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Probate—Satisfying the Due Process Requirement of Actual Notice to Estate Creditors. Tulsa Professional Collection Services v. Pope, 108 S. Ct. 1340 (1988).

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PROBATE—SATISFYING THE DUE PROCESS REQUIREMENT OF ACTUAL NOTICE TO ESTATE CREDITORS. *Tulsa Professional Collection Services v. Pope*, 108 S. Ct. 1340 (1988).

H. Everett Pope, Jr. entered St. John Medical Center in Tulsa, Oklahoma, in November 1978, and remained there until his death on April 2, 1979. JoAnne Pope, his wife, opened an estate pursuant to Oklahoma's probate code.[1] As executrix of the estate, she followed the code provisions which required her to "immediately give notice to creditors."[2] The method used to inform creditors consisted of publishing a notice in a local newspaper for two consecutive weeks.

St. John Medical Center assigned its claim for expenses related to Mr. Pope's illness to its subsidiary, Tulsa Professional Collection Services. Neither the medical center nor the subsidiary filed a claim within the statutory period.[3] After the claim period expired, the collection agency filed an Application for Order Compelling Payment of Expenses of Last Illness.[4] The district court denied this application. The Oklahoma Court of Appeals affirmed the district court, rejecting the collection agency's argument that the nonclaim statute's[5] notice provisions violated due process. The Oklahoma Supreme Court,[6] in a subsequent review, also rejected this argument. The United States Supreme Court reversed.[7] The Court held that due process requires estates to give actual notice to creditors by mail or other means certain to ensure actual notice that their claims must be filed or be barred by the nonclaim statute. For known or reasonably ascertainable creditors of an estate, notice by publication is insufficient to afford due

1. OKLA. STAT. ANN., tit. 58, §§ 1-963 (West 1981).

2. Every personal representative must, immediately after his appointment, give notice to the creditors of the deceased . . . requiring all persons having claims against said deceased to present the same . . . within two (2) months from the date of the first publication of said notice; such notice must be published in some newspaper in said county once each week for two (2) consecutive weeks.

Id. § 331.

3. The statutory period is two months from the date of first publication. *Id.*

4. *Id.* § 594.

5. Nonclaim statutes "fix a definite time limit within which claims against decedents must be proceeded upon; their purpose is to provide relief against uncertainty in the late assertion of claims and to facilitate the speedy settlement of estates." T. ATKINSON, HANDBOOK OF THE LAW OF WILLS § 127, at 690 (2d ed. 1953).

6. Tulsa Professional Collection Services, Inc. v. Pope, 733 P.2d 396 (Okla. 1986).

7. Tulsa Professional Collection Services, Inc. v. Pope, 108 S. Ct. 1340, 1348 (1988). The decision was 8-1, with Chief Justice William Rehnquist dissenting.

process. *Tulsa Professional Collection Services v. Pope*, 108 S. Ct. 1340 (1988).

In 1950 the United States Supreme Court decided *Mullane v. Central Hanover Bank & Trust Co.*[8] which established that notice and a hearing satisfying the standards of due process must accompany state action affecting property.[9] "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."[10]

In *Mullane* the Court struck down state banking legislation[11] regulating the administration of trust estates. The statute permitted notice by publication as the sole means of informing known trust beneficiaries of an action that would settle their rights against the trustee of a common trust fund. In essence, the Court held that publication notice violated the due process clause[12] when the beneficiaries' names and addresses were known to the trustee or could be ascertained by the exercise of reasonable diligence.[13] "The statutory notice to known beneficiaries is inadequate, not because in fact it fails to reach everyone, but because under the circumstances it is not reasonably calculated to reach those who could easily be informed by other means at hand."[14]

Traditionally, whether the notice was sufficient depended upon the court's labeling the proceeding in rem[15] or in personam.[16] In personam jurisdiction required personal service or other notice equally effective in reaching the interested party.[17] However, constructive notice by publication generally satisfied due process requirements for in

8. 339 U.S. 306 (1950).

9. *Id.* at 313. *See generally* Annotation, *Validity of Nonclaim Statute or Rule Provision for Notice by Publication to Claimants Against Estate—Post 1950 Cases*, 56 A.L.R. 4th 458, 461 (1987).

10. 339 U.S. at 314.

11. *Id.* at 309. The legislation affected was former N.Y. BANKING LAW § 100-c(12) (1944).

12. U.S. CONST. amend. XIV, § 1.

13. 339 U.S. at 318.

14. *Id.* at 319.

15. *See* Shaffer v. Heitner, 433 U.S. 186 (1977) (jurisdiction in in rem proceeding is based on court's power over land).

16. *See* Pennoyer v. Neff, 95 U.S. 714 (1877) (in personam jurisdiction is based on state's authority over defendant's person).

17. *Id.* at 734. Due process requires appearance or personal service before judgment is personally binding.

rem proceedings.[18] In *Mullane* the Supreme Court abandoned the historical dichotomy between notice for in rem and in personam proceedings[19] and established a balancing test to determine the sufficiency of notice. This test weighed the state's administrative interest against the individual's interest in receiving notice of the proceeding.[20]

Despite language in *Mullane* suggesting a holding limited to the particular facts of the case,[21] the United States Supreme Court has applied the *Mullane* balancing test in various factual situations. In 1953 the Supreme Court held that as to a potential claim in a bankruptcy proceeding, publication notice was inadequate to inform a known creditor that its claim would be barred if not filed within the statutory period.[22]

The next application of *Mullane* occurred three years later when the Court ruled that notice of condemnation proceedings published in a local newspaper was not sufficient for a landowner whose name the city knew because it was on the official records.[23] The Court further extended the *Mullane* doctrine in *Schroeder v. City of New York*,[24] concluding that publication in a newspaper and posted notices were inadequate to apprise a property owner of condemnation proceedings when his name and address were readily ascertainable from both deed records and tax rolls.

The United States Supreme Court continued the trend expanding *Mullane*'s actual notice requirement in *Mennonite Board of Missions v. Adams*.[25] *Mennonite* involved the constitutionality of Indiana's statutory scheme[26] for the annual sale of real property on which payments of property taxes were delinquent for five months or longer.[27]

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18. Huling v. Kaw Valley Ry. & Improvement Co., 130 U.S. 559, 564 (1889) (publication of notice satisfies due process of law in in rem cases).

19. 339 U.S. at 312.

20. *Id.* at 314.

21. *Id.* at 312. The Court stated that it had:

> not committed itself to any formula achieving a balance between these interests in a particular proceeding or determining when constructive notice may be utilized or what test it must meet. Personal service has not in all circumstances been regarded as indispensable to the process due . . . . *We disturb none of the established rules on these subjects.*

Id. at 314 (emphasis added).

22. City of New York v. New York, N.H. & Hartford R.R. Co., 344 U.S. 293 (1953).

23. Walker v. City of Hutchinson, 352 U.S. 112 (1956).

24. 371 U.S. 208 (1962).

25. 462 U.S. 791 (1983).

26. IND. CODE ANN. §§ 6-1.1-24-1 to 1-24-12 (Burns 1984).

27. 462 U.S. at 792-93.

The statute provided for notice by certified mail to the property owner,[28] but had no provision for notice to mortgagees.

Elkhart County, Indiana, initiated proceedings to sell property mortgaged by Moore to the Mennonite Board of Missions (MBM).[29] The county provided notice as required under the statute by posting and publishing an announcement of the tax sale and mailing notice by certified mail to Moore, the mortgagor. Neither the county nor Moore notified MBM of the pending tax sale.[30] Despite the published notice, MBM never received actual notice of the sale.[31] After expiration of the two year redemption period, Adams, the purchaser of Moore's property at the tax sale, applied for a deed to the property. He then initiated an action to quiet title.[32] MBM opposed Adams' suit to quiet title by contending that it had not received constitutionally adequate notice of the pending tax sale and of the opportunity to redeem the property following the tax sale.[33]

The trial court granted summary judgment to Adams,[34] effectively extinguishing MBM's lien on the property.[35] The Indiana Court of Appeals affirmed the judgment,[36] reasoning that due process did not require actual notice to mortgagees because most mortgagees are sophisticated lenders and should keep accurate records of their mortgagors' obligations.[37]

The United States Supreme Court reversed and remanded the case.[38] When a publicly recorded mortgage identifies the mortgagee, mailed notice or personal service on the mortgagee must supplement publication notice.[39] Constructive notice to a known mortgagee will not satisfy the mandate of *Mullane*.[40] Notice to the property owner will not necessarily lead to actual notice to the mortgagee.[41] The county's use of less reliable forms of notice is not reasonable where "an inexpensive and efficient mechanism such as mail service is avail-

28. IND. CODE ANN. § 6-1.1-24-4 (Burns 1984).
29. 462 U.S. at 794.
30. *Id.*
31. *Id.*
32. *Id.* at 795.
33. *Id.*
34. *Id.*
35. IND. CODE ANN. § 6-1.1-25-4(d) (Burns 1984) (tax deed vests fee simple title free and clear of all liens).
36. Mennonite Bd. of Missions v. Adams, 427 N.E.2d 686 (Ind. Ct. App. 1981).
37. *Id.* at 690.
38. Mennonite Bd. of Missions v. Adams, 462 U.S. 791, 800 (1983).
39. *Id.* at 798.
40. *Id.*
41. *Id.* at 799.

able."[42] Mailed notice or other means as certain to ensure actual notice is a constitutional prerequisite to any proceeding which "will adversely affect the liberty or property interest of *any* party."[43]

The Supreme Court cases decided after *Mullane* limited the situations in which publication notice alone is constitutionally adequate.[44] However, no court had construed *Mullane*'s actual notice requirement to apply to creditors of a decedent. The Kansas Court of Appeals[45] emphasized that in the probate creditor context, no property rights are brought before a court for adjudication.[46] "The notice under the nonclaim statute . . . does not make a creditor a party to the proceeding, but merely notifies him that he may become one if he wishes. It does no more than put into operation a special statute of limitations."[47]

The difference between an adjudication of property rights, to which *Mullane* applies, and a statute of limitations, to which *Mullane* does not apply[48] was further developed in an opinion by the Wisconsin Supreme Court. In a 1981 case,[49] that court reasoned that *Mullane* did not apply to a creditor's probate claim because his claim was cut off by operation of a statute of limitation and not by action of a judicial body.[50] "The bar created by operation of a statute of limitations is established independently of any adjudicatory process."[51]

The Nevada Supreme Court considered whether its notice provision allowing publication notice to estate creditors violated due process in *Continental Insurance Co. v. Moseley (Moseley I)*.[52] In *Moseley I* the executrix of the estate had actual knowledge of the creditor's claim against the estate because there was a pending civil action.[53] However, the executrix simply followed the state's requirement of notice by publication and took no other measures to notify the creditor

42. *Id.* (quoting Greene v. Lindsey, 456 U.S. 444, 455 (1982)).

43. *Id.* at 800.

44. *See supra* text accompanying notes 22-25.

45. Gano Farms, Inc. v. Estate of Kleweno, 2 Kan. App. 2d 506, 582 P.2d 742 (1978). *See also* Kuether, *Is Kansas Probate Non Claim Statute Unconstitutional?* 54 J. KAN. BAR ASS'N 115, 118 (1985).

46. 2 Kan. App. 2d at 509, 582 P.2d at 744 (quoting New York Merch. Co. v. Stout, 43 Wash. 2d 825, 827-28, 264 P.2d 863, 864 (1953)).

47. *Id.*

48. *Id.*

49. *In re* Estate of Fessler, 100 Wis. 2d 437, 302 N.W.2d 414 (1981).

50. *Id.* at 450, 302 N.W.2d at 420.

51. *Id.*

52. Continental Ins. Co. v. Moseley, 98 Nev. 476, 653 P.2d 158 (1982), *vacated and remanded*, 463 U.S. 1202 (1983).

53. *Moseley*, 98 Nev. at 477, 653 P.2d at 159.

insurance company.[54] The creditor received notice of the decedent's death on the last day for filing claims against her estate.[55] However, the creditor did not file its claim until two days after the claim period expired.[56] The court denied the claim on the ground that it was not timely filed.[57]

Continental Insurance Company appealed, contending that publication notice to creditors was insufficient under constitutional standards of procedural due process.[58] Applying the principles of *Mullane* to these circumstances, the Nevada court concluded that published notice pursuant to the Nevada statute was reasonably and sufficiently calculated to provide actual notice to creditors.[59] Furthermore, the insurance company actually did receive notice within the statutory nonclaim period, although it was on the last day for filing claims.[60] In barring the creditor's claim, the *Moseley I* court emphasized the state's interest in the efficient and expedient administration of estates.[61]

The United States Supreme Court granted a writ of certiorari in connection with *Moseley I* and vacated the Nevada court's opinion, remanding the case[62] for further consideration in light of *Mennonite Board of Missions v. Adams*,[63] decided a week earlier. On remand, the Nevada Supreme Court reversed its earlier holding in *Continental Insurance Co. v. Moseley (Moseley II)*.[64] The court quoted *Mullane*'s "elementary and fundamental requirement of due process"[65] language and stated: "Given the facts of this case and the holdings in *Mennonite* and *Mullane*, we conclude that more than service by publication was required in order to afford due process to appellant."[66]

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54. *Id.* The notice was published in the newspaper for three consecutive weeks.

55. *Id.*

56. *Id.*

57. *Id.* The court denied the insurance company's motion to compel republication and declared the claim forever barred.

58. *Id.* Continental contended that mere compliance with the statutory notice provision did not satisfy due process.

59. *Id.* at 478, 653 P.2d at 160.

60. *Id.* The insurance company did not file its claim until two days after expiration of the claims period.

61. *Id.* Publication notice provides an expeditious and comparatively unencumbered means of accomplishing estate administration.

62. Continental Ins. Co. v. Moseley, 463 U.S. 1202 (1983) (mem. opinion).

63. 462 U.S. 791 (1983).

64. 100 Nev. 70, 683 P.2d 20 (1984) (Moseley II).

65. *Id.* at 71, 683 P.2d at 21 (quoting *Mullane*, 339 U.S. 306, 314).

66. *Id.*

Despite the holding of *Moseley II*, many state courts[67] were not willing to concede that the doctrine requiring more notice than that afforded by publication should be applied to notice under nonclaim statutes.[68] The Missouri Supreme Court said that the Supreme Court's procedure—granting certiorari, vacating and remanding for further consideration in light of *Mennonite*—did not conclusively indicate that the Supreme Court held, or will hold, *Mullane* applicable to probate cases.[69] Furthermore, after considering the *Mennonite* case, the Missouri court was not persuaded by *Moseley II*.[70]

A year later the Illinois Court of Appeals considered whether estate creditors were entitled to actual notice.[71] They agreed with the Missouri Supreme Court.[72] *Gibbs v. Estate of Dolan* held that the section of the probate code providing for notice by publication to estate creditors was not facially invalid because it did not deprive creditors of their property without due process of law.[73]

In 1987 the Kansas Supreme Court joined the Missouri and Illinois courts in disagreeing with *Moseley II*.[74] They held that the state's nonclaim statute was a statute of limitations and not an adjudication of rights.[75] Therefore, it was not unconstitutional as a violation of the due process rights of a known creditor.[76] The court further reasoned that to require a decedent's personal representative to "give actual notice to all 'known or reasonably ascertainable creditors' would not only be time-consuming, but extremely difficult to administer."[77] This burden would defeat the state's interest in seeking speedy resolutions of decedents' estates.[78]

In *Tulsa Professional Collection Services v. Pope*[79] Justice O'Connor, writing for the majority,[80] analyzed the creditor's interest at stake in a probate proceeding. The creditor possesses nothing more

67. *See, e.g.*, Estate of Busch v. Ferrell-Duncan Clinic, 700 S.W.2d 86 (Mo. 1985) (en banc).

68. *Id.* at 88.

69. *Id.* at 87 n.2.

70. *Id.*

71. Gibbs v. Estate of Dolan, 146 Ill. App. 3d 203, 496 N.E.2d 1126 (1986).

72. Estate of Busch v. Ferrell-Duncan Clinic, 700 S.W.2d 86 (Mo. 1985).

73. *Dolan*, 146 Ill. App. 3d at 208, 496 N.E.2d at 1130.

74. Estate of Madden v. Union Pac. R.R., 241 Kan. 414, 736 P.2d 940 (1987).

75. *Id.* at 423, 736 P.2d at 947.

76. *Id.*

77. *Id.*

78. *Id.*

79. 108 S. Ct. 1340 (1988).

80. It is interesting to note that Justice O'Connor, who authored the dissent in *Mennonite*, relied largely upon the reasoning of that case in writing the *Pope* majority opinion.

than a cause of action against the estate flowing from an unpaid debt. The Court, applying *Mullane*, concluded that such a cause of action nevertheless constituted an intangible property interest entitled to protection by the fourteenth amendment.[81] However, this constitutional protection exists only to shield the interest at stake from a deprivation caused by state action.[82] State action does not occur merely because private parties make use of "state sanctioned private remedies or procedures."[83] Nor does the tolling of a statute of limitation set by state law rise to the level of state action.[84] However, state action may exist when private parties use state procedures with substantial aid from state officials.[85]

The Court found significant state action in probating an estate.[86] "The probate court is intimately involved throughout, and without that involvement the time bar is never activated. The nonclaim statute becomes operative only after probate proceedings have been commenced in state court. The court must appoint the executor . . . before notice, which triggers the time bar, can be given."[87] The state court's "involvement is so pervasive and substantial that it must be considered state action subject to the restrictions of the Fourteenth Amendment."[88]

Nonclaim statutes are a special statute of limitations applicable only to creditors' claims against estates.[89] These statutes control the time period in which claims can be filed and by their authority act to bar forever claims presented after the statutory period has run.[90] If creditors fail to timely file their claims, the nonclaim statute operates to "terminate their property interests."[91] Although the tolling of the statute does not itself serve to judge the merits of the creditor's claim, the Court stated that "[i]t is not necessary for a proceeding to directly adjudicate the merits of a claim in order to 'adversely affect' that interest."[92]

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81. 108 S. Ct. at 1344-45.
82. *Id.* at 1345.
83. *Id.* (citing Flagg Bros. v. Brooks, 436 U.S. 149 (1978)).
84. *Id.* (citing Texaco, Inc. v. Short, 454 U.S. 516 (1982)).
85. *Id.* (citing Lugar v. Edmondson Oil Co., 457 U.S. 922 (1982)).
86. *Id.* at 1345.
87. *Id.*
88. *Id.* at 1346.
89. *See supra* note 5.
90. 108 S. Ct. at 1346.
91. *Id.*
92. *Id.* For example, in *Mennonite*, "the tax sale proceedings did not address the merits of the mortgagee's claim." *Id.*

The nonclaim periods are relatively short.[93] Often it is difficult, if not impossible, for creditors to discover a debtor's death and file their claims before expiration of the nonclaim period. This fact is especially true where the creditor's sole means of finding out about the death and subsequent opening of the estate is a notice published in a newspaper in the county where the decedent resided.[94] The Court also believed that an executor who stood to benefit from the estate might be hesitant to encourage creditors to file claims which would effectively reduce his share of the estate.[95] The Court concluded that consideration of these factors pointed to a "substantial practical need for actual notice [to estate creditors]."[96]

The Court performed a balancing test weighing the need for actual notice to creditors against the state's interest in the speedy resolution of probate cases. The Court decided that "providing actual notice to known or reasonably ascertainable creditors . . . is not inconsistent with the goals reflected in nonclaim statutes."[97] The giving of actual notice should not impose a substantial burden upon estate administration. "We have repeatedly recognized that mail service is an inexpensive and efficient mechanism that is reasonably calculated to provide actual notice."[98]

The nonclaim statute acts in conjunction with the probate proceedings to "adversely affect" a creditor's property interest.[99] Therefore, the Court concluded that if a creditor's identity "was known or 'reasonably ascertainable,' then the due process clause requires . . . notice by mail or other means as certain to ensure actual notice."[100]

Justice Rehnquist dissented,[101] objecting to the majority's characterization of the probate court's involvement as state action.[102]

93. For example, in Arkansas the claim period is three months. ARK. CODE ANN. § 28-50-101(a) (1987).

94. 108 S. Ct. at 1347. "As the Court noted in *Mullane*, '[c]hance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper.' " *Id.* (citing *Mullane*, 339 U.S. 306, 315 (1950)).

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.* (citing *Mennonite*, 462 U.S. 791, 799 (1983); Greene v. Lindsey, 456 U.S. 444, 455 (1982)).

99. *Id.* at 1348.

100. *Id.* A requirement of actual notice to creditors is not so burdensome that it will delay the promptness with which probate proceedings are conducted.

101. *Id.*

102. *Id.* Chief Justice Rehnquist stated that the majority did not make clear why there is state action in this case. "[It] remains a mystery which is in no way elucidated by the court's opinion." *Id.* at 1349 (Rehnquist, C.J., dissenting).

"The 'intimate involvement' of the Probate Court in the present case was entirely of an administrative nature."[103] There is virtually meaningless state involvement in the probate context and it is wrong that such action, or lack of it, is held dispositive.[104]

The *Pope* holding reflects an important extension of the doctrine enunciated in *Mullane*. It not only makes *Mullane* directly applicable to probate proceedings, but it also imposes a strict requirement on an executor to make "reasonably diligent efforts" to uncover the identities of estate creditors and to serve them with some form of actual notice.[105] "We do not believe that requiring adherence to such a standard will be so burdensome or impracticable as to warrant reliance on publication notice alone."[106]

The holding in *Pope* requires states to reevaluate their nonclaim statutes to assure compliance with due process requirements.[107] In 1987 Arkansas amended its probate code[108] to require personal service on estate creditors. This amendment resulted from the *Mennonite*[109] and *Moseley*[110] decisions and was made in anticipation of *Pope*.[111]

While the amended Arkansas statute contains an actual notice provision for estate creditors,[112] it still does not go far enough to fully embrace the requirements established in *Pope*.[113] A bill to amend the statute is being drafted for presentation to the legislature in January 1989.[114] The proposed amendment seeks to increase the nonclaim period from three to six months and attempts to guide the personal representative and the estate's attorney in determining which creditors

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103. *Id.* at 1349.

104. *Id.*

105. *Id.* at 1347.

106. *Id.* "Notice by mail is already routinely provided at several points in the probate process." *Id.*

107. W. MCGOVERN, S. KURTZ AND J. REIN, WILLS, TRUSTS AND ESTATES § 14.9, at 692 (West 1988).

108. ARK. CODE ANN. § 28-40-111 (Supp. 1987).

109. Mennonite Bd. of Missions v. Adams, 462 U.S. 791 (1983).

110. Continental Ins. Co. v. Moseley, 463 U.S. 1202 (1987).

111. Legislative commentary preceding ARK. CODE ANN. § 28-40-111. *See infra* note 114.

112. ARK. CODE ANN. § 28-40-111(a)(4) (Supp. 1987) provides that "[w]ithin one (1) month after the first publication of the notice, a copy of the notice shall also be served upon . . . all unpaid creditors whose name, status as creditors, and addresses are known to the personal representative, in accordance with § 28-1-112(b)(1), (2), or (3)."

113. As written, the statute does not define the extent of diligence required of a personal representative to locate creditors, nor does it guide one in identifying the "reasonably ascertainable" creditors. *Id.*

114. Interview with William Haught, senior partner at Wright, Lindsey & Jennings, Attorneys at Law, in Little Rock, Arkansas (September 27, 1988).

are reasonably ascertainable and what efforts are required to discover estate creditors. There is also a provision which places the burden on the creditor to prove that he was reasonably ascertainable.[115]

The drafting of this proposed amendment is complicated because the Supreme Court neglected to define "reasonably diligent efforts"[116] and "reasonably ascertainable creditors,"[117] presumably leaving the interpretation of these terms to the discretion of state legislatures and courts.

California is the first state to amend its probate code[118] to reflect the mandate of *Pope*. The amended California statute requires the personal representative to give actual notice to a creditor of whom he has knowledge.[119] A personal representative has knowledge of a creditor if he is aware that the creditor demanded payment from the decedent or the estate.[120] The official comments to the legislation state that the personal representative must have actual notice of a creditor before a duty is imposed on the personal representative to notify the creditor. However, the personal representative may not willfully ignore information that would likely impart notice of a creditor.[121] The personal representative is only required to notify creditors who have made their claims known. There is a provision absolving the personal representative or attorney from liability if, in good faith, he fails to give notice to a creditor.[122] Liability, if any, rests with the estate.[123]

Nevada amended its notice provision after the *Moseley* decision.[124] Michigan[125] and West Virginia[126] statutes requiring actual notice to estate creditors predated the *Moseley* decision. Connecticut's statute[127] provides for publication notice and such other notice as the court deems necessary. The remaining forty-three states have publication notice statutes much like the one struck down by the *Pope*

115. *Id.*

116. *Pope*, 108 S. Ct. at 1347.

117. *Id.*

118. CAL. PROB. CODE §§ 1-21541 (West Supp. 1988).

119. CAL. PROB. CODE § 9050(a) (West Supp. 1988).

120. *Id.*

121. Law Revision Commission Comment to CAL. PROB. CODE § 9050. For example, the personal representative may not refuse to inspect a file of the decedent marked "unpaid bills."

122. CAL. PROB. CODE § 9053(b) (West Supp. 1988).

123. *Id.*

124. NEV. REV. STAT. § 155.020(4) (Michie Supp. 1987).

125. MICH. COMP. LAWS ANN. § 701.32(b) (1980). *See also* Note, *Requirements of Notice in In Rem Proceedings*, 70 HARV. L. REV. 1257, 1270 (1957).

126. W. VA. CODE § 44-2-4 (1982).

127. CONN. GEN. STAT. ANN. § 45-205(a) (1981).

decision.[128]

Many questions remain unanswered after *Pope*, and it is unclear whether a statute such as California's[129] fully satisfies the *Pope* due process requirements. *Pope* does not state whether actual knowledge of the decedent's death is equivalent to actual notice that the non-claim statute has been triggered.[130] Nor does it explain whether actual knowledge that an estate is being administered satisfies the due process requirement of actual notice.

Particularly troublesome is the lack of guidance as to what constitutes "reasonably diligent"[131] efforts. The Court refers to its *Mennonite* standard of reasonable diligence.[132] However, *Mennonite* dealt with notice to mortgagees who are ascertainable from public records. Certainly that is an easier group to identify, locate and notify than some unknown number of estate creditors.

These are serious concerns which will trouble attorneys as they endeavor to follow *Pope* and avoid estate liability from unknown creditors. Perhaps the legislatures will be able to draft statutes which will encompass all of the questions left unanswered after this decision.

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128. ALA. CODE §§ 43-2-60, 61 (1982); ALASKA STAT. § 13.16.450 (1985); ARIZ. REV. STAT. ANN. § 14-3801 (1975); COLO. REV. STAT. § 15-12-801 (1987); DEL. CODE ANN., tit. 12 § 2101(b) (1987); D.C. CODE ANN. § 20-704(a) (1981); FLA. STAT. ANN. § 731.111(1) (Supp. 1988); GA. CODE ANN. § 53-7-92 (1982); HAW. REV. STAT. § 560:3-801(a) (1985); IDAHO CODE § 15-3-801 (1979); ILL. ANN. STAT. ch. 110 ½, § 18-3 (Smith-Hurd Supp. 1988); IND. CODE ANN. § 29-1-7-7 (Burns Supp. 1988); IOWA CODE ANN. §§ 633.230, 633.304 (West Supp. 1988); KAN. PROB. CODE ANN. § 59-2236 (1983); KY. REV. STAT. § 395.520 (Baldwin 1984); LA. CODE CIV. PROC. ANN. art. 3304 (West Supp. 1988); ME. REV. STAT. ANN., tit. 18-A, § 3-801 (1981); MD. ESTATES AND TRUST CODE ANN. § 7-103 (1974); MINN. STAT. ANN. § 524.3-801 (West 1988); MISS. CODE ANN. § 91-7-145 (Cum. Supp. 1987); MO. ANN. STAT. § 473.033 (Vernon Supp. 1988); MONT. CODE ANN. § 72-3-801 (1987); NEB. REV. STAT. § 30-2483 (1985); N.H. REV. STAT. ANN. § 550:10 (Supp. 1987); N.J. STAT. ANN. § 3B:22-4 (West 1983); N.M. STAT. ANN. § 45-3-801 (1978); N.Y. SURR. CT. PROC. ACT. § 1801 (1988); N.C. GEN. STAT. § 28A-14-1 (1984); N.D. CENT. CODE § 30.1-19-01 (1987); OHIO REV. CODE ANN. § 2113.08 (Anderson 1976); OR. REV. STAT. § 113.155 (1983); 20 PA. CONS. STAT. ANN. § 3162 (Purdon Supp. 1988); R.I. GEN. LAWS § 33-18-1 (1984); S.C. CODE ANN. § 62-3-801 (Law Co-op 1987); S.D. CODIFIED LAWS ANN. § 30-21-13 (1984); TENN. CODE ANN. § 30-2-306 (1984); TEX. PROB. CODE ANN. § 294 (Vernon 1980 & Supp. 1985); UTAH CODE ANN. § 75-3-801 (1978); VT. STAT. ANN. tit. 14, § 1201 (Equity Cumm. Supp. 1988); VA. CODE ANN. § 64.1-171 (1987); WASH. REV. CODE ANN. § 11.40.010 (1987); WIS. STAT. ANN. § 859.07 (West Supp. 1987); WYO. STAT. § 2-7-201 (1988).

129. CAL. PROB. CODE § 9050(a) (West Supp. 1988).

130. After *Pope*, this is doubtful. Mr. Pope died in the hospital and the hospital's claim was the basis of the litigation. The Court stated that although Mrs. Pope was aware that her husband endured a long stay at the hospital, it is not clear that this awareness translates into knowledge of the claim. *Pope*, 108 S. Ct. at 1348.

131. 108 S. Ct. at 1347.

132. *Id.* (citing *Mennonite*, 462 U.S. 791, 798 n.4 (1983)).

However, to anticipate all of the possible problems flowing from *Pope* will require comprehensive legislation which will be subject to interpretation by the courts.

Patricia J. Heritage