

Invitation to Comment

Title	Probate—Decedents’ Estates: Advice to Creditors of Decedents (revise <i>Allowance or Rejection of Creditor’s Claim</i> (form DE-174)).
Summary	<i>Allowance or Rejection of Creditor’s Claim</i> (form DE-174) is used by a personal representative of a decedent’s estate to notify a creditor of the decedent that the creditor’s claim against the estate has been allowed and, if necessary, approved by the court, or has been rejected. The form contains advice to the creditor if his or her claim is rejected. The Probate and Mental Health Advisory Committee proposes to modify this advice because it may be misleading in some situations, and because of 2007 legislation.
Source	Probate and Mental Health Advisory Committee Hon. Don Edward Green, Chair
Staff	Douglas C. Miller 415.865.7535; douglas.miller@jud.ca.gov
Discussion	<p>Form DE-174 contains advice to creditors of a decedent whose claims have been rejected by the personal representative of the decedent’s estate. The form advises that the creditor must take action (e.g., by filing a lawsuit) within three months of the notice of rejection if the claim is then due or, if the claim is not then due, within three months of its later due date.</p> <p><i>Stewart v. Seward</i></p> <p>The Probate and Mental Health Advisory Committee proposes to add the following caution to the advice given in the form:</p> <p style="padding-left: 40px;">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.</p> <p>This cautionary advice is proposed because of a comment about the form in a recent opinion of the Court of Appeal, Second Appellate District, in <i>Stewart v. Seward</i> (2007) 148 Cal.App.4th 1513. The comment is found in footnote 7 at 148 Cal.App.4th 1524 and reads in full as follows:</p>

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 Stewart’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 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 claim in *Stewart* arose from an alleged promise by the decedent to the claimant to leave her a portion of the estate (see 148 Cal.App.4th at 1516–1517). The Court of Appeal concluded, as had the trial court, that the claim was barred by the one-year statute of limitation for such claims under Code of Civil Procedure section 366.3. That statute is not tolled by the decedent’s estate creditor’s claim procedure under Code of Civil Procedure section 366.2, including the 90-day period to take action on rejected claims provided in Probate Code section 9353.¹ In effect, claims subject to section 366.3 are not “creditors’ claims” for purposes of the creditors’ claim procedure of Probate Code section 9000 et seq., and claimants described in section 366.3 are not creditors within the meaning of the Probate Code claims provisions.

Although the Court of Appeal expressed concern that the Judicial Council form does not call for a statement of the reason for rejection of a claim and, in the case before the court, did not require the personal representative to advise the claimant that the claim was rejected because the claimant is not a creditor within the meaning of the decedent’s estate claim procedure, the advisory committee’s proposed revision would not require a statement of reasons for rejection of a claim. The statute prescribing the contents of the notice of allowance or rejection of a creditor’s claim, Probate Code section 9250, does not require the personal representative to state why a creditor’s claim has been rejected.

The advisory committee proposes instead to advise creditors holding rejected claims that not all claims are subject to the 90-day period because the claimants are not considered creditors under the claims provisions, the claims are subject to a special statute of limitation, or

¹ See the discussion on page 3, below.

for other legal reasons. The creditor would be advised to consult with an attorney if he or she has questions or is unsure about his or her rights and obligations concerning the claim.

90 Days

Probate Code section 9250 calls for the notice to include a statement that the creditor has 90 days in which to act on a rejected claim. The section was changed by a 2007 statute that substituted 90 days for three months. This change was also made in section 9353 by the same statute.²

As noted above, the form refers to three months. The advisory committee proposes to substitute “90 days” for “three months” throughout the form.

The proposed revised form DE-174 is attached at pages 4 and 5.

Attachment

² See Stats 2007, ch. 159 (Assem. Bill 341), §§ 6, 7.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):	FOR COURT USE ONLY
TELEPHONE NO.:	FAX NO. (Optional):
E-MAIL ADDRESS (Optional):	
ATTORNEY FOR (Name):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF	
STREET ADDRESS:	
MAILING ADDRESS:	
CITY AND ZIP CODE:	
BRANCH NAME:	
ESTATE OF (Name):	DECEDENT
ALLOWANCE OR REJECTION OF CREDITOR'S CLAIM	
CASE NUMBER:	

Draft 6**04/03/08**

**Not Approved by
the Judicial
Council**

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: \$ *(The court must approve certain claims before they are paid.)*
9. Claim is rejected for: \$ *(A creditor has 90 days to act on a rejected claim.* See box below.)*
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.

Date:

(TYPE OR PRINT NAME OF PERSONAL REPRESENTATIVE)

(SIGNATURE OF PERSONAL REPRESENTATIVE)

**NOTICE TO CREDITOR ON REJECTED CLAIM:**

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

- a. **Claim due:** within 90 days* after the notice of rejection.
- b. **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

14. Number of pages attached: _____

 SIGNATURE FOLLOWS LAST ATTACHMENT

ESTATE OF (Name):	CASE NUMBER: DECEDENT
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PROOF OF MAILING PERSONAL DELIVERY TO CREDITOR

1. At the time of mailing or personal delivery I was at least 18 years of age and **not a party** to this proceeding.
2. My residence or business address is (*specify*):

3. I mailed or personally delivered a copy of the *Allowance or Rejection of Creditor's Claim* as follows (*complete either a or b*):
 - a. **Mail.** I am a resident of or employed in the county where the mailing occurred.
 - (1) I enclosed a copy in an envelope AND
 - (a) **deposited** the sealed envelope with the United States Postal Service with the postage fully prepaid.
 - (b) **placed** the envelope for collection and mailing on the date and at the place shown in items below following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
 - (2) The envelope was addressed and mailed first-class as follows:
 - (a) Name of creditor served:
 - (b) Address on envelope:

 - (c) Date of mailing:
 - (d) Place of mailing (*city and state*):
 - b. **Personal delivery.** I personally delivered a copy to the creditor as follows:
 - (1) Name of creditor served:
 - (2) Address where delivered:

 - (3) Date delivered:
 - (4) Time delivered:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)

Item SPR08-42 Response Form

Title: Probate—Decedents' Estates: Advice to Creditors of Decedents
(revise form DE-174)

- 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 written on this form, prepared in a letter format, or submitted online. 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.

Internet: www.courtinfo.ca.gov/invitationstocomment

Email: invitations@jud.ca.gov

Mail: Ms. Camilla Kieliger
Judicial Council, 455 Golden Gate Avenue
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 20, 2008

*Circulation for comment does not imply endorsement by the Judicial Council
or the Rules and Projects Committee.*

All comments will become part of the public record of the council's action.