

## RESOLUTION 11-03-2007

### DIGEST

#### Probate: Furnishing Electronic Version of Schedules of Account Upon Request

Adds Probate Code section 1065 to require an accounting party to furnish electronic versions of account schedules, if they exist, upon request by the court or any other party.

### RESOLUTIONS COMMITTEE RECOMMENDATION

#### DISAPPROVE

#### History:

No similar resolutions found.

#### Reasons:

This resolution adds Probate Code section 1065 to require an accounting party to furnish an electronic version of account schedules, if they exist, upon request by the court or any other party. This resolution should be disapproved because it fails to address significant issues related to the transmission of electronically created and stored data.

Even though this resolution puts no apparent burden on the filing party and does not require the filing party to create a new or electronic version of accounting schedules, and most complex accounting schedules are currently created by electronic means through the use of electronic software programs, expensive and little understood scrubbing and other technical efforts would have to be utilized in order to protect the privacy and integrity of the originator's information. The inadvertent transmission of metadata (hidden codes reflecting the word processing history of documents) can reveal the editing, deletion and modification of the document, as well as notes often stored outside the print area of electronic documents. Such revelations would implicate serious privilege and work product concerns.

In addition, the current state of technology is such that many recipients' software programs might not be compatible with electronic versions transmitted from the filing party's computer. The recipient thus might not be able to open or read the submitted material, leading to further confusion and challenges for the parties and the courts.

The resolution should also be disapproved because the time period allowed for production does not afford the filing party sufficient time to comply. Although three days is certainly enough time in which to transmit schedules by e-mail, it is too short of a time to allow for ordinary delays of receipt such as vacations, time away from the office, and other such circumstances.

## SECTION/COMMITTEE REPORTS

### TRUST & ESTATES SECTION

#### DISAPPROVE

The Trust & Estates Section raised a number of objections to this proposal, including the following: (1) the proposal is premature and should be tabled until technical issues such as acceptable universal formats for accountings (electronic or otherwise) are determined, (2) the notice period is not long enough, (3) issues of metadata scrubbing have not been addressed, (4) there is too much potential for modification of data by opposing counsel after submission, and (5) much data, such as workproduct notes, is often stored outside the print area of a given document.

**This position is only that of the TRUST & ESTATES SECTION of the State Bar of California. This position has not been adopted by either the State Bar's Board of Governors or overall membership, and is not to be construed as representing the position of the State Bar of California.**

**Membership in the TRUST & ESTATES SECTION is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.**

#### TEXT OF RESOLUTION

RESOLVED that the Conference of the Delegates of the California Bar Associations recommends that legislation be sponsored to add Probate Code section 1065 to read as follows:

1    §1065  
2    Upon request, a party must within 3 court days provide to any other party or the court an  
3    electronic version of the schedules of its account. The electronic version may be provided in  
4    any form upon which the parties agree. If the parties are unable to agree on the form, the  
5    responding party must provide to the requesting party the electronic version of the schedules  
6    of its account which it used to prepare the document filed with the court. Under this  
7    provision, a party is not required to create an electronic version or any new version of any  
8    document for the purpose of transmission to the requesting party.

(Proposed new language underlined, language to be deleted stricken)

PROPONENT: Sacramento County Bar Association

#### STATEMENT OF REASONS:

Existing Law: No current law exist related to providing an electronic version of the schedules of an account.

This Resolution: This resolution would add Probate Code §1065 to require a party to provide an electronic version of the schedules of its account on request of another party or the court.

The Problem: Currently parties receiving accounts are required to spend unnecessary time at the expense of their clients to manually search and sort pages of entries in the schedules of the account and then retype the entries for which objections are raised. Alternatively, the party receiving the account has to recreate an electronic version of the schedules of the account in order to electronically search and sort the schedules of the account or use the entries in their objection.

#### IMPACT STATEMENT

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

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