

AMENDED IN ASSEMBLY MARCH 26, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1163

Introduced by Assembly Member Tran

February 27, 2009

An act to amend ~~Section 11640~~ *Sections 953 and 957 of the Evidence Code, and to amend Section 12252 of the Probate Code, relating to decedents' estates: attorney-client privilege.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1163, as amended, Tran. ~~Decedent's-Attorney-client privilege: decedent's estates.~~

(1) *Under existing law, a client of a lawyer has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between the client and lawyer if the privilege is claimed by the holder of the privilege, a person who is authorized to claim the privilege by the holder, or the person who was the lawyer at the time of the confidential communication. However, the lawyer may not claim the privilege if there is no holder of the privilege in existence or if he or she is otherwise instructed by a person authorized to permit disclosure. "Holder of the privilege" is defined for purposes of these provisions to include the client, a guardian or conservator of the client, the personal representative of the client if the client is dead, and a successor, assign, trustee in dissolution, or any similar representative of a firm, association, organization, partnership, business trust, corporation, or public entity that is no longer in existence.*

This bill would clarify that the personal representative of a client that is dead, and who is appointed for purposes of subsequent estate

administration pursuant to the provisions described in (3) below, is a holder of the privilege.

(2) Under existing law, there is no lawyer-client privilege as to a communication relevant to an issue between parties all of whom claim through a deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction.

This bill would clarify that this exception also applies when any of the parties claims under a nonprobate transfer.

(3) Under existing law, if subsequent administration of an estate is necessary after the personal representative has been discharged either because other property is discovered, or disclosure is sought of a communication that is deemed privileged in the absence of a waiver by a personal representative, as specified, or because it becomes necessary or proper for any other cause, the court is required to appoint as personal representative the person entitled to appointment and to give notice of the hearing of the appointment to the person who served as personal representative at the time of the order of discharge and to other interested persons, as specified. Existing law requires the appointed personal representative to be a holder of the decedent's lawyer-client privilege, as specified.

This bill would delete the requirement that the appointed personal representative be a holder of the decedent's lawyer-client privilege. The bill also would delete the requirement that the court perform these functions when subsequent administration of an estate is necessary after the personal representative has been discharged because disclosure is sought of a communication that is deemed privileged in the absence of a waiver by a personal representative.

~~Existing law provides for the administration of the estates of decedents. Existing law requires that when all the debts of an estate have been paid, or when the estate is insolvent, and the estate is ready to be closed, the personal representative file a petition for an order for final distribution of the estate.~~

~~This bill would make technical, nonsubstantive changes to these provisions:~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 953 of the Evidence Code is amended to*
2 *read:*

3 953. As used in this article, “holder of the privilege” means:

4 (a) The client—~~when he~~, *if the client* has no guardian or
5 conservator.

6 (b) A guardian or conservator of the client—~~when~~, *if the client*
7 has a guardian or conservator.

8 (c) The personal representative of the client if the client is dead,
9 *including a personal representative appointed pursuant to Section*
10 *12252 of the Probate Code.*

11 (d) A successor, assign, trustee in dissolution, or any similar
12 representative of a firm, association, organization, partnership,
13 business trust, corporation, or public entity that is no longer in
14 existence.

15 *SEC. 2. Section 957 of the Evidence Code is amended to read:*

16 957. There is no privilege under this article as to a
17 communication relevant to an issue between parties all of whom
18 claim through a deceased client, regardless of whether the claims
19 are by testate or intestate succession, *nonprobate transfer*, or ~~by~~
20 inter vivos transaction.

21 *SEC. 3. Section 12252 of the Probate Code is amended to read:*

22 12252. If subsequent administration of an estate is necessary
23 after the personal representative has been discharged because other
24 property is discovered, ~~disclosure is sought of a communication~~
25 ~~that is deemed privileged in the absence of a waiver by a personal~~
26 ~~representative under Article 3 (commencing with Section 950) of~~
27 ~~Chapter 4 of Division 8 of the Evidence Code~~, or because it
28 becomes necessary or proper for any other cause, both of the
29 following shall apply:

30 (a) The court shall appoint as personal representative the person
31 entitled to appointment in the same order as is directed in relation
32 to an original appointment, except that the person who served as
33 personal representative at the time of the order of discharge has
34 priority. ~~The appointed personal representative shall be a holder~~
35 ~~of the decedent’s lawyer-client privilege for purposes of Article 3~~
36 ~~(commencing with Section 950) of Chapter 4 of Division 8 of the~~
37 ~~Evidence Code.~~

1 (b) Notice of hearing of the appointment shall be given as
 2 provided in Section 1220 to the person who served as personal
 3 representative at the time of the order of discharge and to other
 4 interested persons. If property has been distributed to the State of
 5 California, a copy of any petition for subsequent appointment of
 6 a personal representative and the notice of hearing shall be given
 7 as provided in Section 1220 to the Controller.

8 ~~SECTION 1. Section 11640 of the Probate Code is amended~~
 9 ~~to read:~~

10 ~~11640. (a) When all debts have been paid or adequately~~
 11 ~~provided for, or if the estate is insolvent, and the estate is in a~~
 12 ~~condition to be closed, the personal representative shall file a~~
 13 ~~petition for, and the court shall make, an order for final distribution~~
 14 ~~of the estate.~~

15 ~~(b) The court shall hear and determine and resolve in the order~~
 16 ~~all questions arising under Section 21135, regarding ademption~~
 17 ~~by satisfaction, or Section 6409, regarding advancements.~~

18 ~~(c) If debts remain unpaid or not adequately provided for or if,~~
 19 ~~for other reasons, the estate is not in a condition to be closed, the~~
 20 ~~administration may continue for a reasonable time, subject to~~
 21 ~~Chapter 1 (commencing with Section 12200) of Part 11.~~