



## Judicial Council of California · Administrative Office of the Courts

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on December 13, 2011

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Title	Agenda Item Type
Judicial Council–Sponsored Legislation (Probate): Notice to Creditors in Decedents’ Estates	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Prob. Code, §§ 8100 and 9052	December 13, 2011
Recommended by	Date of Report
Policy Coordination and Liaison Committee	October 28, 2011
Hon. Marvin R. Baxter, Chair	Contact
Probate and Mental Health Advisory Committee	Douglas C. Miller, 818-558-4178 douglas.miller@jud.ca.gov
Hon. Mitchell L. Beckloff, Chair	Daniel Pone, 916-323-3121 daniel.pone@jud.ca.gov

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### **Executive Summary**

The statutorily required content of advice to creditors of decedents’ estates concerning time limits on filing claims with the court and the personal representative of the estate may, in some situations, conflict with the time limits to file these claims required by law. The advice may be potentially misleading to creditors of decedents. Therefore, the Policy Coordination and Liaison Committee and the Probate and Mental Health Advisory Committee recommend that the Judicial Council sponsor legislation amending the statutes that specify the content of the advice. If this recommendation leads to changes in these statutes in 2012, the Probate and Mental Health Advisory Committee would propose conforming revisions of two Judicial Council forms that must be used to advise these creditors, effective on January 1, 2013.

### **Recommendation**

The Policy Coordination and Liaison Committee and the Probate and Mental Health Advisory Committee recommend that the Judicial Council sponsor legislation amending Probate Code sections 8100 and 9052 to conform their statements concerning time limits on filing creditors’

claims in decedents' estates to the requirements for filing these claims established in Probate Code section 9100.

The text of the proposed legislation is attached at pages 7–8.

### **Previous Council Action**

The Judicial Council has adopted two forms that contain advice to creditors of a decedent about their responsibility to file claims with the court and with the personal representative of the debtor's probate estate. The forms are the *Notice of Petition to Administer Estate* (form DE-121), initially adopted by the council effective January 1, 1980, and last revised on January 1, 2006; and the *Notice of Administration to Creditors* (form DE-157), initially approved by the council effective January 1, 1988, and last revised on January 1, 1998.<sup>1</sup>

### **Rationale for Recommendation**

#### **Probate Code section 8100 and form DE-121**

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 to each devisee, executor, and alternate executor named in any will of the decedent offered for probate.<sup>2</sup>

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 of the decedent's 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.<sup>3</sup>

The contents of form DE-121 are prescribed 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.)

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<sup>1</sup> Form DE-157 was converted to a mandatory form on January 1, 2000, along with all other then-existing probate forms.

<sup>2</sup> 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.)

<sup>3</sup> Prob. Code, §§ 8120 and 8121.

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.)

Section 9100 of the Probate Code, referenced in section 8100 and in form DE-121, 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 italicized final sentence quoted above from Probate Code section 8100 and form DE-121 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.<sup>4</sup>

Form DE-121 cannot simply be revised; its relevant statements to creditors are mandated by Probate Code section 8100. That code section must be amended before the form can be revised.<sup>5</sup> The change proposed for 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 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

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<sup>4</sup> A special administrator with general powers is often appointed to commence the administration of an estate while a will contest or other dispute is pending between two or more contenders for appointment as personal representative of the estate. The time period for resolution of the contest or other dispute could easily extend for more than six months after appointment of the special administrator with general powers and after the date of the hearing referred to in section 8100 and identified in form DE-121.

<sup>5</sup> If the Judicial Council sponsors legislation in 2012 and the effort is successful, the advisory committee would recommend revision of form DE-121 in 2012, effective on January 1, 2013, the same date the legislation would become effective.

(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 reference to section 9100 in section 8100 would be deleted as unnecessary.

**Probate Code section 9052 and form DE-157**

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.<sup>6</sup> The contents of the required mailed notice to creditors are 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 sections 9051 and 9052. Item 3 of the form says:

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.

The proposed change in section 8100 would require a change in section 9052, to conform the advice given in the two sections and to clarify to creditors that a personal representative is a “general personal representative” as defined in section 58(b), including a special administrator with general powers. The advisory committee proposes the following:

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.

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<sup>6</sup> Prob. Code, § 9051.

As with the proposed change in section 8100 discussed above, the reference to section 9100 in section 9052 would be eliminated as unnecessary.

If legislation is enacted to make this change, form DE-157 would be revised to conform to the amended statute.

### **Comments, Alternatives Considered, and Policy Implications**

This proposal was circulated for comment as part of the spring 2011 invitation-to-comment cycle. Five individuals or organizations submitted comments. All commentators approved the proposal without recommending modifications. One commentator, Santa Rosa attorney Robert K. Maize, Jr., requested the advisory committee to develop and propose adoption of a creditor's claim form for creditors of deceased settlors of revocable trusts under the optional claims procedure provided in Probate Code sections 19003 and 19040–19041.

The advisory committee will consider Mr. Maize's recommendation for future action, but preliminary indications are that the claims procedure he identifies is infrequently used; development of Judicial Council forms to be used in that procedure may not be justified at this time.

### **Implementation Requirements, Costs, and Operational Impacts**

The proposed legislation is uncontroversial. If the legislation is enacted, modest additional costs will be incurred in 2012 to revise the current Judicial Council estate creditors' claim forms. No operational costs following the changes in the forms are anticipated. If no action is taken, some creditors of estates may fail to preserve their otherwise valid claims because of potentially misleading information contained in existing statutes and in the Judicial Council forms adopted to comply with those statutes.

### **Relevant Strategic Plan Goals and Operational Plan Objectives**

This proposal supports the case management policies underlying strategic Goal III, Modernization of Management and Administration (Goal III.B, Trial and Appellate Case Management) and objective III.B.5<sup>7</sup> of the operational plan, in that it will help ensure, when coupled with related changes in Judicial Council forms after the proposed legislation is enacted, that statewide policies, rules of court, standards of judicial administration, and court forms promote the fair, timely, effective, and efficient processing of cases and make court procedures easier to understand.

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<sup>7</sup> Objective 5 addresses the need to “[d]evelop and implement effective trial and appellate case management rules, procedures, techniques, and practices to promote the fair, timely, consistent, and efficient processing of all types of cases.”

## **Attachments**

1. Proposed amendments to Probate Code sections 8100 and 9052, at pages 7–8
2. Chart of comments, at pages 9–10

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

1 **Probate Code Section 8100**

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

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NOTICE OF PETITION TO ADMINISTER

ESTATE OF \_\_\_\_\_, ESTATE NO. \_\_\_\_\_

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

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

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

26 The petition is set for hearing in Dept. No. \_\_\_\_\_ at \_\_\_\_\_  
27 (Address)  
28 on \_\_\_\_\_ at \_\_\_\_\_.  
29 (Date of hearing) (Time of hearing)

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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.

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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 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. ~~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.~~

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YOU MAY EXAMINE the file kept by the court. If you are interested in the estate, you may request 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.

\_\_\_\_\_  
(Name and address of petitioner or petitioner's attorney)

**Probate Code Section 9052**

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

NOTICE OF ADMINISTRATION OF  
ESTATE OF \_\_\_\_\_, DECEDENT

Notice to creditors:

Administration of the estate of \_\_\_\_\_ (deceased) has been commenced by \_\_\_\_\_ (personal representative) in Estate No. \_\_\_\_\_ in the Superior Court of California, County of \_\_\_\_\_.

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 ~~the~~ 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, ~~as provided in Section 9100 of the California Probate Code~~, or you must petition to file a late claim as provided in Section 9103 of the California Probate Code. Failure to file a claim with the court and serve a copy of the claim on the personal representative will, in most instances, invalidate your claim. A claim form may be obtained from the court clerk. For your protection, you are encouraged to file your claim by certified mail, with return receipt requested.

\_\_\_\_\_  
(Date of mailing this notice)

\_\_\_\_\_  
(Name and address of personal representative or attorney)



**LEG11-02****Probate: Notice to Creditors in Decedents' Estates** (Amend Probate Code sections 8100 and 9052)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Executive Committee of the Trusts and Estates Section, State Bar of California (TEXCOM) by Barry K. Matulich and Saul Bercovitch San Francisco	A	No specific comments.	No response required.
2.	Robert K. Maize, Jr. Robert Maize, a Law Corporation Santa Rosa	A	<p>I have no objections to "Probate: Notice to Creditors in Decedents' Estates," Proposal LEG11-02</p> <p>How about addressing the problems with the trust creditor notice by changing the language of the required notice in Prob. Code, § 19040, or adopting a creditor's claim form that creditors can file in a trust proceeding.</p> <p>Probate Code section 19040 provides for a "statutory" form of notice to creditors of deceased settlors of revocable trusts. The statutory language states in part that "[a] claim form may be obtained from the court clerk." However, no such form has been adopted.</p> <p>It would be nice to have this situation clarified. Alternatives might be one of the following:</p>	<p>No response required.</p> <p>The advisory committee will consider the development of a new creditor's claim form for creditors of deceased settlors of revocable trusts in the next rules and forms cycle. The earliest that such a form could become effective would be January 1, 2013. If this legislative proposal is adopted by the Judicial Council and if the proposed legislation is successfully enacted in 2012, a new claim form could be proposed at the same time as the changes in existing decedent estate creditors' claim forms are made to comply with the statutes as amended by the proposed legislation.</p>

**LEG11-02****Probate: Notice to Creditors in Decedents' Estates** (Amend Probate Code sections 8100 and 9052)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>1) Revise the sentence to read: "The claim shall be in the form of a pleading filed with the court clerk;"</p> <p>2) Revise the Judicial Council creditor claim form for a decedent's estate to apply to trusts also; or</p> <p>3) Prepare a new Judicial Council creditor claim form for a decedent's trust.</p>	
3.	Orange County Bar Association by John Hueston, President Newport Beach	A	No specific comments made.	No response necessary.
4.	Superior Court of Monterey County by Minnie Monarque, Director, Civil & Family Law Division Monterey	A	No specific comments made.	No response necessary.
5.	Superior Court of San Diego County by Michael M. Roddy, Executive Officer San Diego	A	No specific comments made.	No response necessary.