested persons unless they have waived
21 notice or have consented to the proposed action. The petition will be granted unless good cause
22 is shown why it should not be.]

23
24 The petition is set for hearing in Dept. No. _____ at _____

25 (Address)

26 on _____ at _____.

27 (Date of hearing)

(Time of hearing).

28
29 IF YOU OBJECT to the granting of the petition, you should appear at the hearing and state your
30 objections or file written objections with the court before the hearing. Your appearance may be
31 in person or by your attorney.

34 IF YOU ARE A CREDITOR or a contingent creditor of the deceased, you must file your claim
35 with the court and mail a copy to the personal representative appointed by the court within the
36 later of (1) four months from the date of first issuance of letters to a general personal
37 representative as defined in Section 58(b) of the California Probate Code, or (2) 60 days from the
38 date of mailing or personal delivery of a notice to you under Section 9052 of the California
39 Probate Code, as provided in Section 9100 of the California Probate Code. The time for filing
40 claims will not expire before four months from the date of the hearing noticed above.

41
42 YOU MAY EXAMINE the file kept by the court. If you are interested in the estate, you may
43 request special notice of the filing of an inventory and appraisal of estate assets or of any petition
44 or account as provided in Section 1250 of the California Probate Code.

45 _____
46 (Name and address of petitioner or petitioner's attorney)

47
48 9052. The notice shall be in substantially the following form:

49
50 NOTICE OF ADMINISTRATION OF
51 ESTATE OF _____, DECEDENT

52
53 Notice to creditors:

54
55 Administration of the estate of _____(deceased) has been
56 commenced by _____(personal representative) in Estate No.
57 _____ in the Superior Court of California, County of _____. You must
58 file your claim with the court and mail or deliver a copy to the personal representative within the
59 last to occur of four months after _____(the date letters were first issued to ~~the~~ a
60 general personal representative (as defined in Section 58(b) of the California Probate Code)), or
61 60 days after the date this notice was mailed to you or, in the case of personal delivery, 60 days
62 after the date this notice was delivered to you, ~~as provided in Section 9100 of the California~~
63 ~~Probate Code~~, or you must petition to file a late claim as provided in Section 9103 of the
64 California Probate Code. Failure to file a claim with the court and serve a copy of the claim on
65 the personal representative will, in most instances, invalidate your claim. A claim form may be
66 obtained from the court clerk. For your protection, you are encouraged to file your claim by
67 certified mail, with return receipt requested.

68 _____
69 (Date of mailing this notice) (Name and address of personal representative or attorney)

Item LEG11-02 Response Form

Title: Probate: Notice to Creditors in Decedents' Estates (Amend Probate Code sections 8100 and 9052)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

Internet: www.courts.ca.gov/policyadmin-invitationstocomment.htm

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DEADLINE FOR COMMENT: 5:00 p.m., Monday, June 20, 2011

Circulation for comment does not imply endorsement by the Judicial Council or the Policy Coordination and Liaison Committee. All comments will become part of the public record of the council's action.