

RESOLUTION 02-06-2014

DIGEST

California Rules of Court: Notice to Heir of Postdeceased Beneficiary of an Estate

Amends California Rules of Court, rule 7.51 to offer the successors of a postdeceased heir the same protections as those given to a postdeceased beneficiary

RESOLUTIONS COMMITTEE RECOMMENDATION DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution amends California Rules of Court, rule 7.51 to offer the successors of a postdeceased heir the same protections as those given to a postdeceased beneficiary. This resolution should be disapproved because successors of a postdeceased heir are already entitled to notice.

Probate Code section 24 defines a “beneficiary” as a person to whom a donative transfer of property is made or that person’s successor in interest and includes successor in the term “heir” as it relates to an intestate estate of a decedent and “devisee” as it relates to a decedent who died with a will. Under current law, if a beneficiary of an estate dies after the decedent, which includes an heir or a devisee, then notice must either be given to that beneficiary’s personal representative or the beneficiary’s successors in interest. If a probate has already been established, then the personal representative is required to give notice to the beneficiary’s heirs. If a probate has not been established, then notice is required to be given directly to the beneficiary’s heirs. This resolution does not change existing law.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that the Judicial Council amend California Rules of Court, Rule 7.51 to read as follows:

Rule 7.51

- 1 (a) Direct notice required
- 2 (1) Except as otherwise permitted in the Probate Code, a notice sent by mail under
- 3 Probate Code section 1220 must be mailed individually and directly to the person entitled to
- 4 notice.
- 5 (2) A notice mailed to a person in care of another person is insufficient unless the person
- 6 entitled to notice is an adult and has directed the party giving notice in writing to send the notice
- 7 in care of the second person.
- 8 (3) Notices mailed to more than one person in the same household must be sent
- 9 separately to each person.
- 10 (b) Notice to attorney
- 11 If a notice is required or permitted to be given to a person who is represented by an attorney of
- 12 record in the proceeding, the notice must be sent as required in Probate Code section 1214.
- 13 (c) Notice to guardian or conservator
- 14 (1) When a guardian or conservator has been appointed for a person entitled to notice, the
- 15 notice must be sent to the guardian or conservator.
- 16 (2) A copy of the notice must also be sent to the ward or conservatee unless:

17 (A) The court dispenses with such notice; or
18 (B) Under Probate Code section 1210 in a decedent's estate proceeding, the notice is
19 personally served on a California- resident guardian or conservator of the estate of the ward or
20 conservatee.

21 (Subd (c) amended effective January 1, 2004.)

22 (d) Notice to minor

23 Except as permitted in Probate Code section 1460.1 for guardianships, conservatorships, and
24 certain protective proceedings under division 4 of the Probate Code, notice to a minor must be
25 sent directly to the minor. A separate copy of the notice must be sent to the person or persons
26 having legal custody of the minor, with whom the minor resides.

27 (e) Notice required in a decedent's estate when a beneficiary has died

28 (1) Notice when a beneficiary dies after the decedent

29 Notice must be sent to the personal representative of a beneficiary or heir who died after the
30 decedent and, if a beneficiary, survived for a period required by the decedent's will. If no
31 personal representative has been appointed for the postdeceased beneficiary or heir, notice must
32 be sent to his or her beneficiaries or other persons entitled to succeed to his or her interest in the
33 decedent's estate.

34 (2) Notice when a beneficiary of the decedent's will dies before the decedent

35 When a beneficiary under the will of the decedent died before the decedent or fails to survive the
36 decedent for a period required by the decedent's will, notice must be sent to the persons named in
37 the decedent's will as substitute beneficiaries of the gift to the predeceased beneficiary. If the
38 decedent's will does not make a substitute disposition of that gift, notice must be sent as follows:

39 (A) If the predeceased beneficiary is a "transferee" under Probate Code section 21110(c),
40 to the issue of the predeceased beneficiary determined under Probate Code section 240 and to the
41 residuary beneficiaries of the decedent or to the decedent's heirs if decedent's will does not
42 provide for distribution of the residue of the estate.

43 (B) If the predeceased beneficiary is not a "transferee" under Probate Code section
44 21110(c), to the residuary beneficiaries of the decedent or to the decedent's heirs if decedent's
45 will does not provide for distribution of the residue of the estate.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Sacramento County Bar Association

STATEMENT OF REASONS

The Problem: Rule 7.51(e) (1) presently applies only to beneficiaries of a decedent's will who survive the decedent but then die, and are entitled to receive notice under Probate Code section 1220. In such cases, notice must be sent to the personal representative of the postdeceased beneficiary, or if none, to successors. There is no similar provision requiring notice to the personal representative or successors of a postdeceased heir. Existing law allows a situation where there is no requirement for notice to the personal representative or successors of an heir who survives a decedent, but then dies before notice of probate of the decedent's will, for instance, is mailed. Thus the estate of the decedent might be probated to completion without notice ever being given to a person who inherits, but is deceased when it comes time for giving notice. This change will solve that problem.

The Solution: This Resolution offers to the successors of a postdeceased heir the same protections as those given to a postdeceased beneficiary. Notice would be required to the personal representative or successors of the postdeceased heir.

LEGISLATIVE HISTORY

Not known.

IMPACT STATEMENT

The proposed resolution does not affect any other law, statute or rule.

AUTHOR AND/OR PERMANENT CONTACT: Borden Webb, Webb & Tapella Law Corporation, 7311 Greenhaven Drive, Suite 273, Sacramento, CA 95831; (916) 447-1675; bwebb@probateattorneys.com

RESPONSIBLE FLOOR DELEGATE: Borden Webb

SECTION COMMENTS TO RESOLUTION 02-06-2014

TRUST AND ESTATE SECTION OF THE STATE BAR OF CALIFORNIA

SUPPORT IF AMENDED TO INCLUDE TECHNICAL CHANGES

The Executive Committee of the Trusts & Estates Section suggests that the words “or heir” be added to the titles of Rule 7.51(e) and Rule 7.51(e)(1) immediately after the word “beneficiary” and has informally conveyed this proposed change to the contact person for the Resolution, who has expressed his agreement.

Disclaimer:

This position is only that of the TRUSTS and ESTATES SECTION of the State Bar of California. This position has not been adopted by either the State Bar's Board of Trustees or overall membership, and is not to be construed as representing the position of the State Bar of California. Membership in the TRUSTS and ESTATES SECTION is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.