

Judicial Council of California • Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

SPR12-24

Title	Action Requested
Probate: Notice to Creditors in Decedents' Estates	Review and submit comments by June 15, 2012
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise forms DE-121 and DE-157	January 1, 2013
Proposed by	Contact
Probate and Mental Health Advisory Committee Hon. Mitchell L. Beckloff, Chair	Douglas C. Miller 818-558-4178, douglas.c.miller@jud.ca.gov

Executive Summary and Origin

Certain advice given in two Judicial Council forms to creditors of a decedent concerning the time they have to file claims with the court and the personal representative of the decedent's estate is inaccurate and potentially misleading in some situations. This advice is mandated by statute. Legislation sponsored by the Judicial Council is anticipated in 2012 to amend the statute to require the forms to provide more accurate advice. If that legislation becomes law effective on January 1, 2013, the forms must be revised to conform to the amended statute. The forms also fail to alert creditors that law other than that governing the creditors' claim process may affect their claims. The Probate and Mental Health Advisory Committee proposes to revise the forms effective on the same date as the legislation to address these defects.

Background

Form DE-121 and Probate Code section 8100

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.)

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

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 those creditors may 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 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.)

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.)

The Italicized final sentences quoted above from section 8100 and form DE-121 could be misleading 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 a special administrator with general powers could pass before the date the petition for appointment of a personal representative is actually heard.³

Neither section 8100 nor form DE-121 refers to the alternative deadline date for the filing of a creditor's claim provided in Probate Code section 9052. That date is 60 days after the date the personal representative mails the *Notice of Administration to Creditors* (form DE-157) to the creditor. Section 9052 was added to the Probate Code in response to the decision of the United States Supreme Court in *Tulsa Professional Collection Services, Inc. v. Pope* (1988) 485 US 478, 99 L. Ed. 2d 565, 108 S. Ct. 1340, in which the court held that creditors of a decedent known to

² Prob. Code, §§ 8120 and 8121.

³ 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. The time period for resolution of the dispute could easily extend for six months or more after the appointment of the special administrator. Although in that situation the date shown in form DE-121 would not be the date the contested petition is actually heard, a creditor could misinterpret the reference to the hearing date in the form as including any later date to which the hearing on the contested petition is continued.

or reasonably ascertainable by the decedent's personal representative must be given actual mailed notice of the estate administration. To some extent, section 8100 refers back to decedent estate practice before the *Tulsa Professional* decision, when published notice to creditors of a decedent was sufficient.

If the form is to be changed, section 8100 must first be changed. The Judicial Council is sponsoring legislation in the 2012 Legislature that would amend section 8100 to provide:

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.

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

Form DE-157 and Probate Code section 9052

In addition to any 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 and of the claims filing requirements 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.⁴ 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.

⁴ Prob. Code, § 9051.

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 that term is defined in section 58(b), including special administrators with general powers. The Judicial Council's proposed legislation includes a revision of section 9052 that would read:

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.

As with section 8100, the reference to section 9100 in section 9052 would be deleted as unnecessary.

As of this writing, the Judicial Council's sponsored legislation has not yet been introduced. The advisory committee anticipates that the legislation will take the form of an amendment to Assembly Bill 2683, a technical corrections bill on an unrelated topic introduced by the Assembly Judiciary Committee on March 12, 2012.

The Proposal

If the legislation sponsored by the Judicial Council is enacted in 2012, effective January 1, 2013, the Probate and Mental Health Advisory Committee proposes that forms DE-121 and DE-157 be revised as follows, also effective on that date:

Form DE-121

Item 8 of form DE-121 would be revised to conform to amended 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 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 to you of a notice under Section 9052 of the California Probate Code.

An additional revision of the form not compelled by changes in section 8100 is also proposed. The following new text would be added at the bottom of item 8:

Other California statutes and legal authority may affect your rights as a creditor. You may want to consult with an attorney knowledgeable in California law.

Form DE-157

Item 3 of form DE-157 would be revised to conform to amended section 9052, as follows:

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:

four months after (date): _____, the date letters (authority to act for the estate) were first issued to a general personal representative (as defined in Section 58(b) of the California Probate Code), OR

60 days after (date): _____, the date this notice was mailed or personally delivered to you.

Additional revisions of the form not compelled by changes in section 9052 are also proposed, as follows:

- A new sentence would be added to the end of item 4, concerning, late claims. The new sentence would read:

Not all claims are eligible for additional time to file. See section 9103(a).

- A new text box immediately following item 4 would be added, containing the following statement:

EFFECT OF OTHER LAWS: Other California statutes and legal authority may affect your rights as a creditor. You may want to consult with an attorney knowledgeable in California law.

The layout of the proof of mailing on page 2 of the form would be modified to conform to the layout of the similar proof on page 2 of form DE-121. An instruction has also been added at the bottom of the page concerning attached pages for showing additional persons to whom the form is mailed or delivered.

If the 2012 corrective legislation requires different or additional changes in the text of the forms, the advisory committee will make the necessary additional changes so the revised forms may become effective at the same time as the legislation without recirculation for comment or additional delay.

Reasons for additional revisions

The identical statements in bold text to be added at the end of item 8 of form DE-121 and following item 4 of form DE-157 are proposed because of the advisory committee's concern that creditors of decedents may be often misled to believe that successful navigation of the creditors' claim provisions of the Probate Code guarantees that their claims will be upheld in litigation if the personal representative denies the claim. Creditors' claims against decedents' estates remain subject to defenses, including those based on statutes of limitation not related to the creditors'

claims provisions. The most prominent example of the latter is Code of Civil Procedure section 366.2, which provides that if a person dies before expiration of a limitations period on a claim against him or her and the cause of action on the claim survives, the action against the decedent must be brought within a year of the date of death, without regard to the limitations period that applied to the claim before the decedent's death.

Probate Code section 9100 concludes in section 9100(c), with the following:

(c) Nothing in this section [establishing the time periods to file a creditor's claim against a decedent's estate] shall be interpreted to extend or toll any other statute of limitations or to revive a claim that is barred by any statute of limitations. The reference in this subdivision to a "statute of limitations" includes Section 366.2 of the Code of Civil Procedure.

Section 9103, concerning the court's power to grant leave to file certain claims after expiration of the time period specified in section 9100, concludes in section 9103(f) as follows:

(f) Nothing in this section authorizes allowance or approval of a claim barred by, or extends the time provided in, Section 366.2 of the Code of Civil Procedure.

The additional statements proposed for the forms are intended to recommend that creditors consider determining sooner rather than later, with the aid of an attorney knowledgeable in California law, whether their claims against a decedent are barred, without regard to the creditors' claim provisions. Creditors that learn the bad news before they file a claim would be spared the time, effort, and expense of receiving that news only after filing a claim and an action on its denial. Courts, estates, and persons interested in estates would also benefit from creditors that receive that news before proceeding, in that fewer worthless creditors' claims will be filed and fewer doomed actions will be filed on those claims.

The additional sentence in item 4 of form DE-157 is proposed to advise creditors that not every claimant is eligible to request the court's permission to file a late claim. See Probate Code sections 9103(a)–(c). The current statement in the form suggests that the late claim provisions are merely procedural and that all late claims may be eligible for relief. Both creditors and courts would benefit from a reduction in the fruitless filing of petitions for permission to file late claims the court has no authority to grant.

Alternatives considered

No alternatives other than revision of forms DE-121 and DE-157 were considered. These forms must be used to give notice to a decedent's creditors of their responsibilities under the creditors' claim provisions of the Probate Code. Changes in the information provided to creditors for this purpose must be reflected in the forms.

The advisory committee did consider limiting changes in the forms to those that would be required if the changes proposed by the Judicial Council for Probate Code sections 8100 and 9052 become law. But the committee decided to propose the additional changes described above. The committee concluded that the significant amount of litigation in recent years arising from the interplay of Code of Civil Procedure section 366.2 and other statutes of limitations with the creditors' claim requirements of the Probate Code is evidence that creditors of decedents are not adequately advised of difficulties they may face in pursuing their claims. The advice to consult with counsel on these topics at an early stage is proposed to reduce fruitless litigation and its attendant cost to creditors, estates, and courts when a creditor's claim is fatally flawed.

Implementation Requirements, Costs, and Operational Impacts

No significant costs to implement this proposal are anticipated, and none are recurring. To the extent that creditors of decedents are given more accurate and useful advice, costs to them, to the estates of decedents, and to courts that must consider creditors' claims and litigation arising from them should be reduced.

Request for Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Will the proposal provide cost savings? If so please quantify.
- What are the implementation requirements for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management system, or modifying case management system.
- Would an additional six months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Form DE-121, at pages 8 and 9
2. Form DE-157, at pages 10 and 11

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): <hr/> 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</h2> <h3 style="margin: 0;">Not Approved by the Judicial Council</h3>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
ESTATE OF (<i>Name</i>): _____ <div style="text-align: right;">DECEDENT</div>	
NOTICE OF PETITION TO ADMINISTER ESTATE OF (<i>Name</i>):	CASE NUMBER: _____

1. To all heirs, beneficiaries, creditors, contingent creditors, and persons who may otherwise be interested in the will or estate, or both, of (*specify all names by which the decedent was known*):

2. A **Petition for Probate** has been filed by (*name of petitioner*):
in the Superior Court of California, County of (*specify*):
3. The Petition for Probate requests that (*name*):
be appointed as personal representative to administer the estate of the decedent.
4. The petition requests the decedent's will and codicils, if any, be admitted to probate. The will and any codicils are available for examination in the file kept by the court.
5. The petition requests authority to administer the estate under the Independent Administration of Estates Act. (This authority will allow the personal representative to take many actions without obtaining court approval. Before taking certain very important actions, however, the personal representative will be required to give notice to interested persons unless they have waived notice or consented to the proposed action.) The independent administration authority will be granted unless an interested person files an objection to the petition and shows good cause why the court should not grant the authority.
6. **A hearing on the petition will be held in this court as follows:**

a. Date:	Time:	Dept.:	Room:
----------	-------	--------	-------
- b. Address of court: same as noted above other (*specify*):

7. **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.
8. **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 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 to you of a notice under Section 9052 of the California Probate Code.
Other California statutes and legal authority may affect your rights as a creditor. You may want to consult with an attorney knowledgeable in California law.
9. **You may examine the file kept by the court.** If you are a person interested in the estate, you may file with the court a *Request for Special Notice* (form DE-154) of the filing of an inventory and appraisal of estate assets or of any petition or account as provided in Probate Code section 1250. A *Request for Special Notice* form is available from the court clerk.
10. Petitioner Attorney for petitioner (*name*):

(*Address*):

(*Telephone*):

NOTE: If this notice is published, print the caption, beginning with the words NOTICE OF PETITION TO ADMINISTER ESTATE, and do not print the information from the form above the caption. The caption and the decedent's name must be printed in at least 8-point type and the text in at least 7-point type. Print the case number as part of the caption. Print items preceded by a box only if the box is checked. Do not print the italicized instructions in parentheses, the paragraph numbers, the mailing information, or the material on page 2.

ESTATE OF <i>(Name)</i> : _____	CASE NUMBER: _____
DECEDENT	

PROOF OF SERVICE BY MAIL

1. I am over the age of 18 and not a party to this cause. I am a resident of or employed in the county where the mailing occurred.
 2. My residence or business address is *(specify)*:

 3. I served the foregoing *Notice of Petition to Administer Estate* on each person named below by enclosing a copy in an envelope addressed as shown below **AND**
 - a. **depositing** the sealed envelope with the United States Postal Service on the date and at the place shown in item 4, with the postage fully prepaid.
 - b. **placing** the envelope for collection and mailing on the date and at the place shown in item 4 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.
 4. a. Date mailed: _____ b. Place mailed *(city, state)*: _____
 5. I served, with the *Notice of Petition to Administer Estate*, a copy of the petition or other document referred to in the notice.
- 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 PERSON COMPLETING THIS FORM)
(SIGNATURE OF PERSON COMPLETING THIS FORM)

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

	<u>Name of person served</u>	<u>Address (number, street, city, state, and zip code)</u>
1.		
2.		
3.		
4.		
5.		
6.		

Continued on an attachment. *(You may use form DE-121(MA) to show additional persons served.)*

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available upon request if at least 5 days notice is provided. Contact the clerk's office for <i>Request for Accommodations by Persons With Disabilities and Order</i> (form MC-410). (Civil Code section 54.8.)	
--	---

NOTICE OF ADMINISTRATION OF THE ESTATE OF

(NAME)

DECEDENT

NOTICE TO CREDITORS

1. (Name):

(Address):

(Telephone):

is the personal representative of the ESTATE OF (name): , who is deceased.

2. The personal representative HAS BEGUN ADMINISTRATION of the decedent's estate in the

a. SUPERIOR COURT OF CALIFORNIA, COUNTY OF (specify):

STREET ADDRESS:

MAILING ADDRESS:

CITY AND ZIP CODE:

BRANCH NAME:

b. Case number (specify):

3. 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:

a. four months after (date): [] , the date letters (authority to act for the estate) were first issued to a general personal representative (as defined in Section 58(b) of the California Probate Code), OR

b. 60 days after (date): [] , the date this notice was mailed or personally delivered to you.

4. LATE CLAIMS: If you do not file your claim within the time required by law, you must file a petition with the court for permission to file a late claim as provided in Probate Code section 9103. Not all claims are eligible for additional time to file. See section 9103(a).

EFFECT OF OTHER LAWS: Other California statutes and legal authority may affect your rights as a creditor. You may want to consult with an attorney knowledgeable in California law.

WHERE TO GET A CREDITOR'S CLAIM FORM: If a Creditor's Claim (form DE-172) did not accompany this notice, you may obtain a copy of the form from any superior court clerk or from the person who sent you this notice. You may also access a fillable version of the form on the Internet at www.courts.ca.gov/forms under the form group Probate—Decedents' Estates. A letter to the court stating your claim is not sufficient.

FAILURE TO FILE A CLAIM: 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.

IF YOU MAIL YOUR CLAIM: If you use the mail to file your claim with the court, for your protection you should send your claim by certified mail, with return receipt requested. If you use the mail to serve a copy of your claim on the personal representative, you should also use certified mail.

Note: To assist the creditor and the court, please send a blank copy of the Creditor's Claim form with this notice.

(Proof of Service By Mail on reverse)

ESTATE OF <i>(Name)</i> : _____	CASE NUMBER: _____
DECEDENT	

[Optional]

PROOF OF SERVICE BY MAIL

1. I am over the age of 18 and not a party to this cause. I am a resident of or employed in the county where the mailing occurred.
2. My residence or business address is *(specify)*:

3. I served the foregoing *Notice of Administration to Creditors* and a blank *Creditor's Claim* form* on each person named below by enclosing a copy in an envelope addressed as shown below AND
 - a. **depositing** the sealed envelope with the United States Postal Service with the postage fully prepaid.
 - b. **placing** the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with the business' 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.

4. a. Date of deposit: _____ b. Place of deposit *(city and state)*: _____

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) (SIGNATURE OF DECLARANT)

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

	<u>Name of person</u>	<u>Address (number, street, city, state, and zip code)</u>
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		

List of names and addresses continued in attachment. *(You may use form POS-30(P) to show additional persons to whom a copy of this notice was mailed. Do not use page 2 of this form or form POS-030(P) to show that you personally delivered a copy of this notice to a creditor. You may use forms POS-020 and POS-020(P) for that purpose.)*

* **NOTE:** To assist the creditor and the court, please send a blank copy of the Creditor's Claim (form DE-172) with the notice.