

Memorandum 87-10

Subject: Study L-655 - Inventory and Appraisal (Review of Comments
on Tentative Recommendation)

The Commission in January approved the inventory and appraisal recommendation to distribute for comment. We requested comments by February 23, and have received the letters attached to this memorandum as Exhibits 1-34. The letters contain thoughtful and articulate responses that bear careful reading.

Approximately half of the letters received give general approval to the tentative recommendation, either without exception or with concerns about only a few specific provisions. The general approvals range from the fairly noncommittal, such as "in order" (Everett Houser of Long Beach (Exhibit 4)) and "no problems" (Stuart D. Zimring of North Hollywood (Exhibit 14)), to the enthusiastic, such as "excellent and workable" (William P. Wilson of Downey (Exhibit 8)) and "wholeheartedly in favor" (Lon D. Showley of San Diego (Exhibit 25)). Rodney Alan Baker of Covina (Exhibit 18) observes that "it would be a vast improvement over the present situation, and put to rest some of our grumblings we have experienced with the referee process."

This general attitude was not shared by all the commentators, however. The Northern California Chapter of the American Institute of Real Estate Appraisers (Exhibit 26), for example, has concern whether the Commission has adequately addressed the changing relevance of the probate referee function. In addition, we received 2 letters that included serious and strongly expressed concerns about the basic need for probate referee appraisals. The letters contain specific and extensive criticisms of the system, and their logic compels the authors to the following conclusions:

In summary, we agree with the complaints of many of the personal representatives we have represented. The probate referee system does not work well, and in many cases it insults the intelligence of the people working diligently to perform their functions relating to the court system. In

certain cases where the personal representatives are not sophisticated, the probate referee does serve a legitimate function.

Richard E. Llewellyn II and A. Steven Brown of Los Angeles (Exhibit 16)

Although contrary arguments can be made, it seems to me that the probate referee process presently in force is designed primarily to benefit probate referees and that any benefit to the persons interested in estates (or to the State in connection with estate tax determinations) is purely coincidental.

James M. Ruddick of Marysville (Exhibit 29)

The authors of both these letters offer specific suggestions that would cure the defects they see in the system, involving primarily optional or elective use of the probate referee. We will discuss these suggestions in detail in connection with the specific statute sections they would affect.

One feature of the letters we received that the staff believes is noteworthy is the praise given the Commission for its process on this project. Though we frequently get letters commenting on the good job the Commission is doing, we were struck and encouraged by the unsolicited expressions of appreciation. Some of them are set out here:

In closing, we greatly appreciate the job which the California Law Revision Commission performs. We hope that your efforts to obtain comments from the probate and trust bar will be successful. It is difficult sometimes to devote the time necessary to respond to the proposed changes in the law, especially for smaller firms such as ours. Nevertheless, the bar should feel privileged to be a part of the formulation of this type of law for the State of California. Unless sensible and respectable laws are enacted in our state, compliance cannot be expected from the populace. Once again, our sincerest best wishes and thanks for your efforts in these regards.

Richard E. Llewellyn II and A. Steven Brown of Los Angeles (Exhibit 16)

We appreciate the time and effort which the Commission expends in reviewing and recommending revisions to better serve the public (personal representatives, beneficiaries, creditors alike). We commend you for your work and thank you for the opportunity to make suggestions and voice our experiences and ideas.

Paul H. Roskoph and Dawne W. Hollis of Palo Alto (Exhibit 20)

Finally, let me add that I appreciate all of your fine and fair work on the subject of Probate Referees.
Irving Reifman of Los Angeles (Exhibit 23)

First I want to compliment you on the amount of work that has been done. In reading the background, I am impressed by the survey that was taken and the attention paid to the results. ... Keep up the good work. I am proud of you.
Ruth A. Phelps of Burbank (Exhibit 30)

As I indicated in my response to the earlier questionnaire, I do not favor retention of the probate referee system. I must concede, however, that your decision to recommend retention is a reasoned and reasonable one.
Russell G. Allen of Newport Beach (Exhibit 34)

Attached to this memorandum is a revised draft of the recommendation relating to the inventory and appraisal. The revised draft picks up technical corrections pointed out in the letters we have received. Substantive issues raised in the letters are analyzed in notes following the provisions of the draft to which they relate.

We need to review the issues raised and develop a final draft statute on inventory and appraisal. We will then be in a position to decide whether the draft should be introduced in the 1987 legislative session. The staff believes that because of the controversial nature of this subject, it should not be included in the same bill with our other probate legislation, since it could well be the death of an otherwise unobjectionable bill.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

Staff Draft

RECOMMENDATION
Relating to
INVENTORY AND APPRAISAL

BACKGROUND

The major changes made by the new code affecting the inventory and appraisal relate to the role of the probate referee.

The 1982 legislation governing probate referees¹ made specific reference to the California Law Revision Commission study of the administration of estates of decedents, and directed that the study be monitored by the appropriate legislative policy committees.² The Commission has devoted substantial resources to investigating the functioning of the probate referee system, including reviewing material from legislative hearings concerning probate referees, surveying inventory and appraisal systems in other jurisdictions, and considering the views of the probate bar (including the State Bar, Los Angeles County Bar, Beverly Hills Bar, and other bar associations), as well as communications from many interested individuals and groups (including the California Probate Referees' Association, California Bankers Association, California Appraisers Council, and American Institute of Real Estate Appraisers). The Commission has also allocated substantial public meeting time to presentations by interested persons.

In addition, the Commission distributed widely throughout the probate community a questionnaire concerning the functioning of the probate referee system and the need for reforms. The Commission received more than 100 completed questionnaire responses, including group responses from a number of probate bar associations, and

1. Prob. Code §§ 1300-1313, enacted by 1982 Cal. Stat. ch. 1535, § 13.

2. Prob. Code § 1313.

responses from judges, court commissioners, public administrators, and practicing lawyers. Responses came from persons in 20 counties, both rural and urban.

The Commission has taken into account this substantial volume of information in developing the following recommendations for changes in the role of the probate referee in administration of decedents' estates.

RETENTION OF PROBATE REFEREE

The Commission considered removing the probate referee from decedent estate administration entirely, in reliance on appraisal by the personal representative. It has been argued that this would save money for most estates by eliminating the probate referee's fees and would simplify estate administration by eliminating an unneeded third party, with its attendant delays, from the process.

The Commission's investigation reveals that the cost to the estate of the probate referee appraisal is relatively small. The referee's fee is a statutory commission of one tenth of one percent of the value of the estate, plus actual expenses.³ This costs the estate substantially less than an independent appraisal by a private appraiser where such an appraisal is needed for tax or other reasons, and is one of the smaller costs associated with probate.

If an appraisal is not otherwise needed, however, the probate referee's fee is an unnecessary cost to the estate. The Commission recommends, below, a number of changes directed at this problem, relating to assets that may be appraised by the personal representative and procedures for waiver of a probate referee appraisal and reduction of fees.

The Commission's investigation also reveals that the probate referee's involvement causes little complexity or delay in the ordinary case. The probate referee's appraisal is fairly expeditious; 15 days is a typical time for the appraisal after delivery of the inventory by

3. Prob. Code § 609. The commission is subject to a statutory maximum of \$10,000 and minimum of \$75.

the personal representative. Usually, any delay caused is not due to the referee's appraisal but to time spent by the personal representative in preparing the inventory.

There are cases in which a particular probate referee is dilatory or not performing up to standards. The Commission recommends, below, procedures to force expeditious appraisals in such cases, including sanctions against and procedures for removal of inadequate probate referees.

The probate bar generally believes the probate referee works efficiently and expedites and facilitates the probate process in the usual case. Most judges and practitioners think the referee provides a useful and ordinarily high quality service at modest cost to the estate, and that the referee system should be retained. Problems in the system should be resolved by attacking the problems directly, not by scrapping what is a basically sound system. The Commission concurs with these views, and recommends the following changes to cure problems in the probate referee system.

ASSETS APPRAISED BY REFEREE

In some estates the appraisal of assets is simple and does not call for an appraisal expert such as a probate referee. These are estates in which most assets are liquid and easily valued, and could well be appraised by the personal representative without resort to services of the probate referee.

Existing law recognizes this situation by permitting the personal representative to appraise bank accounts, lump-sum insurance payments, cash accounts, and a few other liquid assets.⁴ The new code expands these items to include money market accounts, brokerage cash accounts, and refund checks issued after the decedent's death.

One area the Commission has examined closely is the appraisal of publicly traded stock listed on a national exchange. Although it appears that the personal representative rather than the probate referee might properly appraise such assets, the Commission does not

4. Prob. Code § 605.

recommend that this be done as a matter of course. The economy of scale that enables low-cost probate referee appraisals in the ordinary case would be substantially impaired by removing publicly traded stock as a routine matter. In addition, a major reason the probate referee system works efficiently is that the referee simply appraises all non-cash assets *en masse* and cheaply, without the time and expense of making distinctions between what particular items are and are not subject to referee appraisal. The savings achieved by attempting to distinguish among the many varieties of stock are not significant compared to the procedural costs involved, and could be counterproductive in many cases. Finally, experience has shown that appraisals of publicly traded and listed stock by inexperienced persons are frequently inaccurate, due to such problems as value fluctuations on the date of death, failure to take into account x-dividend dates, and misidentification of the class of stock.

The Commission believes a better approach to appraisal of stock of all kinds, whether publicly traded or closely held, is to require as a matter of course that the referee be the appraiser, subject to waiver for good cause. This is existing law,⁵ and appears to work well in the ordinary case. In the unusual case, such as where the only major asset is stock in a difficult to value family corporation, it may be appropriate to waive the probate referee or to refer the matter to an independent expert for appraisal.⁶

WAIVER AND RELATED MATTERS

The Commission has found the existing procedure for waiver of the probate referee in appropriate cases to be basically sound. The one substantial revision in the waiver procedure made by the new code is to require that a waiver be made before the inventory is delivered to the probate referee. This will expedite administration by encouraging prompt action by the personal representative and avoid having the probate referee invest substantial work on an appraisal only to have the appraisal later waived.

5. Prob. Code § 605.

6. See discussion under "Waiver and Related Matters" *infra*.

The new code supplements the waiver procedure by a provision to permit a unique, unusual, or special item of tangible personal property to be appraised by a qualified independent expert. This would enable the personal representative to avoid appraisal by the probate referee and to select the appraiser in a case where there is need for a special expert. The independent appraisal would be subject to review by the probate referee, and the referee's fees would be subject to reduction or waiver by negotiation with the personal representative or, if they are unable to agree, by the court.

SELECTION AND REMOVAL OF PROBATE REFEREE

Although most people who work with probate referees are satisfied with the operation of the system, there are some instances of dissatisfaction. The Commission has concluded that existing remedies for incompetent or otherwise inadequate referees are not sufficient,⁷ and the new code supplements the existing remedies.

Initially, the new code enables the personal representative to avoid appointment of a probate referee known to provide poor service by application to the court to appoint some other referee. The new code makes clear that the court has authority and discretion not to designate a particular probate referee, and need not designate a referee merely because that referee happens to be next in rotation on a panel.

The new code also enables the personal representative to select a particular probate referee, to a limited extent. This authority is limited in order to avoid favoritism and to prevent influencing the appraisal through a known bias of the referee. However, selection of a particular probate referee may be appropriate in some situations where, for example, the same referee has recently appraised the same property or will be making related appraisals of the same property in another proceeding. Selection of a particular referee by the personal representative is subject to court discretion and a showing of good cause by the personal representative.

7. Existing remedies are generally administered by the State Controller. Prob. Code § 1308.

Where a referee has already been appointed, the new code provides two new removal procedures. First, the personal representative may remove the first referee appointed as a matter of right, without the need for a showing of cause. This is similar to a peremptory challenge of the first judge appointed, and should be an expeditious and effective remedy to ensure the competence of probate referees (by making incompetence easily avoided). Second, the personal representative may seek removal by the court for cause. Cause in this context includes incompetence and undue delay. This will supplement the State Controller's removal authority with local control over appointments in individual cases.

TIME FOR APPRAISAL

The probate referee's appraisal is ordinarily made expeditiously and causes little delay in probate. This is not always the case, however, and the new code adds provisions to ensure that all probate referee appraisals are completed quickly.

The new code creates a statutory duty on the probate referee to appraise the property promptly and with reasonable diligence. The code does not set a specific standard, since the time required for the appraisal may vary with the size, character, and difficulty of assets in the estate. The Commission is informed that the current norm is 15 days after delivery of the inventory and other information necessary for the appraisal.

Under the new code, if 90 days have elapsed since delivery of the inventory and the probate referee has not returned the appraisal, the probate referee must report the status of the appraisal showing why the property has not been appraised and estimating the time needed to complete the appraisal.⁸ The report is filed with the court and delivered to the personal representative, who may have the report set for hearing. Actions the court may take for a dilatory referee include reduction of fees and removal.

It is current practice for some probate referees to withhold delivery of the appraisal, even though completed, until their fees have been paid. This is inappropriate because it delays probate and, in an illiquid estate, it may make it impossible to proceed since payment

must come from proceeds of sale of appraised property. The new code prohibits a probate referee from withholding an appraisal until payment, but also makes clear that the probate referee's fees are an expense of administration, included in the highest statutory priority for payment in the administration proceedings.⁹

JUSTIFICATION OF APPRAISAL

If the probate referee's appraisal is questioned, there is no easy way to obtain the appraisal data used by the probate referee or for supporting the appraisal. The new code takes a number of steps to remedy this problem.

On demand by the personal representative or the beneficiary of property, the probate referee must provide any appraisal report or backup data concerning the property in the referee's files. This information must be provided without charge as part of the referee's regular services.

The referee may also be called upon to justify the appraisal at a hearing for a tax audit or otherwise. Because of the substantial time and effort that may be involved in this situation, the probate referee may be entitled to an additional fee, to be negotiated between the referee and person requiring the justification or, if they are unable to agree, to be fixed by the court.

8. This is analogous to the report made by the personal representative in the event of delay in closing the estate. See Prob. Code § 1025.5. The 90-day period was selected in recognition of the fact that in many cases it takes at least 60 days for the probate referee to obtain necessary appraisal information from the personal representative where the information has not been delivered with the inventory.

In this connection, the new code extends the time within which the personal representative must file the inventory and appraisal from three months to four. See Prob. Code § 600. The four month period is more realistic under current conditions, and is consistent with the 90 day limit for the probate referee. For uniformity, the time for filing a supplemental inventory and appraisal is also extended to four months. See Prob. Code § 611.

9. See Prob. Code § 950.

These two remedies should be sufficient where a question concerning the appraisal arises within a shortly after the appraisal is made. However, existing law does not clearly require record-keeping, so that if an audit or other question arises later, the referee's files may no longer be available. The new code addresses this problem by requiring the referee to offer the files to the personal representative. If the personal representative does not request the files within three years, the files may be destroyed.

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DIVISION 2. GENERAL PROVISIONS

PART 12. PROBATE REFEREES

CHAPTER 1. APPOINTMENT AND REVOCATION

§ 400. Appointment by Controller

400. (a) The State Controller shall appoint at least one person in each county to act as a probate referee for the county.

(b) If there are fewer than three regularly qualified applicants to serve in a county, the State Controller may designate a probate referee from another county or, in the event there is no regularly qualified applicant, make an interim appointment, to serve until the vacancy has been filled by a regularly qualified applicant.

Comment. Subdivision (a) of Section 400 continues a portion of the first sentence of the first paragraph of former Probate Code Section 1305 without change. Subdivision (b) restates the third sentence of the first paragraph without substantive change.

Note. State Bar Study Team 1 (Exhibit 32) points out a number of odd results in subdivision (b), based on whether there are fewer than three applicants for appointment as probate referee or no applicants. If there are fewer than three, only a referee from another county may be "designated" and the designation is apparently permanent. If there are no applicants, anyone apparently may be appointed, but the appointment is temporary, and may only permanently be filled by a person not a referee from another county.

The staff agrees that this scheme doesn't seem to make alot of sense, although there may be reasons. We suggest the provision be simplified to provide that "If there are fewer than three regularly qualified applicants to serve in a county, the State Controller may designate a probate referee from another county to serve until the vacancy has been filled by a regularly qualified applicant."

§ 401. Qualifications for appointment

401. (a) Appointment shall be from among persons passing a qualification examination administered by the State Personnel Board. A person who passes the examination is eligible for appointment for a period of five years from the date of the examination.

(b) Appointment shall be on the basis of merit without regard to sex, race, religious creed, color, national origin, ancestry, marital status, or political affiliation.

Comment. Subdivision (a) of Section 401 restates a portion of the first sentence of the first paragraph and the fifth sentence of the second paragraph of former Probate Code Section 1305 without substantive change. Subdivision (b) continues the second sentence of the first paragraph of former Probate Code Section 1305 without change.

§ 402. Qualification examination

402. (a) The qualification examination for applicants for appointment to act as a probate referee shall be held at times and places within the state determined by the State Controller.

(b) The State Controller shall contract with the State Personnel Board to administer the qualification examination. Administration of the examination shall include:

- (1) Development of standards for passage of the examination.
- (2) Preparation of examination questions.
- (3) Giving the examination.
- (4) Scoring the examination.

(c) Each applicant shall pay a fee established by the State Personnel Board for taking the qualification examination. The State Personnel Board shall transmit to the State Controller a list of candidates who have received a passing score in the examination. The list is a public record.

Comment. Section 402 restates former Probate Code Section 1306 without substantive change.

§ 403. Term of office of probate referee

403. (a) The term of office of a probate referee is four years, expiring June 30. For a period of five years from the date of expiration of the term of office, a person appointed to act as a probate referee is eligible for reappointment.

(b) If the State Controller increases the number of probate referees in a county, the State Controller shall stagger the terms of the new appointees so that one-quarter or as close to one-quarter as possible of the terms of the probate referees in that county expire on June 30 of each succeeding year.

Comment. Section 403 restates the second, third, and sixth sentences of the second paragraph of former Probate Code Section 1305, with the addition that a probate referee's eligibility for reappointment lasts until five years after expiration of the referee's term of office.

§ 404. Standards for probate referee

404. (a) The State Controller may establish and amend standards of training, performance, and ethics of probate referees. The standards are a public record.

(b) The State Controller may revoke the appointment of a person to act as a probate referee for noncompliance with any standard of training, performance, or ethics established under subdivision (a). The State Controller may revoke an appointment under this subdivision without notice or a hearing, but the revocation is subject to review by writ of mandate to a court of competent jurisdiction.

Comment. Subdivision (a) of Section 404 restates former Probate Code Section 1307 without substantive change. Subdivision (b) restates former Section 1308(a) without substantive change.

Note. The lack of appraisal standards is criticized by the Northern California Chapter of the American Institute of Real Estate Appraisers (Exhibit 26), which recommends the adoption of standards of practice for probate referee appraisals. "There is a major move to establish clearer and more comprehensive standards of practice throughout the appraisal occupation, in response to documented abuses. It is our opinion that such action is desirable here, and should be provided for in this revision." This is also the position of the California Appraisers' Council (Exhibit 27), which states, "there is clearly a need to establish standards which will assure that sound appraisal procedures are followed and that the probate referee (appraiser) can conduct an independent and objective appraisal. The probate referee must be held accountable to a set of standards that are apart from the objectives of the 'client' (this allows the probate referee to objectively value the property without influence by the heirs or any other party)." They point out that while some persons feel that probate referee appraisals are generally adequate, others do not. While a probate referee appraisal may be of reasonable quality and serviceable for the "modest" cost, often the appraisal is inadequate. "The cost of compliance with a set of standards that do not result in reliable and objective appraisal results can hardly be termed 'modest'."

These appraisal professionals are not alone in their concern about the quality of the appraisal work done. A number of the letters we received complained about the appraisals. Robert K. Maize, Jr., of Santa Rosa (Exhibit 12) states:

I am a certified tax specialist and my involvement in probate matters is primarily in regards to estate tax and income tax considerations. Because of the importance

attached to the fair market value of the property at the date of death, I find that I am commonly recommending to my clients that they obtain appraisals of property independent of the appraisal prepared by the probate referee. From past experience the probate referee could provide little or no substantiation of how the value was determined when the issue was raised by the Internal Revenue Service on an audit, so that the taxpayer was forced to pay for a second, independent appraisal.

James M. Ruddick of Marysville (Exhibit 29) states:

In my experience, probate referees are only marginally qualified to appraise assets other than listed securities and residential real estate. With respect to listed securities, it makes no sense whatever to pay a fee for an appraisal that can be obtained at no cost from most stock brokers or from the Wall Street Journal. Similarly, if an expert appraisal of residential real estate is required, a local real estate broker can provide a more persuasive (for estate tax purposes) appraisal for a fee similar to (or less than) that established for the probate referee.

On a number of occasions, I have had probate referees advise me "you tell me what it is worth and I will accept your opinion." That is, they are willing to accept, without independent analysis, the opinion of value of the personal representative or the attorney for the personal representative. This is true with respect to both real and personal property. It most frequently occurs in the case of reappraisals for purposes of sale and, in my experience, such reappraisals are done without any real analysis of the value of the asset involved.

In my experience, in the event of federal estate tax audits, the Internal Revenue Service agents give virtually no credence to appraisals by probate referees. For that reason, I routinely advise personal representatives to obtain, at the outset, appraisals of business property and agricultural property from qualified independent appraisers. Again, in such cases, it makes no sense to pay a probate referee to "appraise" something which the probate referee is not qualified to appraise and whose appraisal will, in any event, be disregarded.

This opinion is not universal, however, and we did receive favorable comments. "I have been for the most part quite pleased with the probate referee appraisal system that I have experienced over the last fifteen (15) years here in San Diego." Lon D. Showley of San Diego (Exhibit 25). "I have found that the probate referees appraised fairly and with uncanny accurateness." Ruth A. Phelps of Burbank (Exhibit 30).

The specific suggestion for reform offered by the appraisal professionals is to revise Section 404(a) to read:

The State Controller may establish and amend standards of training, performance, and ethics of probate referees. Such standards, as they relate to the appraisal process and content for appraisal of real estate, personal property, machinery and equipment, or business valuation, shall be, at a minimum, the

Uniform Appraisal Standards adopted by the majority of the membership organizations which form the Ad-Hoc Committee on Professional Appraisal Standards. The standards are a public record.

The Uniform Standards referred to have been adopted by nearly all major appraisal groups. The first two appraisal standards, relating to recognized methods and techniques of real estate appraisals and communication of analysis, opinion, and conclusion in reporting real estate appraisals, are attached to Exhibit 27.

Violation of standards is the subject of subdivision (b) of Section 404. This provision authorizes the State Controller to revoke the appointment of a probate referee for violation of standards "without notice or a hearing." Irving Kellogg of Los Angeles (Exhibit 3) notes that this may violate due process rights, generating lawsuits that are unnecessary, time consuming, and detrimental to government. The staff can see arguments on both sides of the due process issue. We note that appointment of a probate referee is within the discretion of the State Controller, and a referee who accepts an appointment does so with knowledge that it is revocable if in the State Controller's opinion standards have been violated. The probate referees are satisfied with this provision, and we would leave it untouched despite the possibility of litigation.

§ 405. Termination of authority

405. (a) The authority of a person to act as a probate referee ceases immediately upon expiration of the person's term of office, revocation of the person's appointment, or other termination pursuant to law.

(b) Upon cessation of authority of a person to act as a probate referee, the court shall reassign any estate for which the person had been designated as probate referee.

Comment. Subdivision (a) of Section 405 restates former Probate Code Section 1309 without substantive change. Subdivision (b) codifies existing practice. Other termination pursuant to law includes resignation.

§ 406. Political activities of probate referee

406. (a) A probate referee or any person who is an applicant for or seeking appointment or reappointment to act as a probate referee shall not, directly or indirectly, solicit, receive, or contribute, or be in any manner concerned in soliciting, receiving, or contributing, any of the following:

(1) Any assessment, subscription, or contribution to any party, incumbent, or candidate exceeding two hundred dollars (\$200) in any one year for any campaign for any partisan public office of this state.

(2) Notwithstanding paragraph (1), any assessment, subscription, contribution, or political service for any campaign for the office of State Controller.

(b) A violation of this section is a misdemeanor, and the State Controller shall revoke the appointment of a probate referee who violates this section.

(c) The State Controller may not appoint or reappoint as a probate referee any person who, within the two-year period preceding the date of the appointment or reappointment, violates subdivision (a)(1), or who violates subdivision (a)(2), and any such appointment or reappointment is void. However, all acts not otherwise invalid performed by the person before revocation of the person's appointment are valid.

Comment. Subdivisions (a) and (b) of Section 406 restate former Probate Code Section 1311, with the addition of references to incumbency and reappointment. The two hundred dollar limitation of paragraph (a)(1) does not apply to the State Controller; solicitation, receipt, or contribution of any amount to a State Controller campaign is absolutely prohibited by paragraph (a)(2).

Subdivision (c) restates former Probate Code Section 1312, with the added requirement of removal from office. The transitional provision is omitted because it is no longer necessary.

Note. *Stuart D. Zimring of North Hollywood (Exhibit 14) suggests that subdivision (a)(2) should be clarified to reinforce the illegality of a contribution to a campaign for State Controller. The staff would revise the provision to read:*

(2) Notwithstanding---paragraph--(1),---any An assessment, subscription, contribution, or political service for any campaign for the office of State Controller in any amount, notwithstanding paragraph (1).

Irving Kellogg of Los Angeles (Exhibit 3) believes the section is commendable but wonders whether as a practical matter it is enforceable or whether the probate referees are even aware of it. The referees are well aware of it; the staff believes this is a sensitive political matter the Commission should not become involved with. If the Commission feels the need to do something, perhaps Mr. Kellogg's suggestion that a referee file an annual compliance disclosure statement would be appropriate.

CHAPTER 2. POWERS OF PROBATE REFEREE

§ 450. General powers

450. Upon designation by the court, the probate referee has all the powers of a referee of the superior court and all other powers provided in this chapter.

Comment. Section 450 restates subdivision (b) of former Probate Code Section 1301 without substantive change.

Note. *Irving Kellogg of Los Angeles (Exhibit 3) suggests that a cross-reference to other powers of referees would be useful. We do not believe a specific cross-reference should be added to the section itself, since the reference may be incomplete or rendered incomplete by later enactments. We could add to the Comment language such as, "For general provisions relating to referees of the court, see Sections 638 to 645.1 of the Code of Civil Procedure."*

§ 451. Compelling appearance

451. For the purpose of appraisal of property in the estate, the probate referee may require, and may issue a subpoena to compel, the appearance before the referee of the personal representative, guardian, conservator, or other fiduciary, an interested person, or any other person the referee has reason to believe has knowledge of the property.

Comment. Section 451 restates subdivision (a) of former Probate Code Section 1301 and former Probate Code Section 1302, with the addition of the reference to a guardian, conservator, or other fiduciary, since the probate referee may appraise estates other than decedents' estates.

CROSS-REFERENCES

Definitions

- Interested person § 48
- Person § 56
- Personal representative § 58
- Property § 62

§ 452. Examination, testimony, and production of documents

452. The probate referee may examine and take the testimony under oath of a person appearing before the referee, or require, and issue a subpoena to compel, the person to produce any document in the person's possession or control, concerning the value of property in the estate.

Comment. Section 452 restates former Probate Code Section 1303, with the addition of the reference to production of documents. See Section 453 (protective orders and enforcement).

CROSS-REFERENCES

Definitions

Person § 56

Property § 62

§ 453. Protective orders and enforcement

453. (a) On petition of a person required to appear before the probate referee pursuant to this chapter, the court may make a protective order to protect the person from annoyance, embarrassment, or oppression. The petitioner shall mail notice of the hearing on the petition to the probate referee at least 15 days before the date set for the hearing.

(b) On petition of the probate referee, the court may make an order to show cause why a person who is required, but fails, to appear before the probate referee pursuant to this chapter, should not be compelled to do so. The probate referee shall mail notice of the hearing on the petition to the person at least 15 days before the date set for the hearing.

Comment. Subdivision (a) of Section 453 is drawn from Code of Civil Procedure Section 2037.8. Subdivision (b) is drawn from Code of Civil Procedure Section 2034.

CROSS-REFERENCES

Definitions

Person § 56

Mailed notice § 1215

DIVISION 7. ADMINISTRATION OF ESTATES OF DECEDENTS

PART 3. INVENTORY AND APPRAISAL

CHAPTER 1. GENERAL PROVISIONS

§ 8800. Inventory and appraisal required

8800. Within four months after letters are issued to a general personal representative, or within a further time allowed by the court for reasonable cause, the personal representative shall file with the clerk an inventory and appraisal of the fair market value at the time of the decedent's death of the property to be administered in the decedent's estate.

Comment. Section 8800 restates the first portion of the first sentence of former Probate Code Section 600, extending the time for filing the inventory and appraisal from three months to four. See also Section 7061 (actions in chambers). Section 8800 also generalizes the "fair market value" standard from various places in former law.

The inventory and appraisal procedure provided in this part applies to valuation in administration of decedents' estates, but may be incorporated in other proceedings. For example, in a small estate set-aside proceeding under Chapter 6 (commencing with Section 6600) of Part 3 of Division 6, an inventory and appraisal of the decedent's estate is required as provided in Section 6608. No inventory and appraisal of the decedent's estate is required where it is disposed of without administration under Division 8 (commencing with Section 13000) except to the extent an inventory and appraisal is required pursuant to Section 13103 (real property), subdivision (b) of Section 13152 (real property), subdivision (c) of Section 13200 (affidavit procedure), or Section 13658 (property passing or belonging to surviving spouse).

CROSS-REFERENCES

Definitions

Letters § 52

Personal representative § 58

Note. The time for the personal representative to file and inventory and appraisal under existing law is 3 months; this draft extends the period to 4 months. This extension was specifically approved by Howard Serbin of the Orange County Counsel's office (Exhibit 24) and commended by State Bar Study Team 1 (Exhibit 32). Paul H. Roskoph and Dawne W. Hollis of Palo Alto (Exhibit 20) comment that this is "more realistic in view of the time needed to gather information, especially in larger, more complex estates."

John A. Dundas II of Pasadena (Exhibit 2) points out that 4 months is inadequate; since the draft gives the probate referee three months in which to make an appraisal, this leaves the personal representative only one month in which to get the appraisal to the probate referee. He believes the personal representative should have at least 3 months in which to make the appraisal. He points out that if the probate referee obtains an extension of time to complete the appraisal, the same extension of time should apply to the personal representative's duty to file the inventory and appraisal. Thus he would allow the personal representative three months in which to deliver the inventory to the probate referee or to file an unappraised inventory with the court. Thereafter there would be a three month period in which the appraisal would have to be completed. In effect, this would give a six month maximum for completion of the inventory and appraisal.

Russell G. Allen of Newport Beach (Exhibit 34) also questions whether 4 months is appropriate. In larger estates for which a federal estate tax return is required, submission of the inventory and appraisal when the return is due would bring the statute much closer in line to the common practice of many attorneys. His experience is that he files the inventory and appraisal within the first few months only in cases where there is a significant potential for controversy between the personal representative and beneficiaries; more often he files the inventory at the time of the federal estate tax return. He would modify this section to provide that "an inventory must be filed within thirty days after the date (including any extension) for filing a federal estate tax return if one is required, within six months if no return is required, or an inventory (but not necessarily an appraisal) within thirty days after demand by any person interested in the estate (but in no event earlier than four months after the issuance of letters)."

These suggestions make some sense. The Commission has previously considered similar suggestions from local bar associations. The State Bar agreed that a shorter time period is unrealistic in many cases, but felt the shorter statutory period was a useful inducement. The Commission decided on a four month period with these considerations in mind, but may wish to reconsider this matter.

Irving Kellogg of Los Angeles (Exhibit 3) is concerned about a drafting matter--the requirement that the personal representative file the inventory and appraisal within four months could be read by the uninitiated person to require the actual appraising to be done by the personal representative. He suggests that the appraisal requirement be made "subject to the provisions of this part", or some such provision to alert the personal representative. The staff is not sure how useful this provision is. Essentially every statute is subject to some other statute in one way or other, and here all the relevant statutes are collected in the same portion of the code.

Existing law does not require a probate referee appraisal in an interspousal transfer. Paul H. Roskoph and Dawne W. Hollis of Palo Alto (Exhibit 20) are concerned that the present draft does not expressly continue this rule. "We have relied upon this provision in every Section 650 proceeding we have handled, i.e., appraisals on interspousal transfers which are not done by a Referee." A provision is not necessary here because the interspousal transfer provisions provide expressly that an inventory and appraisal is not required.

Section 13659. Roskoph and Hollis nonetheless "strongly urge" a specific reference to interspousal transfers here. Perhaps language would be better in the Comment, drawn from Section 605 (effective July 1, 1987):

No inventory and appraisal of the decedent's estate is required where it is disposed of without administration under Division 8 (commencing with Section 13000) except to the extent an inventory and appraisal is required under or pursuant to Sections 13103, 13152(b), 13200(c), or 13658.

In a small estate set-aside proceeding under Chapter 6 (commencing with Section 6600) of Part 3 of Division 6, an inventory and appraisal of the decedent's estate is required as provided in Section 6608.

Whether a formal appraisal of the estate is even necessary in the ordinary case is the concern of James M. Ruddick of Marysville (Exhibit 29). It has been his experience that a formal appraisal is most often necessary or advisable (1) to determine values for estate tax purposes, (2) to determine the new basis for income tax purposes, or (3) to determine the pattern of distribution of assets in certain cases. "In many estate administration proceedings, because of the nature of the property or the relative simplicity of the distribution pattern, there is simply no need for a formal appraisal or, to the extent that an appraisal is required, the personal representative is capable of providing the necessary appraisal." He would make formal appraisal of estate assets purely optional, on condition that (1) any beneficiary could request or demand a formal appraisal and (2) the probate judge could require an appraisal if the judge saw the necessity for it.

§ 8801. Supplemental inventory and appraisal

8801. If after the inventory is filed the personal representative acquires knowledge of property to be administered in the decedent's estate that is not included in the inventory, the personal representative shall file a supplemental inventory and appraisal of the property in the manner prescribed for the original inventory and appraisal. The supplemental inventory and appraisal shall be filed within four months after the personal representative acquires knowledge of the property.

Comment. Section 8801 restates former Probate Code Section 611, extending the two month time for filing to four months. For enforcement of this requirement, see Section 8805 (failure to timely file inventory and appraisal).

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

Note. This section extends the time for a supplemental inventory and appraisal from two to four months after the personal representative discovers omitted property. Howard Serbin of the Orange County Counsel's office (Exhibit 24) supports this extension.

§ 8802. Form of inventory and appraisal

8802. The inventory and appraisal shall be in the form of a separate listing of each item with the value of the item opposite the item.

Comment. Section 8802 restates the fifth sentence of former Probate Code Section 600. The value must be the fair market value at the time of the decedent's death. Section 8800 (inventory and appraisal required).

Note. State Bar Study Team 1 (Exhibit 32) points out that the existing law requires the appraisal to be in "dollars and cents". This requirement was deleted from the draft at a time when the draft allowed rounding off. Since then we have decided not to allow rounding off, so the staff will return the "dollars and cents" requirement to this section.

§ 8803. Notice of filing of inventory and appraisal

8803. Upon the filing of the inventory and appraisal, the personal representative shall, pursuant to Section 1252, mail a copy to each person who has requested special notice.

Comment. Section 8803 is new.

CROSS-REFERENCES

Definitions

Person § 56

Personal representative § 58

Request for special notice § 1250

§ 8804. Objection to appraisal

8804. (a) At any time before entry of the order for final distribution of the estate, an interested person may file with the court a written objection to the appraisal.

(b) The clerk shall fix a time, not less than 15 days after the filing, for a hearing on the objection.

(c) The person objecting shall give notice of the hearing, together with a copy of the objection, as provided in Section 1220. If the appraisal was made by a probate referee, the person objecting shall

also mail notice of the hearing and a copy of the objection to the probate referee at least 15 days before the date set for the hearing.

(d) The person objecting to the appraisal has the burden of proof.

(e) Upon completion of the hearing, the court may make any orders that appear appropriate. If the court determines the objection was filed without reasonable cause or good faith, the court may order that the fees of the personal representative and attorney and any costs incurred for defending the appraisal be made a charge against the person filing the objection.

Comment. Section 8804 restates former Probate Code Section 608.5, replacing the 10 day minimum hearing time with 15 days consistent with the general notice provisions and providing for an award of fees and costs in the event of a frivolous objection. It is drawn from Probate Code Section 927 and from former Revenue and Taxation Code Sections 14510-14513. See also Sections 8907 (appraisal report, backup data, and justification of appraisal) and 927 (exceptions to account, including objection to appraisal). For objection to the inventory, other procedures are available. See, e.g., Section Chapter 11 (commencing with Section 9860) of Part 5 (conveyance or transfer of property claimed to belong to decedent or other person).

CROSS-REFERENCES

Clerk to set matter for hearing § 1285

Definitions

Interested person § 48

Person § 56

Request for special notice § 1250

Note. *William E. Fox of Paso Robles (Exhibit 15), who has practiced probate law in the Los Angeles area for 16 years, is concerned that some persons could file an objection to the appraisal as a method to delay closing the estate, in order to force a settlement of their claim. He assumes that a jury trial will be demanded, and that because of the five year backlog in metropolitan areas, the objector can effectively tie up the estate. "In my opinion, under this Section, a person could wait until a Petition for Final Distribution is filed and then file objections to the appraisal. The Petition for Final Distribution, in all probability, would have to be placed off calendar, waiting for an adjudication on the appraisal." His suggestion is that the inventory and appraisal should be mailed to beneficiaries as well as persons who have requested special notice, and there would be a 30-day period within which objections could be made.*

The staff is not sure how long an objection to an appraisal would tie up the estate for. A jury trial would not be available, contrary to Mr. Fox's assumption. He does point out that "Determining the value of anything by experts can be very time-consuming and very costly when the matter is heard in court." Whether limiting objections to 30 days after filing the appraisal would substantially cut down the delay problem, we do not know.

§ 8805. Failure to timely file inventory and appraisal

8805. If the personal representative negligently or intentionally fails to file the inventory and appraisal within the time allowed under Section 8800:

(a) The court may compel the personal representative to file the inventory and appraisal pursuant to the procedure prescribed in Section 921 to compel a personal representative to file an account.

(b) The court may remove the personal representative from office.

(c) The personal representative is liable for injury to the estate or to an interested person arising from the failure, including attorney's fees in the court's discretion. Damages awarded pursuant to this subdivision are a liability on the bond of the personal representative.

Comment. Section 8805 restates former Probate Code Section 610 and a portion of former Probate Code Section 611, codifying the case law rule that the statute applies to failure to timely file the appraisal as well as failure to timely file the inventory. Section 8805 is limited to negligent or intentional noncompliance by the personal representative and is not intended to apply where the personal representative was unable to file the appraisal due to the probate referee's delay, or where the personal representative made a good faith effort to file but was unable to due to circumstances beyond the personal representative's control. For delay caused by the probate referee, see Article 3 (commencing with Section 8940) of Chapter 3.

Subdivision (a) is new.

Subdivision (b) provides for removal as an independent sanction. For the removal procedure, see Article 6 (commencing with Section 8500) of Chapter 4 of Part 2. This supplements the removal sanction that is part of the procedure under subdivision (a) to compel a filing.

Under subdivision (c), liability for injury arising from the failure of the personal representative to timely file the inventory and appraisal includes attorney's fees incurred in proceedings to compel the filing. Liability of the personal representative and of the sureties on the bond is joint and several. See Code Civ. Proc. § 996.410 et seq.

CROSS-REFERENCES

Definitions

Interested person § 48

Personal representative § 58

Note. State Bar Study Team 1 (Exhibit 32) notes that this Section provides a remedy for failure to timely file the inventory and appraisal but not for failure to timely file a supplemental inventory and appraisal, even though it is intended to cover both (see the Comment to Section 8801). The staff would correct this defect by applying the section for failure to file within the time required by "this chapter" rather than the time required by "Section 8800", and by adding a reference in the Comment to the supplemental filing.

Irving Kellogg of Los Angeles (Exhibit 3) suggests that we add to this section a provision for a personal representative to file with the court a notice giving the reasons for the delay and an explanation of why the delay is beyond the control of the personal representative. "Such a requirement would state a record in the file and would be indicative of the personal representative's efforts to achieve compliance with the deadline date." This would be analogous to the procedure we provide for the probate referee to appear and explain any delay before sanctions are imposed. See Sections 8940 and 8941 of the draft.

CHAPTER 2. INVENTORY

Article 1. General Provisions

§ 8850. Contents of inventory

8850. (a) The inventory shall include all property to be administered in the decedent's estate.

(b) The inventory shall particularly specify the following property:

(1) Debts, bonds, mortgages, deeds of trust, notes, and other security for the payment of money to the decedent, with the name of each debtor, the date, the sum originally payable, and the endorsements, if any, with their dates.

(2) A statement of the interest of the decedent in a partnership in which the decedent was a member, appraised as a single item.

(3) An account of all money of the decedent.

(c) The inventory shall show, to the extent ascertainable by the personal representative, the portions of the property that are community, quasi-community, and separate property of the decedent.

Comment. Subdivisions (a) and (b) of Section 8850 restate the third and fourth sentences of former Probate Code Section 600 without substantive change. Subdivision (c) restates former Probate Code Section 601, with the addition of the reference to quasi-community property.

CROSS-REFERENCES

Definitions

- Community property § 28
- Personal representative § 58
- Property § 62
- Quasi-community property § 66

Note. Subdivision (b)(1) requires the inventory to particularly specify mortgages, deeds of trust, and other security for debts owed to the decedent. Irving Kellogg of Los Angeles (Exhibit 3) suggests that if the debts are secured by real property, the inventory should contain a legal description of the property. "This would be helpful in tracking the handling of the real property throughout the probate proceeding."

State Bar Study Team 1 (Exhibit 32) believes the phrase in subdivision (b)(2), "appraised as a single item", should qualify both (b)(1) and (b)(2). The staff disagrees. All the items mentioned in subdivision (b)(1) should be appraised separately and not collectively. Team 1 suggests that this is in fact what appraisal "as a single item" is intended to require, but that construction would confound the plain meaning of the words. The relevant provision was first added to the law in 1907, providing:

The inventory must contain all the estate of the decedent, real and personal, a statement of all debts, bonds, mortgages, notes, and other securities for the payment of money belonging to the decedent, specifying the name of the debtor in each debt or security, the date, the sum originally payable, the indorsement thereon (if any), with their dates, and the sum which, in the judgment of the appraisers, may be collected on each debt or security; and a statement of the interest of the decedent in any partnership of which he was a member, to be appraised as a single item.

In this formulation, the qualification clearly applies only to the partnership interest. The Code Commissioners' note to the 1907 provision is that, "Besides some slight changes in wording, the amendment is designed to secure greater definiteness as to the inventory of a partnership property interest." This language was construed by the Supreme Court in 1914--"The interest of a deceased partner in the property of a firm of which he was a member at the time of his death must be inventoried by his administrator or executor, and must be appraised as a single item, no matter how extensive and varied in character the firm property may be, and for the purposes of administration it is deemed part of the personal estate and may be sold as such." *Cooley v. Miller & Lux*, 168 Cal. 120, 136 (1914). The staff believes the tabulation of Section 8850 clarifies the point and should not be changed.

§ 8851. Discharge or devise of claims

8851. The discharge or devise in a will of any debt or demand of the testator against the executor or any other person is not valid against creditors of the testator, but is a specific devise of the debt or demand. The debt or demand shall be included in the inventory. If necessary, the debt or demand shall be applied in the payment of the debts of the testator. If not necessary for that purpose, the debt or demand shall be distributed in the same manner and proportion as other specific devises.

Comment. Section 8851 restates former Probate Code Section 603 without substantive change.

CROSS-REFERENCES

Definitions

Devise § 32

Will § 88

§ 8852. Oath of personal representative

8852. (a) The personal representative shall take and subscribe an oath that the inventory contains a true statement of all property to be administered in the decedent's estate that the personal representative has knowledge of, and particularly of money of the decedent and debts or demands of the decedent against the personal representative.

(b) The oath shall be endorsed upon or attached to the inventory.

Comment. Section 8852 restates former Probate Code Section 604 without substantive change. The requirement of an oath may be satisfied by a written affirmation. Code Civ. Proc § 2015.6.

CROSS-REFERENCES

Definitions

Personal representative § 58

Note. Herbert P. Moore, Jr., of Orinda (Exhibit I) notes that this section does not make clear if all joint personal representatives must sign the inventory. "I recently had a situation involving co-executors wherein one co-executor would not sign the inventory." The staff is reluctant to make special rules dealing with this situation. There are innumerable duties imposed on the personal representative throughout the code, and we would not want to specify for each duty a rule applicable to joint personal representatives. Our approach has been to create general rules on this matter for all estate administration. Thus where there are two personal representatives, both must act; where there are more than two, a majority may act; and any personal representative may seek a court order requiring the others to act. Section 9630.

Article 2. Discovery of Property of Decedent

§ 8870. Subpoena to appear and be examined concerning decedent's property

8870. (a) On petition by the personal representative or an interested person, the court may issue a subpoena to a person to appear before the court and be examined under oath concerning any of the following allegations:

(1) That the person has wrongfully taken, concealed, or disposed of property in the estate of the decedent.

(2) That the person has knowledge or possession of any of the following:

(A) A deed, conveyance, bond, contract, or other writing that contains evidence of or tends to disclose the right, title, interest, or claim of the decedent to property.

(B) A claim of the decedent.

(C) A lost will of the decedent,

(b) If the person does not reside in the county in which the estate is being administered, the superior court either of the county in which the person resides or of the county in which the estate is being administered may issue a subpoena under this section.

(c) Disobedience of a subpoena issued pursuant to this section may be punished as a contempt of the court issuing the subpoena.

Comment. Subdivisions (a) and (b) of Section 8870 restate the first two sentences of former Probate Code Section 613, substituting a petition for a complaint and a subpoena for a citation. See also Section 7061 (actions in chambers).

Subdivision (c) supersedes the first sentence of former Probate Code Section 614. For general provisions governing issuance and enforcement of subpoenas, see Code Civ. Proc. § 1985 et seq. See also Section 1283 (rules of practice).

CROSS-REFERENCES

Definitions

Interested person § 48

Personal representative § 58

Property § 62

Will § 88

Verification required § 1284

Note. Ruth A. Phelps of Burbank (Exhibit 30) notes that the Comment refers to Code of Civil Procedure Section 1985 relating to subpoenas, which allows attorneys to issue subpoenas. She wonders whether the Commission considered extending this to probate.

The Commission did not, and the reference to Section 1985 should be deleted. That is left over from a time when the draft of the general probate practice rules was very broad in its incorporation. The Commission has not yet finalized its decisions in this area, and until then the reference is not applicable.

Russell G. Allen of Newport Beach (Exhibit 34) would replace the subpoena with a different sort of procedure, based on limited experience with the subpoena. He would allow the court to direct an individual to appear before a notary public and provide, in effect, a deposition. If the individual refuses to answer questions in that setting, then relief could be sought from the court as in the case of a

civil discovery proceeding. "As it is, I have found it cumbersome (and a questionable use of the court's time) to require all of the questioning to take place in the courtroom."

§ 8871. Examination

8871. (a) At the examination, interrogatories may be put to the person subpoenaed pursuant to Section 8870, and witnesses may be produced and examined on either side. All such interrogatories and answers shall be in writing, signed by the person examined, and filed with the court.

(b) If upon the examination it appears that the allegations of the petition are true, the court may order the person to disclose the person's knowledge of the facts to the personal representative.

(c) If upon the examination it appears that the allegations of the petition are not true, the person's necessary expenses, including a reasonable attorney's fee, shall be charged against the petitioner or allowed out of the estate, in the discretion of the court.

Comment. Subdivisions (a) and (b) of Section 8871 restate the second, third, and fourth sentences of former Probate Code Section 614. Subdivision (c) supersedes the third sentence of former Probate Code Section 613. The court order of disclosure is enforceable in the same manner as other court orders. See, e.g., Code Civ. Proc. § 1209 (contempt); see also Section 1283 (rules of practice).

CROSS-REFERENCES

Definitions

Personal representative § 58

Note. *Irving Kellogg of Los Angeles (Exhibit 3) suggests that the last sentence of subdivision (a) be split up for clarity and simplicity, thus:*

All such interrogatories and answers shall be in writing. The answers shall be signed under penalty of perjury by the person examined. All interrogatories and answers shall be filed with the court.

This is acceptable to the staff.

Professor Benjamin D. Frantz of McGeorge School of Law (Exhibit 21) wonders why this section speaks in terms of written interrogatories when Section 8870 provides a subpoena to compel the personal attendance of a witness before the court. The staff has no answer to this, other than that existing law provides for it.

§ 8872. Citation to appear and account

8872. (a) On petition by the personal representative, the court may issue a citation to a person who has possession or control of property in the decedent's estate to appear before the court and make an account under oath of the property and the person's actions with respect to the property.

(b) Disobedience of a citation issued pursuant to this section may be punished as a contempt of the court issuing the citation.

Comment. Section 8872 restates former Probate Code Section 615, substituting a petition for a complaint. See also Section 7061 (actions in chambers). The duty to account under this section includes both property entrusted to a person and property that comes into the person's possession, including money, accounts, and other property and papers. For general provisions governing issuance and enforcement of citations, see Sections 1240-1242.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

Note. *Howard Serbin of the Orange County Counsel's office (Exhibit 24) believes the substitution of "petition" for "complaint" in this section is appropriate.*

§ 8873. Wrongful taking, concealment, or disposition of property in estate

8873. A person who has wrongfully taken, concealed, or disposed of property in the estate of the decedent is liable for twice the value of the property, recoverable in an action by the personal representative for the benefit of the estate.

Comment. Section 8873 restates former Probate Code Section 612 without substantive change.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

Note. *Herbert P. Moore, Jr., of Orinda (Exhibit 1) is concerned about a situation where there is a dispute over title to the property. The example he gives is a person who refuses to turn over property claimed by the personal representative on the basis of joint tenancy survivorship rights in the property. Mr. Moore feels that if there is a legitimate dispute, the person who "wrongfully retains" property should not be liable for the same double damages that a person who has "wrongfully taken" property would be liable for.*

This problem could be addressed by limiting the section to cases of wrongful taking, concealment, or disposal "without claim of title or other just cause."

CHAPTER 3. APPRAISAL

Article 1. Procedure

§ 8900. Appraisal by personal representative, probate referee, and independent expert

8900. The appraisal of property in the inventory shall be made by the personal representative, probate referee, or independent expert as provided in this chapter.

Comment. Section 8900 restates the introductory clause of former Probate Code Section 605(a) with the addition of the reference to an independent expert. See Section 8904 (appraisal by independent expert). Designation of a probate referee is made pursuant to Article 2 (commencing with Section 8920). The appraisal is made of the fair market value of the property at the time of the decedent's death. See Section 8800 (inventory and appraisal required).

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 8901. Appraisal by personal representative

8901. The personal representative shall appraise the following property, excluding items whose fair market value is, in the opinion of the personal representative, an amount different from the face value:

(a) Money and other cash items. As used in this subdivision, a "cash item" is a check, draft, money order, or similar instrument issued before the decedent's death that can be immediately converted to cash.

(b) Refund checks issued after the decedent's death, including tax and utility refunds.

(c) Accounts (as defined in Section 21) in financial institutions.

(d) Money market accounts and brokerage cash accounts.

(e) Proceeds of life and accident insurance policies and retirement plans payable on death in lump sum amounts.

Comment. Subdivisions (a), (c), and (e) of Section 8901 restate former Probate Code Section 605(a)(1) without substantive change.

The definition of "cash item" in subdivision (a) is consistent with existing practice. California Probate Referees' Ass'n, Probate Referees' Procedures Guide 9 (1976).

Subdivisions (b) and (d) are new. The personal representative may appraise an item listed in subdivision (b) or (d), as well as items listed in subdivisions (a), (c), and (e), only if its fair market value can be determined solely from its face without calculation or reference to other sources. See introductory clause of Section 8901.

CROSS-REFERENCES

Definitions

Account § 21

Financial institution § 40

Personal representative § 58

Property § 62

Note. This section is a key provision in the probate referee scheme, providing for appraisal of certain assets by the personal representative rather than by the probate referee. There were quite a few comments addressed to this section and the underlying concepts.

Subdivision (a) provides for personal representative appraisal of cash items, including checks issued before the decedent's death. John A. Dundas II of Pasadena (Exhibit 2) would like to see this expanded to include any checks or cash received after death, regardless of the date of issue. "For example, a cash distribution from an estate of a prior decedent, as part or all of the second decedent's interest in that estate, should not require the referee's services." The problem the staff sees with this suggestion is that the line between cash and accounts receivable becomes blurred. What is the cutoff point at which unpaid accounts receivable are valued as part of the estate, without waiting for more payments? The date of death, as in existing law, seems to be the most practical.

Subdivision (b) is a limited exception to the rule of subdivision (a), allowing personal representative valuation of refund checks. Howard Serbin of the Orange County Counsel's office (Exhibit 24) supports this addition. Herbert P. Moore, Jr., of Orinda (Exhibit 1) would add to this Medicare, insurance, and similar health care reimbursements or payments.

Subdivision (d) is an expansion of the account exception in subdivision (c), also supported by Mr. Serbin.

Subdivision (e) allows personal representative appraisal of lump sum amounts payable at death from life and accident insurance policies and retirement plans. Mr. Moore would include here lump sum annuity issued or sponsored by life insurance companies. This seems to the staff consistent with the other payments listed in the subdivision.

Accounts receivable were the subject of comment, though not presently included in the statute. Mr. Moore suggests that receivables that are in fact collected at face value during administration should be appraised by the personal representative. See also the comments of Mr. Dundas, above, relating to checks received after the decedent's death. The problem with this suggestion is that we do not know at the time the appraisal is made whether the account receivable will in fact be collected.

An alternate approach is suggested by Frank M. Swirles of Rancho Santa Fe (Exhibit 6). He would give the option to the personal representative of listing the accounts at face value. "In the case of promissory notes which the personal representative values at face value and includes interest at the specified rate until date of death, there is no need at all for the services of a probate referee. Those services are redundant and costly to the estate." The theory here would be that if the account is listed at face value, any bond will be based on that amount, and beneficiaries will be more than adequately protected. The account receivable would be treated as a cash item at full value, just like a bank account that the personal representative lists at full value.

Advances to beneficiaries that are satisfied upon distribution is offered by Mr. Moore as safe for personal representative appraisal. The staff does not know what he means by this.

Publicly traded stock is the item most likely to be suggested by a commentator for personal representative appraisal, strongly advocated by six of the letters we received concerning this tentative recommendation. The Commission has struggled with this matter and tentatively concluded that although a case can be made for personal representative appraisal of publicly traded stock, nonetheless the probate referee should continue to appraise it for a number of reasons, including error in the appraisal by inexperienced personal representatives and the need for the probate referee to maintain an adequate fee base.

The commentators on this point did not find the Commission's argument convincing. See, e.g., Keith P. Bartel of Burlingame (Exhibit 11)--"I believe that appraising publicly-traded stock should, as a matter of course, be the responsibility of the personal representative and his attorneys and not the responsibility of the probate referee. I find the CLRC's reasons for retaining this as a referee function to be unpersuasive."

A number of the comments responded to the Commission's arguments directly. The problem of inaccurate appraisals could be answered simply by several methods:

(1) Make the valuation date be the closing on the date of death, rather than some interim value. "Stocks and/or bonds listed on major exchanges should be appraised by the representative using the closing prices of such stocks and/or bonds as of the date of death. When death occurs on a date when such exchange is closed, then the closing price of such stock and/or bond on the last preceding date should be used." Byron I. Pesin of Palm Springs (Exhibit 17). "In reality it is no more difficult (and no less credible a measure of value) for the personal representative to obtain the closing prices of the securities on the date of death, than it is to have the probate referee do the same. In fact, in order to assist the referee and expedite her work, we have often provided this information to her." J. Mark Atlas of Willows (Exhibit 7).

(2) Have an experienced person, i.e. a stockbroker, appraise the stock at little or no cost to the estate. "Our suggestion would be to allow a written statement from a broker as to the values on any given date. We have used this procedure in numerous Section 650 confirmations with prompt, accurate valuations provided to us. Many securities brokerage firms have programs available to personal

representatives and attorneys. For example, Dean Witter Reynolds has a program entitled Estate Security Valuation whereby Dean Witter will prepare valuations for a set fee of \$2.00 per security plus an initial set-up fee of \$20.00." Paul H. Roskoph and Dawne W. Hollis of Palo Alto (Exhibit 20). The same point is made by James M. Ruddick of Marysville (Exhibit 29). Russell G. Allen of Newport Beach (Exhibit 34) states, "With the advent of services provided by banks, brokerage firms and other financial institutions for routine evaluation of publicly traded securities, the inaccuracies because of changes in value on the date of death, failures to take into account ex-dividend dates and mis-identification of stock are much less likely than they were in the past."

The problem of maintaining an adequate fee base in order to keep referee fees low was also addressed. Mr. Atlas states, "While it is true that the probate referee's appraisal fees are relatively small, requiring that an estate pay the referee to establish the value of publicly-traded stock is an unnecessary expense."

Valuation of items selected by the personal representative was also advocated. Lon D. Showley of San Diego (Exhibit 25) is generally satisfied with the probate referee system, but believes that there are some instances where their professional expertise is not necessary. "Certainly it would be advantageous if the personal representative can easily pick and choose and select which assets are to be appraised by the referee and which assets are going to be appraised by the personal representative without going through Court approved procedure." This concept is also developed by Richard E. Llewellyn II and A. Steven Brown of Los Angeles (Exhibit 16).

§ 8902. Appraisal by probate referee

8902. Except as otherwise provided by statute:

(a) The personal representative shall deliver the inventory to the probate referee designated by the court, together with necessary supporting data to enable the probate referee to make an appraisal of the property in the inventory.

(b) The probate referee shall appraise all property other than that appraised by the personal representative.

Comment. Subdivision (a) of Section 8902 codifies existing practice. A statutory exception to the duty to deliver an inventory to the probate referee occurs in the case of a waiver of appraisal by the probate referee. See Section 8903. The personal representative must furnish the referee such information as the referee requires concerning the assets appraised by the personal representative or to be appraised by the probate referee. See Sections 450-453 (powers of probate referee).

Subdivision (b) restates a portion of former Probate Code Section 605(a)(2). The probate referee may serve an appraisal function in areas outside of decedent estate administration. See Comment to Section 8800 (inventory and appraisal required). There are statutory exceptions to appraisal by the probate referee. See, e.g., Section

2610 (inventory and appraisal of conservatorship under Lanterman-Petris-Short Act). For waiver of the probate referee, see Section 8903. For appraisal by an independent expert, see Section 8904.

Designation of a probate referee is made pursuant to Article 2 (commencing with Section 8920).

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 8903. Waiver of appraisal by probate referee

8903. (a) The court may, for good cause, waive appraisal by a probate referee in the manner provided in this section.

(b) The personal representative may apply for a waiver either in the petition for appointment of the personal representative or in a separate petition filed in the administration proceedings, but the petition may not be made later than the time the personal representative delivers the inventory to the probate referee. A copy of the proposed inventory and appraisal and a statement that sets forth the good cause that justifies the waiver shall be attached to the petition.

(c) The hearing on the waiver shall be not sooner than 15 days after the petition is filed. The personal representative shall mail a copy of the petition, a copy of the proposed inventory and appraisal, and notice of the hearing on the petition, to all of the following persons at least 15 days before the date set for the hearing:

(1) Devisees whose interest in the estate is affected by the waiver.

(2) Heirs in an intestate estate.

(3) The State of California if any portion of the estate is to escheat to it.

(4) Persons who have requested special notice under Section 1250.

(d) Notwithstanding Section 8901, if the petition is granted, the inventory and appraisal attached to the petition shall be filed pursuant to Section 8800.

Comment. Section 8903 restates former Probate Code Section 605(a)-(b), with changes to make clear that the application for waiver is made by petition, to specify the time within which the petition must be made, and to make clear that the inventory and appraisal attached to the petition is to be filed pursuant to Section 8800 (inventory and appraisal required).

CROSS-REFERENCES

Clerk to set matter for hearing § 1285

Definitions

Letters § 52

Person § 56

Personal representative § 58

Property § 62

Mailed notice § 1215

Verification required § 1284

Note. A number of commentators would in effect make use of the probate referee optional. Herbert P. Moore, Jr., of Orinda (Exhibit 1) would add language to this section to make clear that a waiver of a probate referee appraisal may be made "in whole or in part". The Commission has rejected this approach in the past because it would enable the personal representative to pick and choose among assets, taking the easy ones and leaving the tough ones for the probate referee; the Commission has felt the waiver should be all or nothing. If picking and choosing by the personal representative is allowed, then the probate referee should also be able to pick and choose among what's left. This concept is in fact advocated by one of the commentators, below.

James M. Ruddick of Marysville (Exhibit 29) notes that he has had little trouble obtaining waivers. "Over the past five years or so, I have obtained a waiver (under Section 605 of the Probate Code) of appraisal by the probate referee in every case that I have handled. I have been successful in obtaining such waivers in at least four different counties and no court has even questioned my request for such waiver nor have I been required to make an appearance in connection with any petition for a waiver." Nonetheless, he believes that the necessity to file a petition for waiver should be eliminated. "I believe that appraisal by probate referees is unnecessary in almost all cases and, therefore, should be purely optional." The personal representative would have the choice whether to use a probate referee or a qualified independent appraiser.

This point is also made by Russell G. Allen of Newport Beach (Exhibit 34). "My fundamental objection, however, is to the assertion that the beneficiaries of all estates should share on a pro rata basis the cost of maintaining a referee system for those instances in which there is a need or desire to use a 'low cost' appraiser. I think much sounder policy would be to allow personal representatives (or beneficiaries) to retain the services of a probate referee when circumstances warrant and impose on the beneficiaries of those estates the costs of maintaining the probate referee system, rather than allocating that cost among the beneficiaries of all estates."

This position is also elaborated by Richard E. Llewellyn II and A. Steven Brown of Los Angeles (Exhibit 16), who state "The best system would appear to be one which would permit not only the elective use of the referee as to the inventory, but the elective use of the referee as to selected assets in the estate." Their response to the argument that this would destroy the economic base of the referee system is straightforward. "We propose that instead the referee be given the opportunity to refuse to value certain assets, in which case the personal representative would then be forced to go to private expert appraisal, which is what happens now where the referee requests professional appraisal of certain assets."

This would in essence be a free market system. The personal representative would be free to use or not use the probate referee for any and all assets, and the referee, if concerned that some of the assets would be too difficult, would be free to refuse to value them. The staff believes such an approach would ultimately destroy the probate referee system, since every valuation would be approached from an economic analysis. Eventually, each asset would be appraised by the proper expert at market cost, thereby ending the convenience to the practitioner of all appraisal centered in one person. Llewellyn and Brown's response would be, that's OK. "We do not think the benefits of the probate referee system are so great that it should be preserved at all costs. Individuals concerned with income tax basis information and valuations under federal estate tax returns have reason enough to seek out the true valuation of the assets with which they are charged. Furthermore, the private sector appears to be very good at determining the fair market value of most assets and in those cases where the valuation is difficult, experts are currently needed even under the present probate referee system." They say that in smaller estates or in cases where the representative is unsophisticated, the use of a probate referee could be elective in whole or in part. But as the staff views this scenario, that election would not be available, since the probate referee system would wither and disappear.

Several commentators would simplify the waiver procedure. Howard Serbin of the Orange County Counsel's office (Exhibit 24) would like to see a more efficient means of obtaining the waiver--"perhaps by something akin to a Notice of Proposed Action, instead of a noticed hearing."

Mr. Allen is concerned that a separate waiver petition will be required in all but the simplest estates because of the requirement that the inventory and appraisal be filed concurrently with the petition. He would allow the personal representative to combine the petition for waiver with the petition for appointment and postpone filing the proposed inventory and appraisal. "If waiver is appropriate because of the circumstances of the estate, one should be able to explain those circumstances to the court at the time of the petition for appointment without having to defer filing the appointment petition until an inventory and appraisal can be prepared." The proposed inventory and appraisal would later be filed within the standard time required for filing an inventory and appraisal.

Mr. Allen also suggests that the statute specifically allow a waiver of probate referee petition in connection with a final account and report. There is nothing in the current draft to preclude this;

our one requirement is that the petition be made before delivery of the inventory to the probate referee. This could be pointed out in the Comment.

§ 8904. Appraisal by independent expert

8904. (a) A unique, unusual, or special item of tangible personal property may, at the election of the personal representative, be appraised by an independent expert qualified to appraise the item.

(b) Unless appraisal by a probate referee is waived, an appraisal of property pursuant to this section is subject to review by the probate referee. The personal representative and the probate referee may agree to a reduction or waiver of the commission of the probate referee as to the property. If the personal representative and the probate referee are unable to agree, the court shall determine the appropriate commission, if any.

Comment. Section 8904 is new.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

Note. Section 8904 is a new provision, designed as a safety valve for concerns about forcing inappropriate use of the referee (and designed to save the referee the expense of hiring an expert to appraise an item the referee is not qualified to appraise). The reaction to this section was generally favorable. See, e.g., Robert K. Maize, Jr., of Santa Rosa (Exhibit 12) ("I endorse the concept of being able to have unique, unusual or special items of property appraised by a qualified independent expert."); Howard Serbin of the Orange County Counsel's office (Exhibit 24) ("I believe the idea of the proposed law is a good one. To my knowledge, personal representatives often already use independent experts to appraise items such as jewelry and coin collections. The referees seem to rely on the experts.")

The form of the appraisal was the subject of comment by State Bar Study Team 1 (Exhibit 32). They wonder whether the independent appraisal should be required to be in the same format as a probate referee appraisal. "The appraisal by the referee and the appraisal by the personal representative are required to be on certain standard Judicial Council forms. Should the appraisal of an independent appraiser be required to be on a form as well? We have seen appraisals by independent appraisers come in many sizes, shapes, and forms." The staff sees no problem here. If the Judicial Council has authority to require use of certain forms in probate, it can impose the same requirements on any documents filed with the court, including appraisals by independent experts submitted to the court by the personal representative. We could add a note to the Comment about this if it is believed helpful.

The procedure for use of an independent expert concerned the California Appraisers' Council (Exhibit 27). They suggest a procedure whereby the probate referee declares property that, in the judgment of the probate referee, is beyond the capacity of the probate referee to personally appraise. Only this property would be subject to appraisal by the independent expert; the remainder would be appraised by the probate referee. This is the converse of allowing the personal representative to pick and choose which assets the referee will appraise and which assets will be appraised by other means. The potential for abuse here is, like the potential for abuse there, that the probate referee will pick the easy items to appraise at a profit and leave the difficult items to be appraised at the expense of the estate.

The independent expert provision is limited to unique, unusual, or special items of tangible personal property. Paul H. Roskoph and Dawne W. Hollis of Palo Alto (Exhibit 20) wonder whether this can be construed to apply to items with an "artistic" value or items such as silver, antiques, etc. "It has been our experience that the Referee has requested the personal representative (through us as the attorneys) to obtain an appraisal of silver dollars (for example) from a coin dealer and then submit that appraisal to the Referee." It was the Commission's conception that items such as these could and should be independently appraised. The staff is not certain it is a worthwhile endeavor to try to define "unique, unusual, or special", especially since the personal representative is given discretion to designate these items, and it seems unlikely that litigation would arise over this issue. We could add "artistic" and "collectible" items to the list, if that would be helpful.

Intangible, as well as tangible, personal property could be subject to independent appraisal, suggests John A. Dundas II of Pasadena (Exhibit 2). "Why not include all personal property, so that it would cover closely held stock, for example?"

Real property, as well as personal property, should be covered by this section in the opinion of several of the commentators. Herbert P. Moore, Jr., of Orinda (Exhibit 1) suggests that "consideration be given to excluding appraisals of real estate by experts whose primary business is fee appraisal of real estate with membership in a recognized, national real estate appraisal society." He gives an example of an MAI appraisal of \$2 million of real property he had recently that cost the estate \$7,000. "The probate referee, at my request, used the MAI appraisal, but charged a probate referee's fee of \$2,000 for a few hours work." Using the MAI appraisal instead of the probate referee appraisal would not unduly hurt the probate referees. "There really aren't that many situations where a formal fee appraisal is obtained from a professional fee appraiser, and therefore there won't really be that many instances wherein the probate referee is unfairly discriminated against."

Paul H. Roskoph and Dawne W. Hollis of Palo Alto (Exhibit 20) feel the same way about residential real property. "We have had situations where the personal representative obtained an appraisal from a real estate agent 'as a courtesy' or at a reduced cost." Similarly, James M. Ruddick of Marysville (Exhibit 29) states that, "if an expert appraisal of residential real estate is required, a local real estate

broker can provide a more persuasive (for estate tax purposes) appraisal for a fee similar to (or less than) that established for the probate referee."

Russell G. Allen of Newport Beach (Exhibit 34) states, "If the personal representative obtains an appraisal from a qualified appraiser of real property or any other asset to satisfy the executor's responsibilities for federal estate tax purposes, I see little reason to require 'independent' appraisal by the probate referee."

The Northern California Chapter of the American Institute of Real Estate Appraisers (Exhibit 26) also recommends that the independent expert provision be expanded to cover real property. "It is the Chapter's opinion that there are real property interests that are as unique, unusual or special, from a valuation perspective, as any tangible personal property. We are unable to see any logic to limit the waiver to just one of the two."

The probate referee's fee for review of the independent expert appraisal provided in the section was criticized by a number of commentators. The criticisms can be grouped into three general categories--(1) Why have the probate referee review something that is beyond the referee's area of expertise? (2) Why charge a second fee for the probate referee review? (3) If there is going to be a fee, it should be fixed and not subject to negotiation.

(1) As to the question of whether there should be referee review at all, Paul H. Roskoph and Dawne W. Hollis of Palo Alto (Exhibit 20) state, "we feel that once an independent expert has appraised an item and signed an oath as to its veracity, a Referee does not need to review it and certainly does not need to be paid a fee, albeit a reduced fee, to look it over." Jerome Sapiro of San Francisco (Exhibit 13) adds, "Why provide for review and payment of probate referee concerning appraisals by independent experts in fields in which the referee has no expertise or depth of experience?"

(2) As to the question of paying two fees, John A. Dundas II of Pasadena (Exhibit 2) comments, "It is the practice of some referees to always tell the executor to obtain an expert appraisal of coins, stamps, jewelry, etc. The value of items the referee is not going to appraise should be automatically excluded from the referee's compensation--not just left subject to negotiation." James M. Ruddick of Marysville (Exhibit 29) has a very similar perspective. "In a case which I am presently handling, the probate referee advised the personal representative that she should obtain appraisals of antiques and jewelry from a qualified independent expert and furnish those appraisals to the probate referee. Indeed, we have obtained such appraisals from qualified independent experts but we have no intention of submitting them to the probate referee so that the probate referee can charge a fee for simply adopting those values by reference."

(3) The question of negotiation over the fees was raised by Howard Serbin of the Orange County Counsel's office (Exhibit 24). He offers no specific suggestions, other than the referee's fees "should perhaps be more definitive."

§ 8905. Verification of appraisal

8905. A person who appraises property, whether a personal representative, probate referee, or independent expert, shall sign the appraisal as to property appraised by that person, and shall take and subscribe an oath that the person has truly, honestly, and impartially appraised the property to the best of the person's ability.

Comment. Section 8905 restates former Probate Code Section 608, with the inclusion of an independent appraisal expert. See Section 8904. The requirement of subscription of an oath may be satisfied by a written affirmation or a declaration under penalty of perjury. Code Civ. Proc §§ 2015.5-2015.6

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 8906. Fee for appraisal by personal representative

8906. Neither the personal representative nor the personal representative's attorney is entitled to receive compensation for extraordinary services by reason of appraising any property in the estate.

Comment. Section 8906 restates former Probate Code Section 605(c) and expands it to preclude extra compensation not only for appraising cash items but also for appraising other property in the estate (for example where the probate referee is waived pursuant to Section 8903).

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

Note. *Russell G. Allen of Newport Beach (Exhibit 34) takes issue with the policy of this section. "If the personal representative or counsel for the personal representative devotes substantial time and effort to the appraisal of an asset, then that individual should be compensated for doing so. My impression is that testators frequently identify business associates or others enjoying substantial confidence because of their financial expertise to act as personal representatives. Often times in the closely-held business context or real estate investment context, those persons are the most qualified to gather and assess the significance of factors that affect the value of assets. It makes little sense to provide these particularly qualified people with an incentive to 'farm out' the work to a probate referee or other independent appraiser, simply because someone else can get paid for the work while the personal representative or his or her counsel cannot." The Commission's idea was that the reason for waiver of the probate referee is to save the estate money, but giving a commission to the personal representative or attorney will not save the estate money.*

Herbert P. Moore, Jr., of Orinda (Exhibit 1) hopes this section is clear enough to allow an attorney extraordinary fees for the time the attorney spends working with an appraiser in connection with federal estate tax appraisals. The staff has no ready solution for this concern; perhaps our experts can suggest clarifying or limiting language, if appropriate.

§ 8907. Appraisal report, backup data, and justification of appraisal

8907. A probate referee who appraises property in the estate shall, upon demand by the personal representative or by a beneficiary:

(a) Provide any appraisal report or backup data in the possession of the probate referee used by the referee to appraise an item of property. The probate referee shall not disclose any information that was acquired by the probate referee subject to a statutory provision for confidentiality. The probate referee shall provide the appraisal report or backup data without charge. The cost of providing the appraisal report or backup data shall not be allowed as an expense of appraisal but is included in the commission for services of the probate referee.

(b) Justify the appraisal of an item of property if the appraisal is contested, whether by objection pursuant to Section 8804, by tax audit, or otherwise. The probate referee may be entitled to an additional fee for services provided to justify the appraisal, to be agreed upon by the personal representative or beneficiary and referee. If the personal representative or beneficiary and the probate referee are unable to agree, the court shall determine what fee, if any, is appropriate.

Comment. Section 8907 is new. Backup data required pursuant to subdivision (a) might include, for example, a listing of comparable sales used in the appraisal. The determination of an appropriate fee under subdivision (b) will depend in part upon the quality of the appraisal and whether the contest of the appraisal is reasonable.

CROSS-REFERENCES

Definitions

Beneficiary § 24

Personal representative § 58

Property § 62

Note. Stuart D. Zimring of North Hollywood (Exhibit 14) believes this provision, especially as it relates "to the ability of the personal representative to obtain the background information utilized by the referee" is "long overdue". The provision is also supported by Howard Serbin of the Orange County Counsel's office (Exhibit 24).

§ 8908. Retention of records by probate referee

8908. A probate referee who appraises property in an estate shall retain possession of all appraisal reports and backup data used by the referee to appraise the property for a period of three years after the appraisal is filed. The probate referee shall, during the three year period, offer the personal representative the information used by the referee to appraise the property. Any information not requested by the personal representative may be destroyed at the end of the three year period without further notice.

Comment. Section 8908 is new.

CROSS-REFERENCES

Definitions

Beneficiary § 24

Property § 62

Note. Robert K. Maize, Jr., of Santa Rosa (Exhibit 12) supports the "concept of clearly imposing a duty upon the probate referee to maintain his records for a specified period of time," as does Howard Serbin of the Orange County Counsel's office (Exhibit 24).

Demetrios Dimitriou of San Francisco (Exhibit 5) suggests that it would be helpful to define the class or classes of data that must be retained and delivered to the personal representative. He does not believe "appraisal reports" and "backup data" is sufficiently precise. Does this mean the probate referee must maintain work product in the file but not used to support an appraisal? Does the referee have an obligation to reduce to writing and keep in the file thought processes or other activity dealing with concepts, ideas, information, or other data relevant to establishing the value of an asset appraised, whether used or not?

The staff does not believe the draft is as unclear as Mr. Dimitriou suggests. There is nothing in the section requiring the referee to generate paperwork for storage purposes, and the requirement is limited to material "used by the referee to appraise the property." Perhaps the probate referees can offer us some additional comment on this point.

Article 2. Designation and Removal of Probate Referee

§ 8920. Designation by court

8920. The court shall designate the probate referee from among the persons appointed by the State Controller to act as a probate referee for the county. If there is no person available who is able to act or if the court does not designate a person appointed for the county, the court may designate a probate referee from another county.

Comment. Section 8920 restates a portion of former Probate Code Section 605(a)(2), and makes clear that the probate referee is designated from the panel appointed for the county by the State Controller. See Section 400 (appointment by Controller). Where there is no person able to act, whether because all are disqualified or removed or because there are an insufficient number appointed or because the court elects not to designate a particular probate referee or otherwise, the court may appoint a probate referee from another county. This codifies existing practice. The designation of a probate referee may be made by the judge in chambers. Section 7061.

CROSS-REFERENCES

Definitions

Property § 62

Note. *Rawlins Coffman of Red Bluff (Exhibit 10) doesn't find any reference in the statute to appointment of a referee for reappraisal of property to be sold. This is because the matter is dealt with specifically in connection with property sales. We could add in the Comment a cross-reference to Section 10309, which is the relevant provision in the estate management statute.*

§ 8921. Designation at request of personal representative

8921. The court may designate a person requested by the personal representative as probate referee, on a showing by the personal representative of good cause for the designation. The following circumstances are included within the meaning of good cause, as used in this section:

(a) The probate referee has recently appraised the same property that will be appraised in the administration proceeding.

(b) The probate referee will be making related appraisals in another proceeding.

(c) The probate referee has recently appraised similar property in another proceeding.

Comment. Section 8921 is new.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

Note. *This provision, enabling a personal representative to exercise some control in the designation of a probate referee, received favorable comment. See Paul H. Roskoph and Dawne W. Hollis of Palo Alto (Exhibit 20) ("A good addition to the Code is enabling the personal representative to select a Referee. We have worked with some very efficient Referees and have had the unfortunate and frustrating*

experiences of working with some not-so-efficient Referees."); Howard Serbin of the Orange County Counsel's office (Exhibit 24) ("This will solve a potential problem, and I support it."); Beryl A. Bertucio, Matthew Bender Senior Legal Writer (Exhibit 28) ("especially like" this new section); Russell G. Allen of Newport Beach (Exhibit 34) ("makes singularly good sense if we are to retain the probate referee system").

§ 8922. Discretion not to designate person as probate referee

8922. The court has authority and discretion not to designate a particular person as probate referee even though appointed by the State Controller to act as a probate referee for the county.

Comment. Section 8922 is new. The court may, but is not required to, designate probate referees in rotation from the panel for the county, or may use any other system of designation. The court may refuse to designate a particular person as probate referee if experience with that person is unsatisfactory, if experience with that person's office or staff (including office or staff shared with other probate referees) is generally unsatisfactory, or for other proper reasons in the court's discretion. Where there is no satisfactory probate referee for the county, or not a sufficient number of satisfactory probate referees for the county, the court may designate a probate referee from the panel appointed for another county. Section 8920 (designation by court).

Note. Irving Reifman of Los Angeles (Exhibit 23) suggests that this section may be vague or insufficient to support the court's exercise of discretion. He would like to see some of the material from the Comment incorporated in the text of the section as a clear statement of legislative intent.

The staff does not believe that this is necessary. Courts look to and rely on the Commission comments regularly for an expression of legislative intent. We would be concerned about limiting the court's authority by adding specific language in the text of the statute. It is or should be clear that the mere fact the State Controller appoints a person to the probate referee panel for a county does not obligate the court to designate that person to act in a case.

§ 8923. Disqualification of probate referee

8923. The court may not designate as probate referee any of the following persons:

(a) The clerk or a deputy clerk.

(b) A partner or employee of the judge or commissioner who orders the designation.

(c) A person who is related within the third degree to the judge or commissioner who orders the designation or to the spouse of the judge or commissioner, or who is married to a relative within the third degree of the judge or commissioner.

Comment. Section 8923 restates former Probate Code Section 606 without substantive change.

§ 8924. Removal of probate referee

8924. (a) The court shall remove the designated probate referee in any of the following circumstances:

(1) The personal representative shows cause, including incompetence or undue delay in making the appraisal, that in the opinion of the court warrants removal of the probate referee. The showing shall be made at a hearing on petition of the personal representative. The personal representative shall mail notice of the hearing on the petition shall be mailed to the probate referee at least 15 days before the date set for the hearing.

(2) The personal representative demands removal of the probate referee, regardless of cause. The demand shall be made by affidavit or declaration under penalty of perjury filed with the court and a copy mailed to the probate referee, and thereupon the court shall remove the probate referee without any further act or proof. Removal pursuant to this paragraph is a matter of right, but may be exercised only once in the administration of the estate and only before the personal representative delivers the inventory to the probate referee.

(3) Any other cause provided by statute.

(b) Upon removal of the probate referee, the court shall designate another probate referee in the manner prescribed in Section 8920.

Comment. Section 8924 is new. Other causes provided by statute for removal of a probate referee include failure to make a timely appraisal or report. See Section 8941 (hearing and order). If experience with all the probate referees in a particular office is unsatisfactory, a referee from that office can be removed pursuant to Section 8924 or designation of a referee from that office can be avoided pursuant to Section 8922 (discretion not to designate a person as probate referee).

CROSS-REFERENCES

Definitions

Personal representative § 58
Mailed notice § 1215
Verification required § 1284

Note. *Beryl A. Bertucio, Matthew Bender Senior Legal Writer (Exhibit 28) especially likes this section.*

Article 3. Time For Probate Referee Appraisal

§ 8940. Time required for appraisal or status report

8940. (a) The probate referee shall promptly and with reasonable diligence appraise the property in the inventory that the personal representative delivers to the referee.

(b) The probate referee shall, not later than 90 days after delivery of the inventory, do one of the following:

(1) Return the appraisal to the personal representative.

(2) Make a report of the status of the appraisal. The report shall show the reason why the property has not been appraised and an estimate of the time needed to complete the appraisal. The report shall be delivered to the personal representative and filed with the court.

Comment. Sections 8940 and 8941 are new. They parallel Sections 12200 to 12205 (time for closing estate). The personal representative must deliver an inventory together with supporting data to the probate referee. Section 8902 (appraisal by probate referee). Subdivision (a) of Section 8940 requires the probate referee to act promptly and diligently in making the appraisal, which in the ordinary case should occur well before the 90-day period provided in subdivision (b) has run. The 90-day period provided in subdivision (b) should be viewed as an unusually long period and not as the norm for accomplishing the appraisal.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

Note. *The Commission's recommendation states that ordinarily the appraisal by the probate referee is done quickly (typically within 15 days) and does not delay administration. This section imposes a duty on the probate referee to complete the appraisal expeditiously, and provides a procedure and sanctions if the appraisal is not completed within 90 days.*

A number of commentators took issue with the Commission's claim that appraisals are completed within 15 days in the ordinary case. See Herbert P. Moore, Jr., of Orinda (Exhibit 1) ("Most of the appraisers are great and perform their tasks within thirty days. However, I know of a few bad apples, and they are always late and/or need strong prodding."); John A. Dundas II of Pasadena (Exhibit 2) ("I strongly disagree with the statement that 15 days is a typical time for the appraisal. My experience has been that 30 days is about the minimum, and 45-60 days is more usual."); Everett Houser of Long Beach (Exhibit 4) ("If I could get an appraisal that quickly, I would not complain.

My practice is primarily in Southern L.A. and Orange Counties. My experience is that the norm in my area is 60 days and even then, I may have to 'chase' it.")

Commentators also felt that 90 days was too long to allow before action is taken against a dilatory probate referee. Howard Serbin of the Orange County Counsel's office (Exhibit 24) states "I would like to see the time limit a little less than ninety days. Your background comments point out that fifteen days is the norm. A time allowance six times longer than the norm seems too much." Herbert P. Moore, Jr., of Orinda (Exhibit 1) strongly recommends a 60 day limit, as does Everett Houser of Long Beach (Exhibit 4). Mr. Moore points out that 60 days should be adequate since all that is required of the referee is a report, which could be a one-liner indicating, for example, that not all the background material has been received from the personal representative. Rawlins Coffman of Red Bluff (Exhibit 10) suggests a 30 day period.

§ 8941. Hearing and order

8941. (a) The court shall, on petition of the personal representative or probate referee, or may, on the court's own motion, hear the report of the status of the appraisal. Notice of the hearing shall be served on the personal representative and the probate referee by citation.

(b) If the probate referee does not make the report of the status of the appraisal within the time required by this article or prescribed by the court, the court shall, on petition of the personal representative or may, on its own motion, cite the probate referee to appear before the court and show the reason why the property has not been appraised.

(c) Upon the hearing, the court may order any of the following:

(1) That the appraisal be completed within a time that appears reasonable.

(2) That the probate referee be removed. Upon removal of the probate referee the court shall designate another probate referee in the manner prescribed in Section 8920.

(3) That the commission of the probate referee be reduced by an amount the court deems appropriate, regardless of whether the commission otherwise allowable under the provisions of Sections 8960 to 8963 would be reasonable compensation for the services rendered.

(4) That the personal representative be removed.

Comment. Sections 8940 and 8941 are new. They parallel Sections 12200 to 12205 (time for closing estate).

Reduction of the probate referee's commission under subdivision (c)(3) may be appropriate if the time taken was within the control of the referee and was not in the best interest of the estate or interested persons. In making such a determination, the court should take into account any previous action taken under this article as a result of the delay.

Removal of the personal representative under subdivision (c)(4) may be appropriate where the personal representative's failure to supply necessary information is hindering completion of the appraisal.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

Verification required § 1284

Note. The basic procedure outlined in this section is that a referee who hasn't completed the appraisal in 90 days files and serves a report of status of appraisal. No action is taken on the report unless the personal representative or referee or the court on its own motion moves to hear the report. At the hearing the court can impose sanctions, such as allowing further time, removing the referee, or reducing the commission of the referee.

Beryl A. Bertucio, Matthew Bender Senior Legal Writer (Exhibit 28) especially likes this procedure.

Richard E. Llewellyn II and A. Steven Brown of Los Angeles (Exhibit 16) think the procedure won't work, "for the same reason that prior enforcement sections have not worked." They state that in virtually every inventory it can be alleged that further information is required before the appraisal can be completed. "In some cases the referees have requested further information which is outside the realm of realistic information necessary for the appraisal. At the times those requests were made, we were aware that the offices of those probate referees were swamped with other work."

Everett Houser of Long Beach (Exhibit 4) feels that in the ordinary case the procedure can be expedited by giving the referee 30 days to decide whether additional information is needed, and either make a demand for further information or release the appraisal. In a complicated case an extension of time would be in order. Rawlins Coffman of Red Bluff (Exhibit 10) suggests something quite similar--the appraisal should be given to the personal representative within 30 days or a written statement of reasons for the delay submitted. If the delay extends to 90 days, the referee would have to apply to the court for a reasonable extension of time and be required to justify the extension.

Article 4. Commission and Expenses of Probate Referee

§ 8960. Payment of commission and expenses

8960. (a) The commission and expenses provided by this article as compensation for the services of the probate referee shall be paid from the estate appraised by the referee.

(b) The probate referee may not withhold the appraisal until the commission and expenses are paid, but shall deliver the appraisal to the personal representative promptly upon completion.

(c) The commission and expenses of the probate referee are an expense of administration, entitled to the priority for payment provided by Section 11420, and shall be paid in the course of administration.

Comment. Subdivision (a) of Section 8960 restates a portion of the first sentence of the first paragraph of former Probate Code Section 609 without substantive change.

Subdivisions (b) and (c) are new. Section 11420 provides the highest priority for payment of expenses of administration, which take precedence over all other debts. A personal representative who fails to give the priority required by law to the commission and expenses of the probate referee is liable for the failure. Section [to be drafted] (liability of personal representative to administer estate according to law).

Note. Howard Serbin of the Orange County Counsel's office (Exhibit 24) believes this section is quite important and should be enacted into law. Everett Houser of Long Beach (Exhibit 4) says, "I especially thank you for providing a release of the appraisal prior to payment. I resent being treated as a cheap crook."

§ 8961. Amount of commission and expenses

8961. As compensation for services the probate referee shall receive all of the following:

(a) A commission of one-tenth of one percent of the total value of the property for each estate appraised, subject to Section 8962. The commission shall be computed excluding property appraised by the personal representative pursuant to Section 8901 and shall be reduced for property appraised by an independent expert to the extent required pursuant to Section 8904.

(b) Actual and necessary expenses allowed by the court for each estate appraised. The referee shall file with the inventory a verified account of the referee's expenses.

Comment. Section 8961 restates a portion of the first sentence and the second sentence of the first paragraph, and the second paragraph, of former Probate Code Section 609 without substantive change. The commission provided by this section is subject to a maximum and minimum pursuant to Section 8962 (maximum and minimum commissions).

CROSS-REFERENCES

Definitions

Property § 62

Note. George E. Atkinson, Jr., of Paramount (Exhibit 22) is concerned about probate referee fees for reappraisal of property for sale. "It has been my experience that when a sale is made after the expiration of the one year period and a request for a re-appraisal is made, the Referee usually uses the sales price for the re-appraisal figure and charges the usual 1/10th of 1% of the value of the real property. I believe that since the Referee does no more than merely insert the sales price figure and sign his or her name to the appraisal that a reduced fee should be charged by the Referee for this particular service." This problem was also addressed by James M. Ruddick of Marysville (Exhibit 29), who states that "in my experience, such reappraisals are done without any real analysis of the value of the asset involved."

Richard E. Llewellyn II and A. Steven Brown of Los Angeles (Exhibit 16) have basic concerns with the whole probate referee function, which are reflected of course in concerns about referee fees. "To begin with, executors often object to the fee charged by the probate referee. In those cases where a beneficiary of the estate is also acting as executor, the objection is sometimes very strenuous. The objection is understandable when the personal representative is asked to supply all of the basic information for the appraisal so that in many cases the valuation is obvious. In those cases, the representative often resents the charge of the probate referee for what appears to be for confirming the work which the representative has done." They go on to point out that the personal representative may work diligently to establish values for an estate tax return, and then find that the referee's values disagree and may be used against the personal representative in an estate tax audit. Having to pay for that privilege is troublesome. "Second, in those cases where the assets are difficult to value, the probate referee typically asks that an appraisal be obtained for the referee to use in his or her valuation. This is extremely difficult for the attorney to explain to the client, and even though there is justification for the offset of the appraisal fee from the referee's fee, it raises the question in the personal representative's mind as to exactly what the responsibility is for the probate referee." The waiver and expert appraisal procedures in the draft address these problems.

§ 8962. Maximum and minimum commissions

8962. (a) Notwithstanding Section 8961 and subject to subdivision (b), the commission of the probate referee shall in no event be less than seventy-five dollars (\$75) nor more than ten thousand dollars (\$10,000) for any estate appraised.

(b) Upon application of the probate referee and notice given as provided in Section 1220 and mailed to persons who have requested special notice, the court may allow a commission in excess of ten thousand dollars (\$10,000) if the court determines that the reasonable value of the referee's services exceeds that amount.

Comment. Section 8962 restates a portion of the first sentence of the first paragraph and the third paragraph of former Probate Code Section 609 with the addition of the provision for notice in the case of an increase in commission.

§ 8963. Division of commission between referees

8963. If more than one probate referee appraises property in the estate, each is entitled to the share of the commission agreed upon by the referees or, absent an agreement, that the court allows. In no case shall the total commission for all referees exceed the maximum commission that would be allowable for a single referee.

Comment. Section 8963 restates former Probate Code Section 609.5 without substantive change. Reference to division of expenses is omitted, since each referee is entitled to actual and necessary expenses allowed by the court, regardless of the amount of the commission. It should be noted that the amount of the commission split by the referees may exceed the statutory maximum in a case where the court determines that the reasonable value of the services in the case exceeds the statutory amount. See Section 8962(b).

CROSS-REFERENCES

Definitions

Property § 62

Note. Russell G. Allen of Newport Beach (Exhibit 34) doesn't believe this section covers the situation where one referee begins the appraisal process, leaves office, and that appraisal is completed by another referee. He suggests the section be amended to allow the court to allocate fees in that circumstance, as well as where more than one referee completes appraisal of part of the assets. The staff believes the section is intended to cover that situation, though maybe it is not adequately drafted. It might be useful to add to the section that the commission may be split if a referee appraises "or engages in activities to appraise" property.

COMMENTS TO REPEALED SECTIONS

CHAPTER 9. INVENTORY AND APPRAISEMENT

Probate Code § 600 (repealed)

Comment. The first portion of the first sentence of former Section 600 is restated in Section 8800 (inventory and appraisal required) without substantive change. See also Section 7061 (actions in chambers). The last portion of the first sentence is restated in Section (change in ownership statement) [to be drafted].

The second sentence is omitted because it no longer serves a useful purpose. The third and fourth sentences are restated in Section 8850 (contents of inventory) without substantive change. The fifth sentence is restated in Section 8802 (form of inventory and appraisal) without substantive change. See also Section 8800 (inventory and appraisal required).

Probate Code § 601 (repealed)

Comment. Former Section 601 is restated in Section 8850 (contents of inventory) without substantive change.

Probate Code § 602 (repealed)

Comment. Former Section 602 is continued in Section (appointment of personal representative) without substantive change.

Probate Code § 603 (repealed)

Comment. Former Section 603 is restated in Section 8851 (discharge or devise of claims) without substantive change.

Probate Code § 604 (repealed)

Comment. Former Section 604 is restated in Section 8852 (oath of personal representative) without substantive change.

Probate Code § 605 (repealed)

Comment. The introductory portion of subdivision (a) of former Section 605 is superseded by Section 8900 (appraisal by personal representative, probate referee, and independent expert). Subdivision (a)(1) is superseded by Section 8901 (appraisal by personal representative). See also Estate and Trust Code Sections 40 ("financial institution" defined) and 8800 (inventory and appraisal required).

Subdivision (a)(2) is restated in Estate and Trust Code Sections 8902 (appraisal by probate referee), 8920 (designation by court), and Section 8903 (waiver of appraisal by probate referee) without substantive change.

Subdivision (a)(3) is restated in Section 8903(b)-(d) (waiver of appraisal by probate referee), with clarifying changes.

Subdivision (b) is superseded by Estate and Trust Code Sections 450-453 (powers of probate referee). Subdivision (c) is restated in Section 8906 (fee for appraisal by personal representative) and expanded to preclude extra compensation not only for appraising cash items but also for appraising other property in the estate.

Subdivision (d) is omitted as unnecessary. See Section 6608. Subdivision (e) is omitted as unnecessary. See Sections 13103, 13152(b), 13200(c), and 13658.

Probate Code § 606 (repealed)

Comment. Former Section 606 is restated in Section 8923 (disqualification of probate referee) without substantive change.

Probate Code § 607 (repealed)

Comment. Former Section 607 is omitted; the procedure provided in the section was ignored in practice.

Probate Code § 608 (repealed)

Comment. Former Section 608 is restated in Section 8905 (verification of appraisal), with the addition of an independent appraisal expert.

Probate Code § 608.5 (repealed)

Comment. Former Section 608.5 is restated in Section 8804 (objection to inventory and appraisal), with the clarification that the procedure applies to the inventory as well as the appraisal.

Probate Code § 609 (repealed)

Comment. The first portion of the first sentence of the first paragraph of former Section 609 is restated in Estate and Trust Code Sections 8960 (payment of commission and expenses) and 8961 (amount of commission and expenses) without substantive change. The last portion of the first sentence is restated in Section 8962 (maximum and minimum commissions) without substantive change. The second sentence is restated in Section 8961 (amount of commission and expenses) without substantive change. The third sentence is omitted because it was an obsolete relic from the inheritance tax function of probate referees.

The second paragraph is restated in Section 8961 (amount of commission and expenses) without substantive change. The third paragraph is restated in Section 8962 (maximum and minimum commissions), with the addition of a provision for notice.

Probate Code § 609.5 (repealed)

Comment. Former Section 609.5 is restated in Section 8963 (division of commission between referees) without substantive change.

Probate Code § 610 (repealed)

Comment. Former Section 610 is restated in Section 8805 (failure to timely file inventory and appraisal), which makes clear that failure to timely file the appraisal is included within the statute. Liability of the personal representative and of the sureties on the bond is joint and several. See Code Civ. Proc. § 996.410 et seq.

Probate Code § 611 (repealed)

Comment. Former Section 611 is restated in Estate and Trust Code Sections 8801 (supplemental inventory and appraisal) and 8805 (failure to timely file inventory and appraisal) without substantive change.

Probate Code § 612 (repealed)

Comment. Former Section 612 is restated in Section 8873 (wrongful taking, concealment, or disposition of property in estate) without substantive change.

Probate Code § 613 (repealed)

Comment. The first two sentences of former Section 613 are restated in Section 8870 (subpoena to appear and be examined concerning decedent's property), substituting a petition for a complaint and a subpoena for a citation. The third sentence is superseded by Section 8871 (examination).

Probate Code § 614 (repealed)

Comment. The first sentence of former Section 614 is superseded by Section 8870(c) (subpoena to appear and be examined concerning decedent's property). The second, third, and fourth sentences are restated in Section 8871 (examination).

Probate Code § 615 (repealed)

Comment. Former Section 615 is restated in Section 8872 (subpoena to appear and account), substituting a petition for a complaint.

CHAPTER 23. PROBATE REFEREES

Probate Code § 1300 (repealed)

Comment. Former Section 1300 is omitted; it no longer serves a useful purpose.

Probate Code § 1301 (repealed)

Comment. Subdivision (a) of former Section 1301 is restated in Section 451 (compelling appearance), with the addition of the reference to a guardian, conservator, or other fiduciary, since the probate referee may appraise estates other than decedents' estates. Subdivision (b) is restated in Section 450 (general powers) without substantive change.

Probate Code § 1302 (repealed)

Comment. Former Section 1302 is restated in Section 451 (compelling appearance) without substantive change.

Probate Code § 1303 (repealed)

Comment. Former Section 1303 is restated in Section 452 (examination, testimony, and production of documents), with the addition of the reference to production of documents.

Probate Code § 1304 (repealed)

Comment. Former Section 1304 is superseded by Section 453 (protective orders and enforcement).

Probate Code § 1305 (repealed)

Comment. The first sentence of the first paragraph of former Section 1305 is restated in Section 400(a) (appointment by Controller) and the first sentence of Section 401(a) (qualifications for appointment) without substantive change. The second sentence is restated in Section 401(b) (qualifications for appointment) without change. The third sentence is restated in Section 400(b) (appointment by Controller) without substantive change.

The first sentence of the second paragraph is omitted; it is a transitional provision that no longer serves a function. The second sentence is restated in the first sentence of Section 403(a) (term of office of probate referee) without substantive change. The third sentence is restated in Section 403(b) (term of office of probate referee) without substantive change. The fourth sentence is omitted; it is a transitional provision that no longer serves a function. The fifth sentence is restated in the second sentence of Section 401(a) (qualifications for appointment) without substantive change. The sixth sentence is restated in the second sentence of Section 403(a) (term of office of probate referee) without substantive change.

Probate Code § 1306 (repealed)

Comment. Former Probate Code Section 1306 is restated in Section 402 (qualification examination) without substantive change.

Probate Code § 1307 (repealed)

Comment. Former Probate Code Section 1307 is restated in Section 404(a) (standards for probate referee) without substantive change.

Probate Code § 1308 (repealed)

Comment. Subdivision (a) of former Probate Code Section 1308 is restated in Section 404(b) (standards for probate referee) without substantive change. Subdivision (b) is omitted; the authority of the Controller to remove 10% of the probate referees in a county has not been used in modern times. Moreover, in a large county the terms of the probate referees are staggered so that the Controller will be able to replace probate referees continuously.

Probate Code § 1309 (repealed)

Comment. Former Probate Code Section 1309 is restated in Section 405 (termination of authority) without substantive change.

Probate Code § 1310 (repealed)

Comment. Former Probate Code Section 1310 is omitted; it relates to illegal activities in connection with the inheritance tax, which has been abolished.

Probate Code § 1311 (repealed)

Comment. Former Probate Code Section 1311 is restated in Section 406(a)-(b) (political activities of probate referee) without substantive change.

Probate Code § 1312 (repealed)

Comment. Former Probate Code Section 1312 (with the exception of the last sentence) is restated in Estate and Trust Code 406(c) (political activities of probate referee). The last sentence is omitted; it is a transitional provision that no longer serves a function.

Probate Code § 1313 (repealed)

Comment. Former Section 1313 is omitted. For the report of the California Law Revision Commission concerning administration of estates of decedents, see _____.

LAW OFFICES OF
HERBERT P. MOORE, JR.
23 ORINDA WAY, SUITE 312
ORINDA, CALIFORNIA 94563

TELEPHONE
(415) 254-2850

January 29, 1987

CA LAW REV. COMM'N

JAN 30 1987

RECEIVED

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Re: Tentative Recommendation Relating to Probate Law and
Procedure, Inventory & Appraisal

Gentlemen:

I have the following comments with respect to the following proposed Probate Code Sections:

§8852. I recently had a situation involving co-executors wherein one co-executor would not sign the inventory. The law was unclear concerning the need of both co-executors to sign the inventory. Because any interested party, including one of the co-executors, can contest the contents of an inventory, I wonder whether it is worth-while to add language authorizing any of the co-executors to execute the oath. Maybe all that needs to be done is substitute "A" for the word "The" at the beginning of the Section.

§§8870 and 8873. In this same matter involving unfriendly co-executors, one of the co-executors filed an action against the other co-executor for the alleged wrongful failure of the defendant co-executor to turn over property to the estate that the defendant co-executor contended was his by virtue of joint tenancy survivorship rights. The matter is still pending. However, even though I think Section 8870 and Section 8873 is probably clear enough, there are judges and lawyers that think "wrongful taking" is the same as "wrongful retaining under claim of right." See also Probate Code Section 521 of the existing Codes which involves the same problem of "wrongful taking" versus alleged "wrongful retention". In short, it should be made clear that when a person retains property under claim of right, he should not be subjected to potential double liability under Section 8873 nor should he be necessarily subjected to removal under Section 521.

§8901. I do not have Section 21 of the new Probate Code handy and am not sure how "accounts" are defined therein. Assuming Section 21 does not cover the following, it seems to me

that receivables due within one year from date of death and believed to be collectible at face value should be appraised by the personal representative. Likewise, Medicare, insurance and similar health care reimbursements or payments should be appraised by the personal representative. Also, annuities issued or sponsored by life insurance companies payable in a lump sum should be excluded along with proceeds of life and accident insurance policies. As I am dictating this, I guess there are really two areas which seem safe for personal representative appraisal, namely, receivables that are in fact collected at face value during administration and advances to beneficiaries that are satisfied upon distribution.

§8903. I think it should be made clear that the court may waive appraisal ", in whole or in part," by a probate referee, etc.

§8904. I have not been involved in any debates, and I know that hearing arguments for and against are very helpful. I am a sole practitioner and I have not discussed my comments with other practitioners. I think Section 8904 is a step in the right direction, and suggest that consideration be given to excluding appraisals of real estate by experts whose primary business is fee appraisal of real estate with membership in a recognized, national real estate appraisal society. I recently had a MAI appraisal of \$2,000,000.00 worth of real estate that cost the estate \$7,000.00 wherein the probate referee, at my request, used the MAI appraisal, but charged a probate referee's fee of \$2,000.00 for a few hours work. There really aren't that many situations where a formal fee appraisal is obtained from a professional fee appraiser, and therefore there won't really be that many instances wherein the probate referee is unfairly discriminated against.

§8906. I hope this section is clear enough to allow an attorney extraordinary fees for the time he spends working with an appraiser in connection with federal estate tax appraisals.

§8940. I strongly recommend a sixty day rather than a ninety day limit for this Code Section. Most of the appraisers are great and perform their tasks within thirty days. However, I know of a few bad apples, and they are always late and/or need strong prodding. The ninety day time frame is not necessary because within the ninety days all the late referee need do is make a report of the status of the appraisal. I am sure everybody would be happy with one line explanations, and once the report is filed the Code Section has no further time frame.

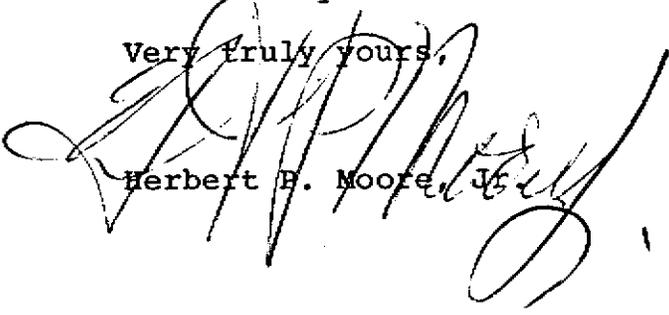
California Law Revision Commission

January 29, 1987

Page 3

If the problem is with the probate attorney, all the referee need do is say that he hasn't received necessary follow up information quick enough from the attorney.

Very truly yours,



Herbert B. Moore, Jr.

HPMjr:cjm

LAW OFFICES OF

JOHN A. DUNDAS II
810 SOUTH MARENGO AVENUE
PASADENA, CALIFORNIA 91101
(818) 440-0952

CA LAW REV. COMM'N

FEB 02 1987

RECEIVED

January 30, 1987

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303

Dear Commission members:

This is in response to the material included with your letter of January 15, 1987, dealing with Inventory and Appraisal. While I generally favor the recommendations, I would add the following comments.

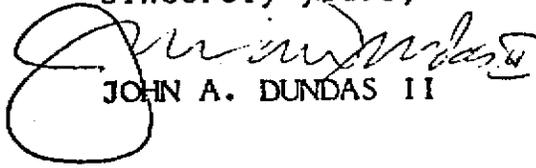
Sections 8800 and 8940: Taken together, these mean, as I understand it, that the executor has only one month after appointment in which to prepare and submit the inventory to the referee. That is not realistic. If you give the referee three months to appraise the property, the executor should have at least the same amount of time. Further, if under 8940, the referee elects to file a report with the Court, instead of completing the appraisal, that should automatically extend the executor's time to file the appraisal. Come to think about it, why not change the whole concept, so that the executor's duty is to send the Inventory to the referee within a certain time, but then it's the referee who has the duty to file the appraisal with the Court? Or perhaps require the filing of the unappraised inventory, and thereafter have the appraisal made.

Section 8901: I would like to see a further expansion of the "cash items" exception, to include any checks or cash received after death. For example, a cash distribution from an estate of a prior decedent, as part or all of the second decedent's interest in that estate, should not require the referee's services.

Section 8904: It is the practice of some referees to always tell the executor to obtain an expert appraisal of coins, stamps, jewelry, etc. The value of items the referee is not going to appraise should be automatically excluded from the referee's compensation--not just left subject to negotiation. Also, why limit this to tangible personal property? Why not include all personal property, so that it would cover closely held stock, for example?

As a general comment--I strongly disagree with the statement that "15 days is a typical time for the appraisal..." My experience has been that 30 days is about the minimum, and 45-60 days is more usual.

Sincerely yours,


JOHN A. DUNDAS II

LAW OFFICES
IRVING KELLOGG

FEB 05 1987
RECEIVED

1880 CENTURY PARK EAST, 12TH FLOOR
LOS ANGELES, CALIFORNIA 90067
(213) 551-9127 • (213) 277-1226

February 2, 1987

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, Calif. 94303-4739

Re: Inventory and Appraisal, January 1987

Dear Commission Members:

The following are my comments about the Tentative Recommendation for the above.

1. Section 403.

The second sentence contains an ambiguity: "A person appointed to act as a probate referee is eligible for reappointment for a period of five years from the date of expiration of the term of office." The ambiguity arises because the words, "for a period of five years from the date of expiration of the term of office" raises the question whether the reappointment is for a period of five years or whether as put into the comment, that for a period of five years after the expiration of office, the person remains eligible.

Therefore I suggest that the sentence should read:

"After expiration of a term of office, a probate referee is eligible for reappointment within a period of five years from the date of the expiration."

2. Section 404.

The revocation without notice or a hearing may violate the constitutional right of due process and may, therefore, lead to lawsuits that are unnecessary, time consuming, and detrimental to government.

3. Section 406.

This is a commendable section. But is it practical? Has it been enforced? Is it a mockery? Do referees know about it?

Does each referee sign a disclosure statement each year that he or she complied with this section?

4. Section 450.

The section should refer to where the powers of the probate referee are listed. Otherwise the reader of this section is lost as to what those powers are. Suggested wording: "as set forth in Section of the Probate and Trust Code as it exists or is amended."

5. Section 8800.

This section implies that the personal representative (p/e) files the inventory and enters the fair market value. For the non-lawyer and for those lawyers unfamiliar with the Probate and Trust Code, would it not be advisable to state:

".....subject to the requirements about appraisals of inventory items as set forth in Sections et seq of this Code, the personal representative shall"

With that "subject to" preceding the instruction to the p/e, the likelihood of misunderstanding is reduced considerably.

6. Section 8806 and the Comment to it.

Would it not be advisable to insert into the Section that the p/e should, if unable to file the inventory before the expiration of the deadline date, file a notice to the court, giving the reasons for the delay and an explanation of why the delay is beyond the control of the personal representative? Such a requirement would state a record in the file and would be indicative of the p/e's efforts to achieve compliance with the deadline date.

7. Section 8850.

Include under (b) (1) the requirement that real property and notes receivable secured by real property shall contain the legal description of the property and of the real property securing the note. This would be helpful in tracking the handling of the real property throughout the probate proceeding.

8. Section 8871.

The second sentence should read: " All such interrogatories and answers shall be in writing. The answers shall be signed under penalty of perjury by the person examined. All interrogatories and answers shall be filed with the court."

Split the sentence into smaller sentences. The original sentence was too long and seemed to require that the person examined sign not only the answers but also the interrogatories.

Those are my comments. None of them is earth shattering, but I think they do clarify some irritating points that a quick reader could easily overlook. Thank you for the opportunity to be of assistance to the Commission. I enjoyed reviewing this Tentative Recommendation, and I compliment the Commission for an outstanding improvement.

Sincerely,


Irving Kellogg

Exhibit 4
Everett Houser

Attorney at Law

5199 E. Pacific Coast Highway #508

Lang Beach, Calif. 90804-3307

(213) 498-3955

CA LAW REV. COMM'N

FEB 05 1987

RECEIVED

February 3, 1987

Law Revision Commission
4000 Middlefield Road D-2
Palo Alto, CA 94303-4739

Re: January 1987 Tentative Recommendations

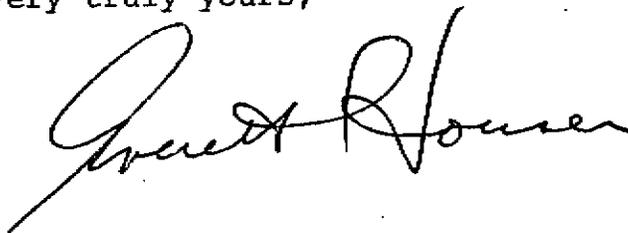
On page 6 you quote the norm for delivery at 15 days. If I could get an appraisal that quickly, I would not complain. My practice is primarily in southern L.A. and Orange Counties. My experience is that the norm in my area is 60 days and even then, I may have to "chase" it.

I recommend a further change to give the appraiser 30 days to decide whether additional material is needed from the attorney and either to make such demand or release the appraisal. The outside limit should be 60 days.

An extension of time in a complicated case is certainly in order.

The other suggested changes are in order. I especially thank you for providing a release of the appraisal prior to payment. I resent being treated as cheap crook.

Very truly yours,



LAW OFFICES OF
MAIER DIMITRIOU & ROSS
500 WASHINGTON STREET
FIFTH FLOOR
SAN FRANCISCO, CALIFORNIA 94111
TELEPHONE (415) 434-1000

CA LAW REV. COMM'N

FEB 05 1987

RECEIVED

February 4, 1987

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

RE: Tentative Recommendation Relating to Probate Law
and Procedure "Inventory and Appraisal" Section 8908

Dear Commissioners:

I have reviewed the above materials and find them helpful in creating more flexibility in the use of probate referees. I have some concerns, however, relating to your proposed Section 8908.

Consider defining "appraisal reports" and "backup data" as those terms are used. Would the referee be required to disclose information not used as part of the basis for the valuation? Would material in the file (appraiser's "work product"), but not used to support the evaluation of an asset, be made available to the personal representative? Would everything in the referee's file be available? What obligation would the referee have to reduce to writing and keep in the file for the required period of time thought processes or other activity dealing with concepts, ideas, information, or other data relevant to establishing the value of an asset appraised, whether used by the referee or not? For example, see Laskey, et al. v. Superior Court (1985) 172 Cal.App.3d 264 discussing file content and work product.

I suggest that it would be helpful if you could attempt to define the class or classes of data which would be required to be made available to the personal representative by the probate referee. I might also call to your attention Business and Professions Code Section 5037, dealing with accountants, which deals with the issue that I raise.

If my point is not clear, or if I can be of any additional help to you in this matter, please feel free to call.

Yours very truly,



Demetrios Dimitriou

DD/ccs

FRANK M. SWIRLES
LAW CORPORATION

CA LAW REV. COMM'N

FEB 06 1987

RECEIVED

February 1, 1987

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Re: Probate Law and Procedure - Inventory & Appraisal

Gentlemen:

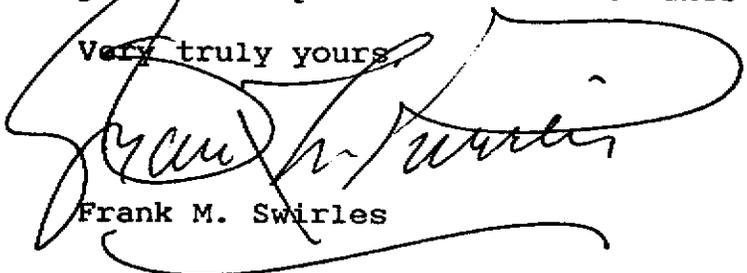
The attached copy of Attachment No. 2 from one of my recent probate cases illustrates my complaint, which I do not think you have addressed in your Tentative Recommendations of January 1987.

The issue involves items 1 and 2 which the Los Angeles Probate Court insisted be appraised by the probate referee. My petition to have these items excluded was denied.

In the case of promissory notes which the personal representative values at face value and includes interest at the specified rate until date of death, there is no need at all for the services of a probate referee. Those services are redundant and costly to the estate.

A possible solution may be that under such circumstances, such items can be considered as cash items to be appraised by the personal representative. It makes sense to me. Does it to you?

Very truly yours



Frank M. Swirles

Attachment

P.O. BOX 1490
RANCHO SANTA FE, CALIFORNIA 92067
(619) 756-2080

ATTACHMENT NO: 2

(IN DECEDENTS' ESTATES, ATTACHMENTS MUST CONFORM TO PROBATE CODE 601 REGARDING COMMUNITY AND SEPARATE PROPERTY)

PAGE. 1 . . . OF. 5 . . . TOTAL PAGES
(ADD PAGES AS REQUIRED)

Item No.	Description	Appraised value
1.	Promissory note \$280,000 face value, the whole amount unpaid, dated August 1, 1978, payable on demand, made by G. Pierre Gaspard, son of decedent, at 8% compounded annually.	\$ 280,000.00
	Accrued interest to death . . .	202,597.06
2.	Promissory note \$750,000 face value, the whole amount unpaid, dated May 1, 1984 (A replacement for note in payable on demand, the amount of \$600,000 dated May 1, 1981) made by Donald J. Gaspard, son of decedent, at 9.6% compounded annually.	750,000.00
	Accrued interest to death . . .	14,000.00
3.	Promissory Note made by Louis A. Nese and Rose M. Nese dated July 12, 1974, secured by Deed of Trust. Collection #11516434 at Highland Park Branch, Security Pacific National Bank. 8% per annum interest rate. Matures on July 22, 1989.	
	Principal outstanding at date of death	16,983.00
	Interest due at date of death	132.15
4.	Promissory Note made by Louis A. Nese and Rose M. Nese dated July 12, 1974, secured by Deed of Trust. Collection #11516569 at Highland Park Branch, Security Pacific National Bank. 8% per annum interest rate. Matures on June 22, 1989.	
	Principal outstanding at date of death	39,626.24
	Interest due at date of death	63.00

LAW OFFICES
FROST, KRUP AND ATLAS

CHARLES H. FROST
LEONARD G. KRUP
J. MARK ATLAS,
LAW CORPORATION

PROFESSIONAL BUILDING
134 WEST SYCAMORE STREET
WILLOWS, CALIFORNIA 95988

TELEPHONE (916) 934-5416

CALIFORNIA LAW REV. COMM'N

FEB 06 1987

RECEIVED

February 3, 1987

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

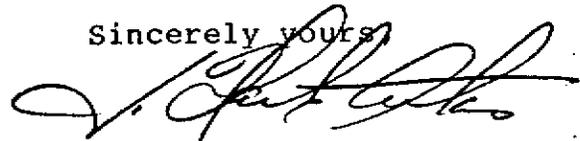
Gentlemen:

I received the tentative recommendation regarding Probate Law and Procedure with respect to inventory and appraisals.

The only major comment I have is with regard to appraisals of publicly-traded stock. While it is true that the probate referee's appraisal fees are relatively small, requiring that an estate pay the referee to establish the value of publicly-traded stock is an unnecessary expense. In reality it is no more difficult (and no less credible a measure of value) for the personal representative to obtain the closing prices of the securities on the date of death, than it is to have the probate referee do the same. In fact, in order to assist the referee and expedite her work, we have often provided this information to her.

Therefore I believe that publicly-traded securities should be included in proposed Section 8901 as assets which are to be appraised by the personal representative. Thank you for your consideration of this.

Sincerely yours,



J. MARK ATLAS

JMA:eb

WILLIAM P. WILSON
MARK J. FERRIZO
DANIEL J. WILSON
DANIEL S. LOPEZ

Wilson, Wilson & Perrizo
ATTORNEYS AT LAW
10901 PARAMOUNT BOULEVARD
Downey, California 90241

(213) 923-4513

February 5, 1987

RECEIVED
FEB 09 1987

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303

Re: Probate Law and Procedure

Gentlemen:

Thank you for sending a copy of tentative recommendations relating to inventory and appraisal for my review.

The tentative recommendations are excellent and workable. I hope they are adopted as stated.

Sincerely,

WILSON, WILSON & PERRIZO



William P. Wilson

WPW/ms

FEB 09 1987

RECEIVED

WILBUR L. COATS
ATTORNEY AND COUNSELOR AT LAW

TELEPHONE (619) 748-6512

February 5, 1987

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, Ca 94303-4739

Re: Tentative Recommendations relating
to Probate Law, Inventory & Appraisal

Gentlemen:

Having reviewed the above cited document (L-655) I am in general agreement with the tentative recommendations and do not have any suggestions that would improve on the tentative recommendations.

Thank you for the opportunity to review the proposed law.

Very truly yours,



Wilbur L. Coats

POST OFFICE BOX 158

RAWLINS COFFMAN
ATTORNEY AT LAW
RED BLUFF, CALIFORNIA 96080

TELEPHONE 527-2021
AREA CODE 916

February 5, 1987

CA LAW REV. COMM'N

FEB 09 1987

RECEIVED

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Gentlemen:

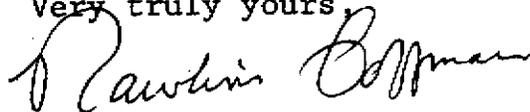
Thank you for the Tentative Recommendation #L-655 on inventory and appraisal.

I don't find anything referring to procedures for reappraisal other than the existing Section 784 of the Probate Code.

Permitting the probate referee four months in which to complete his appraisal is not good in my opinion. My thought would be he should complete his appraisal in thirty days, failing which he should give the personal representative's attorney a written statement stating the reasons for the delay, which in turn could be furnished to the attorney's client. If, after passage of ninety days, the probate referee did not complete his work, then he should apply to the court for a reasonable extension of time, and in so doing he would be required to justify the further extension of time.

Except for the foregoing comments, you have done a good job. Please keep me on your mailing list.

Very truly yours,



RAWLINS COFFMAN

RC:mb

CARR, McCLELLAN, INGERSOLL, THOMPSON & HORN

ATTORNEYS AT LAW
SECURITY PACIFIC BUILDING
216 PARK ROAD, POST OFFICE BOX 513
BURLINGAME, CALIFORNIA 94011-0513
(415) 342-9600

ROBERT R. THOMPSON	LUTHER M. CARR
ALBERT J. HORN	FRANK B. INGERSOLL, JR.
DAVID C. CARR	CYRUS J. McMILLAN
ARTHUR H. BREDENBECK	OF COUNSEL
NORMAN I. BOOK, JR.	
QUENTIN L. COOK	E. H. COSGRIFF
ROBERT A. NEBRIG	(1880-1947)
RICHARD C. BERRA	J. ED McCLELLAN
L. MICHAEL TELLEEN	(1895-1985)
LAGE E. ANDERSEN	
KEITH P. BARTEL	SAN FRANCISCO
MARK A. CASSANEGO	(415) 434-4800
LAURENCE M. MAY	
PENELOPE C. GREENBERG	PALO ALTO
KRISTI COTTON SPENCE	(415) 595-5440
ROBERT W. PAYNE	
JAMES R. COOY	TELECOPIER
PAUL M. KAWAKAMI	(415) 342-7685
MARK D. HUDAK	
DAVID M. MCKIM	
JORDAN W. CLEMENTS	
EDWARD J. WILLIG III	
KEVIN F. KOUBA	
STEPHEN M. HALL	
JORDAN G. POWERS	

CA LAW REV. COM'N

FEB 09 1987

RECEIVED

February 6, 1987

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

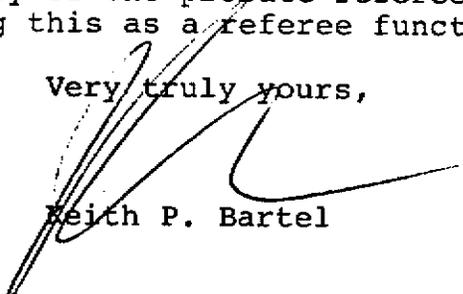
Gentlemen:

Re: Recommendation #L-655
Inventory and Appraisal

I have reviewed the CLRC's Tentative Recommendation relating to Inventory and Appraisal.

I am in agreement with your tentative recommendations, but with one exception: I believe that appraising publicly-traded stock should, as a matter of course, be the responsibility of the personal representative and his attorneys and not the responsibility of the probate referee. I find the CLRC's reasons for retaining this as a referee function to be unpersuasive.

Very truly yours,


Keith P. Bartel

KPB:sh

ROBERT K. MAIZE, JR.
A PROFESSIONAL LAW CORPORATION

1604 FOURTH STREET
POST OFFICE BOX 11648
SANTA ROSA, CALIFORNIA 95406

(707) 544-4462

February 10, 1987

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-0739

Re: Probate Law and Procedure --
Inventory and Appraisal

Gentlemen:

After reviewing your tentative recommendations dated January, 1987, I do not have any specific comments in regards to the proposals but I do have the following observation:

I am a certified tax specialist and my involvement in probate matters is primarily in regards to estate tax and income tax considerations. Because of the importance attached to the fair market value of the property at the date of death, I find that I am commonly recommending to my clients that they obtain appraisals of property independent of the appraisal prepared by the probate referee. From past experience the probate referee could provide little or no substantiation of how the value was determined when the issue was raised by the Internal Revenue Service on an audit, so that the taxpayer was forced to pay for a second, independent appraisal. Therefore, I endorse the concept of being able to have unique, unusual or special items of property appraised by a qualified independent expert. I also support a concept of clearly imposing a duty upon the probate referee to maintain his records for a specified period of time.

Very truly yours,

ROBERT K. MAIZE, JR.,
A Professional Law Corporation

by:


Robert K. Maize Jr.

RKM:jas

JEROME SAPIRO

ATTORNEY AT LAW

SUTTER PLAZA, SUITE 608

1388 SUTTER STREET

SAN FRANCISCO, CA, 94109-5416

(415) 928-1515

Feb. 11, 1987

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Re: Tentative Recommendation
Probate Law & Procedure
Inventory & Appraisal, #L-655

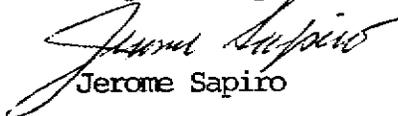
Honorable Commission:

Above-mentioned tentative recommendation is approved.

One question occurred, relating to §8904.

Why provide for review and payment of probate referee concerning appraisals by independent experts in fields in which the referee has no expertise or depth of experience?

Respectfully,


Jerome Sapiro

JS:mes

RECEIVED

LAW OFFICES OF

LEVIN, BALLIN, PLOTKIN & ZIMRING

A PROFESSIONAL CORPORATION

12650 RIVERSIDE DRIVE

NORTH HOLLYWOOD, CALIFORNIA 91607-3492

(213) 877-0683 • (818) 984-3950

WILLIAM LEVIN
HARMON R. BALLIN
JAY J. PLOTKIN
STUART D. ZIMRING
NANCY O. MARUTANI
GIG KYRIACOU
JOAN H. OTSU

OF COUNSEL
JUSTIN GRAF
MANYA BERTRAM

LEGAL ASSISTANTS
PATRICIA D. FULLERTON
PACITA A. FRANCISCO
KIRSTEN HELWEG

February 11, 1987

California Law Revision Commission
400 Middlefield Road
Suite D-2
Palo Alto, California 94303-4739

Re: Proposed Revisions to Probate Code
Sections 600-615 and 1300-1315

Dear Commission Members:

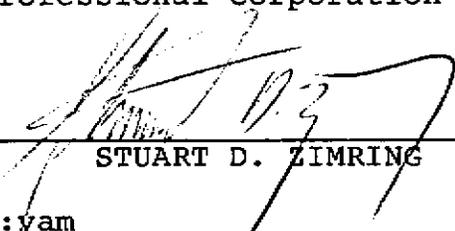
Once again, thank you for giving me the opportunity to assist the Commission. I have reviewed the proposed revisions to Probate Code Section 600-615 and 1300-1315 and I am delighted to say that I have only one substantive suggestion: I believe Section 406(a)(2) should be clarified to reinforce the illegality of a contribution to a campaign for State Controller.

Other than that I have no problems with proposed revisions, and in fact, believe the new sections contained in Chapter 3, especially as they relate to the ability of the personal representative to obtain the background information utilized by the referee are long over due.

If I can be of further assistance, feel free to contact me.

Sincerely,

LEVIN, BALLIN, PLOTKIN & ZIMRING
A Professional Corporation

By: 
STUART D. ZIMRING

SDZ:yam

WILLIAM E. FOX

ATTORNEY AT LAW

819-12TH STREET

P. O. BOX 1756

PASO ROBLES, CALIFORNIA 93447

TELEPHONE (805) 238-9571

FEB 17 1987

RECEIVED

February 13, 1987

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

RE: Objection to
Appraisal No. 8804

Gentlemen:

I would like to recommend to your Honorable Commission that the time for objecting to the Inventory and Appraisal be changed. I would recommend that the time for filing objections be thirty days after receiving a copy of the same for persons who have filed a request for Special Notice and, for those who have not filed such a request, the time be thirty days after the Inventory is filed, with a copy of the Inventory being mailed to all of the beneficiaries named in the Will.

In the metropolitan areas, the Courts on Civil matters are about five years behind on their calendars.

I assume also, that a jury trial could be demanded. This could cause a great delay in closing an estate.

Some persons could use this method of delaying the closing of an estate deliberately, so they could be paid to settle their claim.

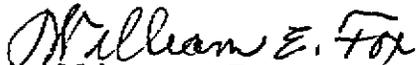
In my opinion, the reason so many Will contests are filed today is to get a substantial pay-off because of the length of time it takes to get to trial.

Determining the value of anything by experts can be very time-consuming and very costly when the matter is heard in court. In my opinion, under this Section, a person could wait until a Petition for Final Distribution is filed and then file objections to the appraisal. The Petition for Final Distribution, in all probability, would have to be placed off calendar, waiting for an adjudication on the appraisal.

California Law Revision Commission
RE: Objection to Appraisal No. 8804
Page Two
February 13, 1987

I have had considerable experience in this field for the last sixteen years and have been appearing in Court, mostly in the Los Angeles area.

Yours very truly,


William E. Fox

WEF:eg

ALBERT J. GALEN
W. MICHAEL JOHNSON
RICHARD E. LLEWELLYN II
HOWARD L. MAYO
A. STEVEN BROWN
GREGORY D. DICKINSON

LAW OFFICES
HOLLEY & GALEN
800 SOUTH FIGUEROA STREET, SUITE 1100
LOS ANGELES, CALIFORNIA 90017
(213) 629-1880

CLYDE E. HOLLEY (1891-1980)

CA LAW REV. COMM'N

FEB 17 1987

RECEIVED

February 13, 1987

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Re: Tentative Recommendation Relating to
Probate Law and Procedure: Inventory
and Appraisal, January 1987

Dear Commission Members:

We have reviewed with great interest the proposed system for inventory and appraisal as recently recommended. Although we have several criticisms, we have few solutions.

To begin with, executors often object to the fee charged by the probate referee. In those cases where a beneficiary of the estate is also acting as executor, the objection is sometimes very strenuous. The objection is understandable when the personal representative is asked to supply all of the basic information for the appraisal so that in many cases the valuation is obvious. In those cases, the representative often resents the charge of the probate referee for what appears to be for confirming the work which the representative has done. This is especially true in cases where the estate is large enough to warrant the preparation of a federal estate tax return, and the personal representative has worked diligently to establish values for that return. In many cases where the federal estate tax values arrived at by the personal representative do not agree with the values supplied by the probate referee, the personal representative is placed in an awkward situation of having to pay for a valuation which he does not agree with, and which might be used against him at the time of audit of the federal estate tax return.

Second, in those cases where the assets are difficult to value, the probate referee typically asks that an appraisal be obtained for the referee to use in his or her valuation. This is extremely difficult for the attorney to explain to the client, and even though there is justification for the offset of the appraisal fee from the referee's fee, it raises the

California Law Revision Commission
February 13, 1987
Page 2

question in the personal representative's mind as to exactly what the responsibility is for the probate referee. The newly proposed waiver of the use of the probate referee and election to proceed with an expert appraisal should alleviate both of these problems.

Third, the provisions for enforcement of the probate referee's obligation to return the inventory within the stated time frame are not likely to work for the same reason that prior enforcement sections have not worked. In virtually every inventory filed, there can be some asset which the referee could allege required further information from the personal representative before the valuation could be completed. In some cases the referees have requested further information which is outside the realm of realistic information necessary for the appraisal. At the times those requests were made, we were aware that the offices of those probate referees were swamped with other work. In some cases, the assistants to these referees worked in one office for several referees. We have been given the impression that the referees delegate much of the valuation responsibilities to these assistants. In certain cases where legitimate, important disputes existed as to the method of valuation for particular assets, we have personally written and called the referees in an attempt to discuss the method of valuation. In most cases, we have had to rely on written correspondence because we have been unable to contact the referees personally by telephone. In most cases, the calls are returned by their assistants who relay the messages or who "promise" us that our correspondence will be reviewed personally by the referee.

In summary, we agree with the complaints of many of the personal representatives we have represented. The probate referee system does not work well, and in many cases it insults the intelligence of the people working diligently to perform their functions relating to the court system. In certain cases where the personal representatives are not sophisticated, the probate referee does serve a legitimate function.

The best system would appear to be one which would permit not only the elective use of the referee as to the inventory, but the elective use of the referee as to selected assets in the estate. The criticism which you have posed of such a selective system is that it would present an economic hardship on the referees who need a broader base for their

California Law Revision Commission
February 13, 1987
Page 3

appraisals in order for their set fees to cover all of their costs. We propose that instead the probate referee be given the opportunity to refuse to value certain assets, in which case the personal representative would then be forced to go to private expert appraisal, which is what happens now where the referee requests professional appraisal of certain assets.

We do not think the benefits of the probate referee system are so great that it should be preserved at all costs. Individuals concerned with income tax basis information and valuations under federal estate tax returns have reason enough to seek out the true valuation of the assets with which they are charged. Furthermore, the private sector appears to be very good at determining the fair market value of most assets and in those cases where the valuation is difficult, experts are currently needed even under the present probate referee system. In smaller estates or in cases where the representative is unsophisticated, the use of a probate referee could be elective in whole or in part.

In closing, we greatly appreciate the job which the California Law Revision Commission performs. We hope that your efforts to obtain comments from the probate and trust bar will be successful. It is difficult sometimes to devote the time necessary to respond to the proposed changes in the law, especially for smaller firms such as ours. Nevertheless, the bar should feel privileged to be a part of the formulation of this type of law for the State of California. Unless sensible and respectable laws are enacted in our state, compliance cannot be expected from the populace.

Once again, our sincerest best wishes and thanks for your efforts in these regards.

Very truly yours,



Richard E. Llewellyn II



A. Steven Brown
of
HOLLEY & GALEN

RE1:jgp

BYRON I. PESIN, J.D.

ATTORNEY AT LAW
777 EAST TAHQUITZ-MCCALLUM, SUITE 200
PALM SPRINGS, CALIFORNIA 92262

Telephone (619) 323-4833

CA LAW REV COMM'N

FEB 17 1987

RECEIVED

February 10, 1987

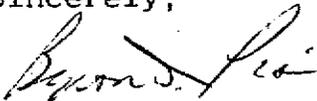
California Law Revision
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Dear Commission Members:

I have received and examined the "Tentative Recommendation Relating to Probate Law and Procedure - Inventory and Appraisal".

I approve this tentative recommendation, but suggest that stocks and/or bonds listed on major exchanges should be appraised by the representative using the closing prices of such stocks and/or bonds as of the date of death. When death occurs on a date when such exchange is closed, then the closing price of such stock and/or bond on the last preceding date should be used.

Sincerely,



BYRON I. PESIN, JD

BIP:rs
(D9/B11)

FEB 20 1987

RECEIVED

Law Offices of
RODNEY ALAN BAKER, INC.

281 EAST WORKMAN STREET, SUITE 102
COVINA, CALIFORNIA 91723
TELEPHONE (818) 331-7241

February 17, 1987

FILE _____

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

**Re: Tentative Recommendations relating to
Probate Law and Procedure**

Dear Committee,

I have reviewed the proposed changes relative to the appraisal and referee process, and endorse the Committee's recommendations. I think it would be a vast improvement over the present situation, and put to rest some of our grumblings we have experienced with the referee process.

Accordingly, I would endorse the suggestions fully.

Very truly yours,



RODNEY ALAN BAKER

RAB:jmg

LAW OFFICES OF
VAUGHAN, PAUL & LYONS
1418 MILLS TOWER
220 BUSH STREET
SAN FRANCISCO 94104
(415) 392-1423

TO THE REV. C. ...
FEB 20 1987
RECEIVED

February 19, 1987

California Law Revision Commission
4000 Middlefield Rd., Suite D-2
Palo Alto, CA 94303-4739

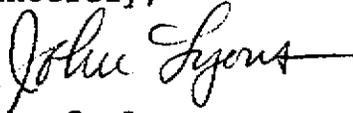
Re: Study #L-655
Probate Law and Procedure
(Inventory and Appraisal)

Gentlemen:

Thank you for sending me the above study.

I am in accord with the recommendations, and
feel sure they will be very helpful, if adopted.

Sincerely,


John G. Lyons

JGL:emr

CA LAW REV. (1987)

FEB 20 1987

RECEIVED

REAM, TRAIN & ROSKOPH
 A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
 ATTORNEYS AT LAW
 755 PAGE MILL ROAD
 SUITE 8-100
 PALO ALTO, CALIFORNIA 94304
 TELEPHONE (415) 494-7133
 TELECOPIER (415) 494-0774

*A PROFESSIONAL CORPORATION

OUR FILE NUMBER

February 19, 1987

ROBERT L. BOUCHIER*
 JAMES R. BUSSELLE
 CHRISTOPHER REAM*
 PAUL H. ROSKOPH*
 BRUCE TRAIN
 GAIL E. SUNIGA
 ELIZABETH ROTH
 CYNTHIA CALDEIRA
 THOMAS E. MOORE III
 DANIEL ALEXANDER
 VIRGINIA R. COLES
 GORDON N. HANSON

California Law Revision Commission
 4000 Middlefield Road, Suite D-2
 Palo Alto, CA 94303-4739

Re: **Revisions to Probate Code
 Inventory and Appraisalment**

Gentlemen:

We have reviewed the Commission's tentative recommendations with respect to revision of the Probate Code dealing with Probate Referees and the Inventory and Appraisalment. The proposed revisions generally address our experience — good and bad — with this aspect of estate administrations. There are still some areas of concern to us, however, which we offer for your review and consideration.

Real Property

It may be less expensive to have the Referee appraise real property rather than obtaining an independent MAI appraisal, although appraisals of residential property are often accomplished at a fixed, reasonable cost. We have had situations where the personal representative obtained an appraisal from a real estate agent "as a courtesy" or at a reduced cost. Would this be a situation where we could request waiver of Referee for "just cause?"

Publicly Traded Stock

The Commission's recommendation states, "Although it appears that the personal representative rather than the probate referee might properly appraise such assets, the Commission does not recommend that this be done..." (see pp. 3 - 4) The Commission refers to "inexperienced persons" inaccurately valuing the stock. Our suggestion would be to allow a written statement from a broker as to the values on any given date. We have used this procedure in numerous Section 650 confirmations with prompt, accurate valuations provided to us. Many securities brokerage firms have programs available to personal representatives and attorneys. For example, Dean Witter Reynolds has a program entitled Estate Security Valuation whereby Dean Witter will prepare valuations for a set fee of \$2.00 per security plus an initial set-up fee of \$20.00.

Again, we would suggest that this situation could come under the heading of "just cause" to allow a waiver of Referee.

Unique, Unusual or Special Item of Personal Property

No mention has been made of specific items of personal property such as items with an "artistic" value or items such as silver, antiques, etc. It has been our experience that the Referee has requested the personal representative (through us as the attorneys) to obtain an appraisal of silver dollars (for example) from a coin dealer and then submit that appraisal to the Referee. We are not certain how most Referees handle these items but would suggest that since they are not experts, they should not be making this type of valuation. What is the Commission's conception of "unique, unusual or special" items of personal property?

Independent Appraisals Reviewed by Referee

Under Section 8904 (p. 27), we feel that once an independent expert has appraised an item and signed an oath as to its veracity, a Referee does not need to review it and certainly does not need to be paid a fee, albeit a reduced fee, to look it over. Our suggestion would be to give the Court the discretion to review any appraisals by independent experts. This function is now being handled by the Probate Examiner's office although, again, they are not in a position as experts to value these articles.

Miscellaneous Revisions

A good addition to the code is enabling the personal representative to select a Referee. We have worked with some very efficient Referees and have had the unfortunate and frustrating experiences of working with some not-so-efficient Referees.

The time in which a personal representative must file the Inventory is extended from three months to four months which is more realistic in view of the time needed to gather information, especially in the larger, more complex estates.

Our major concern is the omission of Probate Code Section 605 (a) (2) (A). We have relied upon this provision in every Section 650 proceeding we have handled, i.e., appraisals on interspousal transfers which are not done by a Referee. It appears that the new Section 8902 (see pp. 25 - 26) deletes this authority. We strongly urge inserting specific reference to interspousal transfers with a choice of using a Referee or using alternative appraisal methods such as independent appraisals.

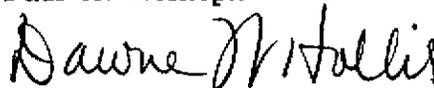
California Law Revision Commission
February 19, 1987
Page Three

We appreciate the time and effort which the Commission expends in reviewing and recommending revisions to better serve the public (personal representatives, beneficiaries, creditors alike). We commend you for your work and thank you for the opportunity to make suggestions and voice our experiences and ideas.

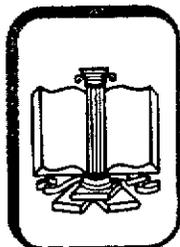
Very truly yours,



Paul H. Roskoph



Dawne W. Hollis
Legal Assistant



McGEORGE SCHOOL OF LAW

UNIVERSITY OF THE PACIFIC 3200 Fifth Avenue, Sacramento, California 95817

February 18, 1987

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Attention: John H. DeMouilly
Executive Secretary

Re: Tentative Recommendation of January 1987 Proposed Probate
Sections 8870 and 8871

Dear Mr. DeMouilly:

Proposed section 8870 provides the machinery for requiring a person to appear personally before the court to be examined under oath.

Proposed section 8871 talks about "interrogatories and answers shall be in writing."

Very truly yours,


BENJAMIN D. FRANTZ
Professor of Law

BDF:bk

LAW OFFICE
ATKINSON & ATKINSONGEORGE E. ATKINSON, JR.
GEORGE E. ATKINSON, III16288 SOUTH PARAMOUNT BOULEVARD
PARAMOUNT, CALIFORNIA 90723
(213) 633-1323
LOS ANGELES (213) 636-3596

February 18, 1987.

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739.RE: Tentative Recommendation Relating
to Probate Law and Procedure
Inventory and Appraisement

Gentlemen:

I have received and reviewed your recommendations concerning the above referenced matter and wish to advise you that I approve of the changes recommended.

I note, however, that your proposed revisions do not deal with or encompass the fees of the Referees in connection with the re-appraisals for sale purposes required when the real property is not sold within one year from the date of the decedent's death. It has been my experience that when a sale is made after the expiration of the one year period and a request for a re-appraisal is made, the Referee usually uses the sales price for the re-appraisal figure and charges the usual 1/10th of 1% of the value of the real property. I believe that since the Referee does no more than merely insert the sales price figure and sign his or her name to the appraisal that a reduced fee should be charged by the Referee for this particular service.

I hope this will be considered and the problem remedied.

Very truly yours,



GEORGE E. ATKINSON, JR.

GEA:aj

REIFMAN, ALTMAN & SHERMAN

A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

11601 WILSHIRE BOULEVARD, SUITE 1830

LOS ANGELES, CALIFORNIA 90025

February 18, 1987

OF COUNSEL

BARBARA J. BAILEY

IRVING REIFMAN
JEFFREY A. ALTMAN
JEROLD S. SHERMAN*
IRIS C. WOLINSKY

*A PROFESSIONAL LAW CORPORATION

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
4000 Middlefield Road
Suite D-2
Palo Alto, CA 94303-4739

Dear Mr. DeMouilly:

As you may know, I am a California Probate Referee and have participated in a number of Public hearings of the Law Revision Commission regarding the Probate Referees, as well as in other portions of your study of the Referee system, and I was present at your recent meeting in Los Angeles, where the tentative recommendations were discussed and adopted.

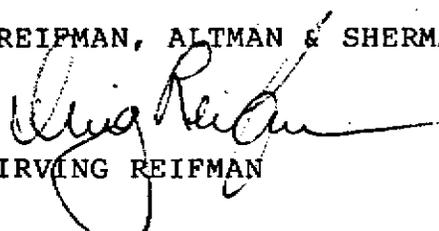
Although I did not comment on section 8922 at the time, I have recently had occasion to review the section again in preparing for a recent speech I gave to the Beverly Hills Bar Probate Trust and State Planning Section. After preparing for that speech and discussing the section with several attorneys, I would respectfully suggest that the section may be legally vague, or at least legally insufficient to sustain action which might be taken under it.

Certainly the purpose of the section is understandable and it would seem that some of the grounds that are discussed in the comment should be incorporated into the body of the section so that if a court does act under this section, the exercise of discretion can be more clearly shown to be within the legislative intent and not merely be supported by the general language of the comment. My comments herein are written as a private attorney and do not reflect any position of the Probate Referee's Association or of any individual Probate Referee other than myself.

Should you or any member of your staff or the commission have any further question or comment regarding my thinking on this subject, please do not hesitate to contact me. Finally, let me add that I appreciate all of your fine and fair work on the subject of Probate Referees.

Very truly yours,

REIFMAN, ALTMAN & SHERMAN


IRVING REIFMAN



Writer's Direct Dial Number

(714) 834-6333

OFFICES OF

THE COUNTY COUNSEL
COUNTY OF ORANGE

10 CIVIC CENTER PLAZA
MAILING ADDRESS: P.O. BOX 1379
SANTA ANA, CALIFORNIA 92702-1379

714/834-3300

ADRIAN KUYPER
COUNTY COUNSEL

WILLIAM J. McCOURT
CHIEF ASSISTANT

ARTHUR C. WAHLSTEDT, JR.
LAURENCE M. WATSON
ASSISTANTS

VICTOR T. BELLERUE	SUSAN STROM
JOHN R. GRISET	DAVID BEALES
EDWARD M. DURAN	TERRY C. ANDRUS
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BARBARA L. STOCKER	SARA L. PARKER
JAMES F. MEADE	SHARON LOWSEN
STEFEN H. WEISS	

DEPUTIES

February 20, 1987

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Ladies and Gentlemen:

Thank you for sending me the tentative recommendations regarding the Inventory and Appraisal sections of the proposed Estate and Trust Code.

My comments follow. As with my previous comments to you about the proposed Code, please note that these are my individual views. I do not write here as a representative of the Orange County Counsel, the Orange County Public Administrator/Public Guardian, or the County of Orange.

Proposed Sections 8800 and 8801: I support the proposed time extensions.

Proposed Section 8872: The substitution of "petition" for "complaint" is appropriate.

Proposed Section 8901: I support the addition of subdivisions (b) and (d). These seem clearly to be items the personal representative can appraise just as accurately and easily as a referee.

Proposed Sections 8903 and 8904: I believe the idea of the proposed law is a good one. To my knowledge, personal representatives often already use independent experts to appraise items such as jewelry and coin collections. The referees seem to rely on the experts. However, I would like to see a more efficient way to obtain the waiver, perhaps by something akin to a Notice of Proposed Action, instead of a noticed hearing.

The proposal in 8904(b) concerning referees' fees for an item appraised by an expert with appraisal subject to a referee's review should perhaps be more definitive.

Proposed Sections 8904 and 8908: I support these proposals.

California Law Revision Commission
February 20, 1987
Page Two

Proposed Section 8921: This will solve a potential problem, and I support it.

Proposed Section 8940: I would like to see the time limit a little less than ninety days. Your background comments point out that fifteen days is the norm. A time allowance six times longer than the norm seems too much.

Proposed Section 8960: I believe the new provisions (b) and (c) are both quite important and should be enacted into law.

Please note that I have mentioned here only the proposals I find of particular interest. Failure to mention a particular proposal does not indicate either support or opposition.

I look forward to receiving your further recommendations.

Very truly yours,



Howard Serbin
Deputy County Counsel
Orange County

HS:mm

cc: Carol Gandy, Assistant Public Administrator/Guardian
Linda C. Martinez, Chief Deputy Public Guardian
Dwight G. Tipping, Jr., Supv. Deputy Public Administrator
Laurence M. Watson, Assistant County Counsel
James F. Meade, Deputy County Counsel
Nicholas S. Chrisos, Deputy County Counsel

SHOWLEY & THOMPSONLON D. SHOWLEY
KENT C. THOMPSONATTORNEYS AT LAW
CALIFORNIA FIRST BANK BUILDING
530 "B" STREET, SUITE 2333
SAN DIEGO, CALIFORNIA 92101AREA CODE 619
TELEPHONE 231-7922

February 20, 1987

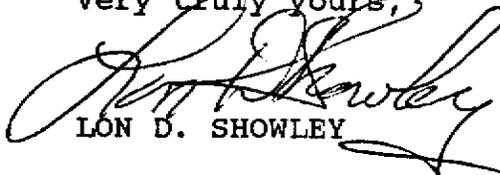
California Law Revision Commission
4000 Middlefield Road, Ste. D-2
Palo Alto, California 94303-4739Re: Tentative Recommendation
Inventory and Appraisal

Dear Sirs:

I have reviewed the Law Revisions Commission's tentative recommendation relating to probate law and procedure pertaining to proposed changes in inventory and appraisement and I am wholeheartedly in favor with the proposed changes. I have been for the most part quite pleased with the probate referee appraisal system that I have experienced over the last fifteen (15) years here in San Diego, but I totally concur that there are instances where their professional expertise is not mandated as pointed out by your recommendation. Certainly it would be advantageous if the personal representative can easily pick and choose and select which assets are to be appraised by the referee and which assets are to be appraised by the personal representative without going through Court approved procedure. This may however not be expedient in the greater scope of things and is certainly an inconvenience that one could live with.

Again, I express my concurrence with the proposed revisions, and thank you for the opportunity of reviewing the tentative recommendation.

Very truly yours,


LON D. SHOWLEY

LDS/del

NORTHERN CALIFORNIA CHAPTER NO. 11

AMERICAN INSTITUTE OF REAL ESTATE APPRAISERS

OF THE

NATIONAL ASSOCIATION OF REALTORS

400 MONTGOMERY STREET, SUITE 301, SAN FRANCISCO, CALIFORNIA 94104

TELEPHONE 415-398-2876



1987 OFFICERS

CHARLES E. SEWING, MAI

*President*420 MONTGOMERY STREET, MAC 0101-078 (AU 10)
SAN FRANCISCO, CA 94163
415/396-7252

HECTOR R. LESLIE, MAI

*Vice President*116 NEW MONTGOMERY, SUITE 615
SAN FRANCISCO, CA 94105
415/986-3454

2001 SALVIO, SUITE 16

CONCORD, CA 94502

415/671-2793

BRUCE R. WILLMETTE, MAI

*Treasurer*2027 GRAND CANAL BOULEVARD, SUITE 33
STOCKTON, CA 95207
209/478-9204

JAMES B. O'BRIEN, MAI

*Secretary*380 DIABLO ROAD, SUITE 201
DANVILLE, CA 94526
415/838-9799

KATHERINE A. ENANDER

Executive Secretary

February 20, 1987

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

RE: Tentative Recommendation (January, 1987)
Probate Law and Procedure
Inventory and Appraisal

To the Commission:

The Northern California Chapter of the American Institute of Real Estate Appraisers, by action of its Board of Directors taken on February 19, 1987, presents the following comments on the Commission's above-referenced Tentative Recommendation, for the Commission's consideration. These comments should not be construed to represent the position of the Institute, other Chapters in or out of California, or of the Institute's individual members. Further, it should be noted that the Chapter has some members who are probate referees and some who are not.

1) Overall, the Chapter has some concern whether the changing relevance of the probate referee function has been addressed adequately. However, it does appear (from the questionnaire responses received by the Commission) that this concern is not shared by the probate bar.

2) The Chapter is disturbed to see the phrase "high quality service" used on page 3, line 12, to describe the opinion of most Judges and practitioners of the ordinary service of probate referees. We respectfully dissent; we believe the ordinary service of probate referees in valuation issues may well be useful. However, by any standard of comparison to the wider valuation/appraisal community, the service of probate referees would better be described by the phrase "reasonable quality",

rather than by the phrase "high quality". This issue can easily be clarified by comparing the appraisal process of referees with any of the published standards of appraisal practice, whether those of the Federal National Mortgage Association, Federal Home Loan Bank Board, the proposed Uniform Appraisal Standards recently adopted by nearly all major appraisal groups, or those set forth in the recently adopted California Certified Appraisal Law.

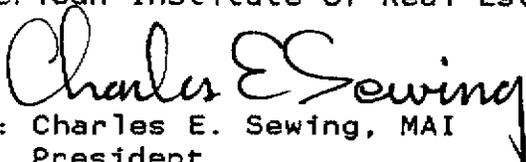
3) The Chapter recommends that the proposed code change described in the first paragraph of page 5 be expanded, to include either tangible personal property or real property interests of the type described. It is the Chapter's opinion that there are real property interests that are as unique, unusual or special, from a valuation perspective, as any tangible personal property. We are unable to see any logic to limit the waiver to just one of the two.

4) The Chapter recommends the adoption of standards of practice for inheritance referees. There is a major move to establish clearer and more comprehensive standards of practice throughout the appraisal occupation, in response to documented abuses. It is our opinion that such action is desirable here, and should be provided for in this revision.

Thank you for this opportunity to comment on your Tentative Recommendation. We would appreciate receiving a copy of any future material released by the Commission relative to this topic.

Very sincerely,

Northern California Chapter
American Institute of Real Estate Appraisers



by: Charles E. Sewing, MAI
President

cc: Officers
Regional V.P.



California Appraisers' Council

February 21, 1987

California Law Revision Commission
Attn: Nathaniel Sterling
Asst. Executive Secretary
4000 Middlefield Road
Palo Alto, CA 94303-4739

Re: Tentative Recommendation
Probate Law and Procedure
Inventory and Appraisal

Dear Mr. Sterling:

Thank you for sending us a copy of the tentative recommendation for our review and commentary. We appreciate the opportunity to provide constructive input to this important undertaking of the Commission.

In earlier commentary, we have cited the concerns of the California Appraisers' Council with respect to Probate Law and Procedure. We observe that some of those concerns have been addressed in the Tentative Recommendation.

There remain two areas where we believe significant improvements to the Probate Referees' activities can be accomplished. These areas are addressed in the attached commentary pages.

We appreciate this opportunity to contribute to the improvement of probate law and procedure. It is our objective to provide suggestions which will result in improved cost effectiveness and reliability for users of the valuations associated with probate. The heirs and the public should receive full value for the costs associated with the probate procedures and we feel that adoption of the changes suggested would result in achieving of that goal.

Sincerely,

W. David Snook, A.S.A.
Senior Vice President
California Appraisers' Council
2624 Berry Drive
Fairfield, CA 94533
(707) 422-6333

cc: Frank Virtue, President
California Appraisers' Council

CALIFORNIA APPRAISERS' COUNCIL RECOMMENDATION NO. 1

"Section 404. Standards for Probate Referee"

General: The code provides that "(a) The Controller may establish and amend standards of training, performance, and ethics of probate referees. The standards are a public record."

The function of a probate referee is that of an appraiser for the court in regard to the assets of an estate under probate. The standards which are established are developed to address the needs of the probate law and procedure.

Problem: The public and court perception of the probate referee is as an appraiser. Given the very close relationship between the probate referee, the personal representative and the court, and the basis of the "commission" paid to the probate referee, there is clearly a need to establish standards which will assure that sound appraisal procedures are followed and that the probate referee (appraiser) can conduct an independent and objective appraisal. The probate referee must be held accountable to a set of standards that are apart from the objectives of the "client" (this allows the probate referee to objectively value the property without influence by the heirs or any other party). Concurrently, as the probate referee is viewed as an appraiser (by the public and the court), the standards which are applied to the conduct of the valuation of property in an estate must be the same standards which apply to all appraisal work.

Without consistent standards, the public could well perceive that the valuation by a probate referee is not an independent valuation but rather could be an artificial value, the consequence of directives by the personal representative, an heir or some other influence; what amounts to a "directed valuation". Without such standards, the probate referee has little alternative but to comply with the directives of the personal representative.

Suggested Amendment: The Ad-Hoc Committee on Professional Appraisal Standards (representing eight professional appraisal organizations; the American Institute of Real Estate Appraisers, Appraisal Institute of Canada, American Society of Appraisers, International Association of Assessing Officers, International Right of Way Association, National Association of Independent Fee Appraisers, National Society of Real Estate Appraisers, Society of Farm Managers and Rural Appraisers and the Society of Real Estate Appraisers) has developed uniform appraisal standards for virtually every type of property. Two of the standards were completed in 1986 and have been adopted by the major appraisal organizations in the United States. The eight remaining standards (which address Review Appraisals, Real Estate Analysis, Mass Appraisal, Personal Property & Machinery/Equipment and Business Valuation) were recently completed and are in the process of adoption. Enclosed is a copy of the first two standards (Standard 1: Developing a Real Estate Appraisal and Standard 2: Reporting the Results of a Real Estate Appraisal).

CALIFORNIA APPRAISERS' COUNCIL RECOMMENDATION NO. 1

"Section 404. Standards for Probate Referee

Page 2.

Suggested Amendment (continued):

Copies of the eight remaining standards will be available as soon as they are adopted. Adoption is expected in 1987 as the various organizations have their annual meetings.

The body of Uniform Appraisal Standards are to serve the consumers of appraisal services and the appraisal community in the same fashion as the accounting standards of the Financial Accounting Standards Board serve the public. While being minimum standards, the Uniform Appraisal Standards do provide a standard of reference to which the public, the client and the appraiser can refer when considering the reliability, objectivity and adequacy of an appraisal.

On page three of the commission comments on the tentative recommendation relating to inventory and appraisal, in the second paragraph, it is stated that "Most judges and practitioners think the referee provides a useful and ordinarily high quality service at modest cost....". For such a judgement to be valid we believe that the standards of reference must be the standards which the appraisal community has adopted. Without such independent standards, a qualitative rating (such as high, low, adequate, inadequate, etc.) have no meaning. The same condition exists in relation to the cost. Compliance with Uniform Appraisal Standards would provide a basis for the comparison of cost. The cost of compliance with a set of standards that do not result in reliable and objective appraisal results can hardly be termed "modest".

We recommend that Section 404 (a) be amended as follows:

"(a) The State Controller shall establish and amend standards of training, performance, and ethics of probate referees. Such standards, as they relate to the appraisal process and content for appraisal of Real Estate, Personal Property/Machinery & Equipment or Business Valuation, shall be, at a minimum, the Uniform Appraisal Standards adopted by the majority of the membership organizations which form the Ad-Hoc Committee on Professional Appraisal Standards. The standards are a public record."

CALIFORNIA APPRAISERS' COUNCIL RECOMMENDATION NO. 2

"Section 8904. Appraisal by independent expert

General: The code provides that "(a) A unique, or special item of tangible personal property may, at the election of the personal representative, be appraised by an independent expert qualified to appraise the item."

Problem: By omission, there is the implication that the personal representative shall include in the inventory for appraisal all other property not otherwise exempt from appraisal. The variety of experience and capability of probate referees is very broad. While some are well qualified to appraise unique or special types of property, either tangible or intangible, many are not. A prudent probate referee would engage an independent expert qualified to appraise any property that the probate referee is not qualified to appraise. This event leads to a surcharge to the estate for the services of the probate referee in addition to the cost of the independent experts services. Such redundancy is unnecessary.

Suggested Amendment: We recommend that Section 8904 (a) be amended as follows:

"(a) A unique, or special item of property may, at the election of the personal representative, be appraised by an independent expert qualified to appraise the property. The probate referee is to be advised by the personal representative as to the nature of the property in the inventory to be appraised and the probate referee shall declare such property that, in the judgement of the probate referee, is beyond the capacity of the probate referee to personally appraise. Such declaration shall be made a part of the petition for waiver described in Section 8903 (b). Property in the inventory not declared as beyond the scope of the probate referee shall be appraised by the probate referee in conformance with the standards for appraisal set forth pursuant to Section 404."

AD HOC COMMITTEE

on

UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE
Chicago, Illinois
May 5, 1986

To Our Respective Organizations:

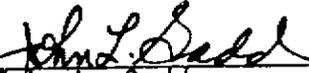
The undersigned constitute the Ad Hoc Committee on Uniform Standards of Professional Appraisal Practice. The attached document is the initial stage in finished form of our work product. We recommend immediate adoption by each organization either as a re-stated Standards of Professional Practice document or as an adjunct to the existing Standards of Professional Practice document.

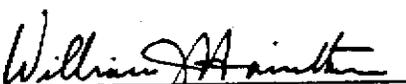
The attached document addresses real property valuation practice and is forwarded for adoption at this time as a common response to the recent concerns of users of such appraisal services and the public. Adoption includes a commitment to further development of Standards addressing other areas of appraisal practice. The document is an evolution of the existing standards within each of our organizations and is consistent with what we have required of members.

We stand in concert and are ready to discuss and defend the development of the document with the appropriate committees, boards, and/or councils of our organizations.

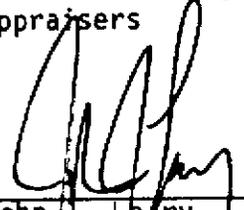

Harold N. Butler
Appraisal Institute of
Canada

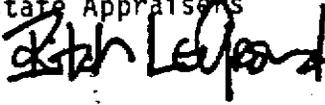

Joe S. Durant
American Society of
Farm Managers & Rural
Appraisers


John L. Gadd
American Society of
Appraisers

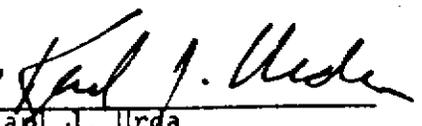

William J. Hamilton
National Society of Real
Estate Appraisers


Carroll W. Keck
International Right of
Way Association


John J. Leary
American Institute of
Real Estate Appraisers


Ritch LeGrand
Society of Real Estate
Appraisers


Ian W. McClung
International
Association of
Assessing Officers


Karl J. Urda
National Association of
Independent Fee Appraisers

**UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE
PREAMBLE**

It is essential that a professional appraiser arrive at and communicate his or her analyses, opinions, and advice in a manner that will be meaningful to the client and will not be misleading in the marketplace. The intent of these Uniform Standards of Professional Appraisal Practice is to assist appraisers in arriving at and communicating their analyses, opinions, and advice; to assist the appraisal profession in establishing appropriate standards; and to make the users of appraisal services and the public aware of these standards. These standards reflect the current standards of the appraisal profession. Appraisers who desire to maintain the highest level of professional practice will observe these standards.

These standards deal with the procedures to be followed in developing an appraisal, analysis, or opinion and the manner in which an appraisal, analysis, or opinion is communicated. Standard 1 relates to the development of a real estate appraisal. Standard 2 relates to the communication of a real estate appraisal. These standards contain binding requirements, as well as specific appraisal guidelines and specific reporting guidelines from which departures are permitted only if the appraiser complies with the rules in these standards that govern and limit such departures.

These standards recognize that appraisers perform functions other than individual real property valuation. The intent is to further develop these standards to cover other areas of appraisal practice such as mass appraisal for ad valorem tax purposes, review appraising, personal property appraising, and various analytical functions.

JURISDICTIONAL EXCEPTIONS

If any part of these standards is contrary to the law or public policy of any jurisdiction, only that part shall be void and of no force or effect in that jurisdiction.

DEFINITIONS

For the purpose of these standards, the following definitions apply:

APPRAISAL: the act or process of estimating value.

APPRAISAL REPORT: any communication, written or oral, of an appraisal; the document that is transmitted to the client upon completion of an appraisal assignment.

CLIENT: any party for whom an appraiser performs a service.

REAL ESTATE: an identified parcel or tract of land, including improvements, if any.

REAL PROPERTY: the interests, benefits, and rights inherent in the ownership of real estate.

STANDARD 1

In developing a real estate appraisal, an appraiser must be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal.

STANDARDS RULES RELATING TO STANDARD 1

S.R. 1-1

In developing a real estate appraisal, an appraiser must:

- (a) be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal;**
- (b) not commit a substantial error of omission or commission that significantly affects an appraisal;**
- (c) not render appraisal services in a careless or negligent manner, such as a series of errors that, considered individually, may not significantly affect the results of an appraisal, but which, when considered in the aggregate, would be misleading.**

S.R. 1-2

In developing a real estate appraisal, an appraiser must observe the following specific appraisal guidelines:

- (a) adequately identify the real estate, identify the real property interest under consideration, define the purpose and intended use of the appraisal, consider the scope of the appraisal, describe any special limiting conditions, and identify the effective date of the appraisal;**

- (b) define the value being considered;**

if the value to be estimated is market value, the appraiser must clearly indicate whether the estimate is the most probable price:

- (i) in terms of cash; or**
 - (ii) in terms of financial arrangements equivalent to cash;**
- or**

(iii) in such other terms as may be precisely defined;

if an estimate of value is based on submarket financing or financing with unusual conditions or incentives, the terms of such financing must be clearly set forth, their contributions to or negative influence on value must be described and estimated, and the market data supporting the valuation estimate must be described and explained;

- (c) consider easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances, or other items of a similar nature;
- (d) consider whether an appraised fractional interest, physical segment, or partial holding contributes pro rata to the value of the whole;
- (e) identify any personal property, fixtures or intangible items that are not real property but are included in the appraisal.

S.R. 1-3

In developing a real estate appraisal, an appraiser must observe the following specific appraisal guidelines:

- (a) consider the effect on use and value of the following factors: existing land use regulations, reasonably probable modifications of such land use regulations, economic demand, the physical adaptability of the property, neighborhood trends, and the highest and best use of the property;
- (b) recognize that land is appraised as though vacant and available for development to its highest and best use and that the appraisal of improvements is based on their actual contribution to the site.

S.R. 1-4

In developing a real estate appraisal, an appraiser must observe the following specific appraisal guidelines when applicable:

- (a) value the site by an appropriate appraisal method or technique;
- (b) collect, verify, analyze, and reconcile:

- (i) such comparable cost data as are available to estimate the cost new of the improvements (if any);
- (ii) such comparable data as are available to estimate the difference between cost new and the present worth of the improvements (accrued depreciation);
- (iii) such comparable sales data, adequately identified and described, as are available to indicate a value conclusion;
- (iv) such comparable rental data as are available to estimate the market rental of the property being appraised;
- (v) such comparable operating expense data as are available to estimate the operating expenses of the property being appraised;
- (vi) such comparable data as are available to estimate rates of capitalization and/or rates of discount.

No pertinent information shall be withheld.

- (c) base projections of future rent and expenses on reasonably clear and appropriate evidence;
- (d) when estimating the value of a leased fee estate or a leasehold estate, consider and analyze the effect on value, if any, of the terms and conditions of the lease;
- (e) consider and analyze the effect on value, if any, of the assemblage of the various estates or component parts of a property and refrain from estimating the value of the whole solely by adding together the individual values of the various estates or component parts;
- (f) consider and analyze the effect on value, if any, of anticipated public or private improvements, located on or off the site, to the extent that market actions reflect such anticipated improvements as of the effective appraisal date;
- (g) identify and consider the appropriate procedures and market information required to perform the appraisal, including all physical, functional, and external market factors as they may affect the appraisal;
- (h) appraise proposed improvements only after examining and having available for future examination:
 - (i) plans, specifications, or other documentation sufficient to identify the scope and character of the proposed improvements;
 - (ii) evidence indicating the probable time of completion of the proposed improvements; and

- (iii) reasonably clear and appropriate evidence supporting development costs, anticipated earnings, occupancy projections, and the anticipated competition at the time of completion.

S.R. 1-5

In developing a real estate appraisal, an appraiser must:

- (a) consider and analyze any current Agreement of Sale, option, or listing of the property being appraised, if such information is available to the appraiser in the normal course of business;
- (b) consider and analyze any prior sales of the property being appraised that occurred within the following time periods:
 - (i) one year for one-to-four-family residential property; and
 - (ii) three years for all other property types;
- (c) consider the quality and quantity of data available and analyzed within the approaches used, and the applicability or suitability of the approaches used in the final reconciliation.

COMPETENCY PROVISION RELATING TO STANDARD 1

Prior to entering into an agreement to perform a real estate appraisal, an appraiser must carefully consider the knowledge and experience that will be required to complete the appraisal competently and either:

1. have the knowledge and experience necessary to complete the appraisal competently, or
2. immediately disclose the lack of knowledge or experience to the client, and take all steps necessary or appropriate to complete the appraisal competently.

DEPARTURE PROVISION RELATING TO STANDARD 1

An appraiser may enter into an agreement to perform a real estate appraisal that calls for something less than, or different from, the work that would otherwise be required by the specific appraisal guidelines, provided that prior to entering into such agreement,

1. the appraiser has determined that the appraisal to be performed is not so limited in scope that the resulting appraisal concerning real estate would tend to mislead or confuse the client, the users of the appraisal report, or the public; and
2. the appraiser has advised the client that the appraisal assignment calls for something less than, or different from, the work required by the specific appraisal guidelines, and therefore the appraisal report will include a qualification that reflects the limited or differing scope of the appraisal.

In this context, exceptions to Standards Rules 1-1 and 1-5 are not permitted.

STANDARD 2

In reporting the results of a real estate appraisal, an appraiser must communicate each analysis, opinion, and conclusion in a manner that is not misleading.

STANDARDS RULES RELATING TO STANDARD 2

S.R. 2-1

Each written or oral appraisal report must:

- (a) clearly and accurately set forth the appraisal in a manner that will not be misleading;**
- (b) contain sufficient information to enable the person(s) who receive or rely on the report to understand it properly;**
- (c) clearly and accurately disclose any extraordinary assumption or limiting condition that directly affects the appraisal and indicate its impact on value.**

S.R. 2-2

Each written appraisal report must comply with the following specific reporting guidelines:

- (a) identify and describe the real estate being appraised;**
- (b) identify the real property interest being appraised;**
- (c) define the purpose of the appraisal;**
- (d) define the value to be estimated;**
- (e) set forth the effective date of the appraisal and the date of the report;**
- (f) describe the scope of the appraisal;**
- (g) set forth all assumptions and limiting conditions that affect the analyses, opinions, and conclusions;**

- (h) set forth the information considered, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions;
- (i) set forth the appraiser's opinion of the highest and best use of the real estate being appraised when such an opinion is necessary and appropriate;
- (j) explain and support the exclusion of any of the usual valuation approaches;
- (k) set forth any additional information that may be appropriate to show compliance with, or clearly identify and explain permitted departures from, the requirements of Standard 1;
- (l) include a signed certification in accordance with Standards Rule 2-3.

S.R. 2-3

Each written appraisal report must contain a certification that is similar in content to the following form:

- (a) I certify that, to the best of my knowledge and belief:
 - the statements of fact contained in this report are true and correct.
 - the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional analyses, opinions, and conclusions.
 - I have no (or the specified) present or prospective interest in the property that is the subject of this report, and I have no (or the specified) personal interest or bias with respect to the parties involved.
 - my compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in, or the use of, this report.
 - my analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
 - I have (or have not) made a personal inspection of the property that is the subject of this report. (If more than one person signs the report, this certification must clearly specify which individuals did and which individuals did not make a personal inspection of the appraised property.)

- no one provided significant professional assistance to the person signing this report. (If there are exceptions, the name of each individual providing significant professional assistance must be stated.)

S.R. 2-4

To the extent that it is both possible and appropriate, each oral appraisal report (including expert testimony) must address the substantive matters set forth in Standards Rule 2-2.

DEPARTURE PROVISION RELATING TO STANDARD 2

An appraiser may enter into an agreement that calls for an appraisal report that is something less than, or different from, the complete appraisal report that would otherwise be required by the specific reporting guidelines, provided that prior to entering into such an agreement,

1. the appraiser has determined that the resulting appraisal report would not be so limited in scope that it would tend to mislead or confuse the client, the users of the appraisal report, or the public; and
2. the appraiser has advised the client that the report to be prepared is something less than, or different from, the report required by the specific reporting guidelines and therefore the appraisal report for the service will include a qualification that reflects this fact.

In this context, an exception to Standards Rule 2-1 is not permitted. An exception to Standards Rule 2-3 is not permitted in a written report.

**Matthew Bender**

CA LAW REV. COMMISSION

FEB 25 1987

RECEIVED

Matthew Bender
& Company, Inc.
2101 Webster Street
Post Office Box 2077
Oakland, CA 94604
(415) 446-7100

February 23, 1987

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, suite D-2
Palo Alto, CA 94303-4739

Re: Studies # L-655 (Inventory and Appraisal)

Gentlemen:

Thank you for the January, 1987 versions of the tentative recommendations of the above-referenced proposal.

I agree with all the proposed provisions for inventory and appraisals and especially like new sections 8921, 8924, 8940, and 8941.

Yours very truly

Beryl A. Bertucio
Senior Legal Writer

cc George A. Meier

JAMES M. RUDDICK
ATTORNEY AT LAW
P.O. BOX 2410
630 "B" STREET
MARYSVILLE, CALIFORNIA 95901

(916) 742-8215

CALIF. LAW REV. COMM'N

FEB 25 1987

RECEIVED

February 23, 1987

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Re: Tentative Recommendation Relating to
Inventory and Appraisal

Ladies and Gentlemen:

Thank you for the opportunity to review and comment upon the tentative recommendations of the California Law Revision Commission regarding inventory and appraisal in probate matters.

Although I am a general practitioner, probate work comprises a significant part of my practice. Over the past five years or so, I have obtained a waiver (under Section 605 of the Probate Code) of appraisal by the probate referee in every case that I have handled. I have been successful in obtaining such waivers in at least four different counties and no court has even questioned my request for such waiver nor have I been required to make an appearance in connection with any petition for a waiver. Nonetheless, for reasons noted below, the necessity of filing a petition for such a waiver should be eliminated.

I believe that appraisal by probate referees is unnecessary in almost all cases and, therefore, should be purely optional. My belief is based in part on the following:

1. In my experience, probate referees are only marginally qualified to appraise assets other than listed securities and residential real estate. With respect to listed securities, it makes no sense whatever to pay a fee for an appraisal that can be obtained at no cost from most stock brokers or from the Wall Street Journal. Similarly, if an expert appraisal of residential real estate is required, a local real estate broker can provide a more persuasive (for estate tax purposes) appraisal for a fee similar to (or less than) that established for the probate referee.

2. Although in some cases, there may be other reasons to appraise assets it has been my experience that formal appraisals are most often necessary or advisable (i) to determine values for estate tax purposes, (ii) to determine the new basis for income

tax purposes or (iii) to determine the pattern of distribution of assets in certain cases. In many estate administration proceedings, because of the nature of the property or the relative simplicity of the distribution pattern, there is simply no need for a formal appraisal or, to the extent that an appraisal is required, the personal representative is capable of providing the necessary appraisal.

3. On a number of occasions, I have had probate referees advise me "you tell me what it is worth and I will accept your opinion." That is, they are willing to accept, without independent analysis, the opinion of value of the personal representative or the attorney for the personal representative. This is true with respect to both real and personal property. It most frequently occurs in the case of reappraisals for purposes of sale and, in my experience, such reappraisals are done without any real analysis of the value of the asset involved.

4. In a case which I am presently handling, the probate referee advised the personal representative that she should obtain appraisals of antiques and jewelry from a qualified independent expert and furnish those appraisals to the probate referee. Indeed, we have obtained such appraisals from qualified independent experts but we have no intention of submitting them to the probate referee so that the probate referee can charge a fee for simply adopting those values by reference.

5. In my experience, in the event of federal estate tax audits, the Internal Revenue Service agents give virtually no credence to appraisals by probate referees. For that reason, I routinely advise personal representatives to obtain, at the outset, appraisals of business property and agricultural property from qualified independent appraisers. Again, in such cases, it makes no sense to pay a probate referee to "appraise" something which the probate referee is not qualified to appraise and whose appraisal will, in any event, be disregarded.

Although contrary arguments can be made, it seems to me that the probate referee process presently in force is designed primarily to benefit probate referees and that any benefit to the persons interested in estates (or to the State in connection with estate tax determinations) is purely coincidental. It is my opinion, therefore, that formal appraisal of estate assets should be made purely optional on the conditions that (i) any estate beneficiary could request (or demand) formal appraisal during some specified period of time and (ii) the probate judge could require appraisal if he or she saw the necessity therefor. Even in those cases, it should be optional (or for court determination) whether

California Law Revision Commission
February 23, 1987
Page 3

the appraisal is obtained from the probate referee or from a qualified independent appraiser.

Thank you for your consideration of my comments.

Very truly yours,



JAMES M. RUDDICK

JMR:db

MACCARLEY, PHELPS & ROSEN

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

MARK MACCARLEY
EDWARD M. PHELPS
WALTER K. ROSEN
RUTH A. PHELPS
DEBORAH BALLINS SCHWARZ
HARLAN L. BRANSKY

3800 ALAMEDA AVENUE, SUITE 1150
BURBANK, CALIFORNIA 91505-4331

TELEPHONES
(818) 841-2900
(213) 384-1234

February 23, 1987

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Re: Comments to Tentative recommendation
relating to Probate Law & Procedure:
Inventory and Appraisal

Dear Sir/Madame:

I am writing to comment on the tentative recommendation regarding Inventory and Appraisal which you recently sent me.

First I want to compliment you on the amount of work that has been done. In reading the background, I am impressed by the survey that was taken and the attention paid to the results. I have found that the probate referees appraised fairly and with uncanny accurateness. I can understand that there may be some abuses and your recommendations appear to solve those problems. I have a few comments.

Section 8870-Subpena to Appear
and Be Examined Concerning
Decedents Property

I note that you refer to Code of Civil Procedures §1985 so I have assumed that you read that section. It allows attorneys to issue civil subpoenas. Did the commission consider allowing attorneys to do that in probate matters? I offer that as a suggestion.

Section 8923-Disqualification
of Probate Referee

I do not understand Subsection C of this code section. What is a spouse within the third

MACCARLEY, PHELPS & ROSEN
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California Law Revision Commission
February 23, 1987
Page 2

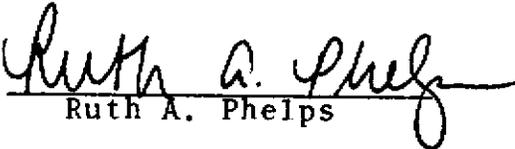
degree? Both of the modifiers "within the third degree" need to be relocated in this code section. I suggest it be reworded as follows:

(c) A person who is related within the third degree to the judge or commissioner who orders the designation or the spouse of that judge or commissioner, or who is married to a relative within the third degree of the judge or commissioner.

Keep up the good work. I am proud of you.

Very truly yours,

MACCARLEY, PHELPS & ROSEN
A Professional Corporation

By: 
Ruth A. Phelps

RAP:cw
0804e

GILBERT M. W. SMITH

ATTORNEY AT LAW
LLOYDS BANK BUILDING, SUITE 800
595 EAST COLORADO BOULEVARD
PASADENA, CALIFORNIA 91101

(818) 795-0232
(213) 681-5131

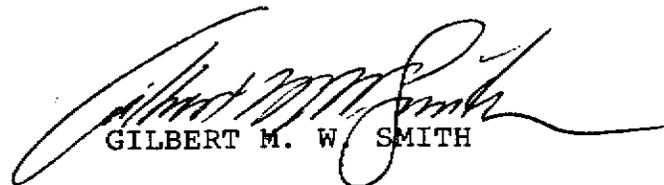
February 24, 1987

California Law Revision Commission
4000 Middlefield Rd, Suite D-2
Palo Alto, CA 94303-4739

Re: Tentative Recommendation re Probate Law and
Procedure and Inventory and Appraisal

Gentlemen:

I have read your Tentative Recommendation relating
to Probate Referees and Inventory & Appraisal and
entirely approve it!



GILBERT M. W. SMITH

GMWS:mka

**ESTATE PLANNING, TRUST AND
PROBATE LAW SECTION
THE STATE BAR OF CALIFORNIA**

ChairLLOYD W. HOMER, *Campbell***Vice-Chair**D. KEITH BILTER, *San Francisco***Advisors**

HERMIONE K. BROWN, *Los Angeles*
 THEODORE J. CRANSTON, *La Jolla*
 JAMES D. DEVINE, *Monterey*
 IRWIN D. GOLDRING, *Beverly Hills*
 KENNETH M. KLUG, *Fresno*
 JAMES C. OPEL, *Los Angeles*
 LEONARD W. POLLARD II, *San Diego*
 JAMES V. QUILLINAN, *Mountain View*
 JAMES F. ROGERS, *Los Angeles*
 HUGH NEAL WELLS III, *Irvine*



555 FRANKLIN STREET
 SAN FRANCISCO, CA 94102-4498
 (415) 561-8200

CA LAW REV. COMM. 11

FEB 27 1987

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Executive Committee

KATHRYN A. BALLSUN, *Los Angeles*
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 OWEN C. FIORE, *San Jose*
 JOHN A. GROMALA, *Eureka*
 ANNE K. HILKER, *Los Angeles*
 WILLIAM HOISINGTON, *San Francisco*
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 JAY ROSS MacMAHON, *San Rafael*
 STERLING L. ROSS, JR., *Mill Valley*
 WILLIAM V. SCHMIDT, *Costa Mesa*
 CLARE H. SPRINGS, *San Francisco*
 ANN E. STODDEN, *Los Angeles*
 JAMES A. WILLETT, *Sacramento*
 JANET L. WRIGHT, *Davis*
 DIANE C. YU, *Oakland*

February 26, 1987

Mr. John H. DeMouilly
 Executive Director
 California Law Revision Commission
 4000 Middlefield Road, Room D-2
 Palo Alto, CA 94303

Re: LRC TR - Inventory and Appraisal

Dear John:

I have enclosed a copy of Study Team 1's technical report on the TR for Inventory and Appraisal. The report represents the opinions of the team only. The report has not been reviewed by the Executive Committee. I am sending it to you for your information and comment. It is intended to assist in the technical review of those sections involved.

Very truly yours,

James V. Quillinan
 James V. Quillinan
 Attorney at Law

JVQ/h1
 Encls.

cc: Chuck Collier Jim Opel
 Keith Bilter Jim Devine
 Irv Goldring Lloyd Homer

R E P O R T

RECEIVED

FEB 26 1987

TO: ✓ JAMES V. QUILLINAN
LLOYD W. HOMER
D. KEITH BILTER
CHARLES A. COLLIER, JR.
JAMES D. DEVINE
IRWIN D. GOLDRING
JAMES C. OPEL
THE EXECUTIVE COMMITTEE IN GENERAL

Binner, Schneider, Jaffers,
Luce & Quillinan

FROM: WILLIAM V. SCHMIDT, STUDY TEAM NO. 1

DATE: FEBRUARY 24, 1987

SUBJECT: REPORT OF STUDY TEAM NO. 1 on STUDY L-655, TENTATIVE
RECOMMENDATION (INVENTORY AND APPRAISAL);
New Estate and Trust Code §§ 400-453 and 8800-8963

Study Team No. 1, through its member, William V. Schmidt, has reviewed this Tentative Recommendation and has the following comments in regard to it:

Section 400: Section 400(b) - Although this Section is taken almost verbatim from the third sentence of the first paragraph of existing Probate Code § 1305, we question the use of the word "designate". Section (a) uses the word "appoint" as all of the other Sections in Chapter 1. It is our understanding that the word "appoint" will be used in the new Estate and Trust Code to describe the selection by the State Controller of a particular person to serve in the office of a probate referee, while the word "designate" is used to describe the assignment by a superior court judge of a particular probate referee to a particular estate proceeding. See Section 8920. Since the word "designate" in this Section is used to describe the action of the State Controller, it seems that such action should be more appropriately described as "appoint".

Even if the word "designate" is replaced by the word "appoint", the sentence still is not clear to us. It refers to two situations. The first is if there are fewer than three regularly qualified applicants. The second is if there is no regularly qualified applicant. It is unclear as to whether the words "to serve until the vacancy has been filled" is to apply to both of these situations or to apply only to the second situation. Where there are fewer than three regularly qualified applicants, may the State Controller designate a probate referee in another county for a full four year term or only until the vacancy has been filled? In the event there is no regularly qualified applicant, the State Controller may make an interim appointment, but from what group? Would such a group of persons be limited to probate referees from another county? Hopefully the group would be limited to regularly qualified persons.

Sections 401-406: Satisfactory.

Sections 450-453: Satisfactory.

Section 8800: Satisfactory. The technical and policy changes made from former Probate Code § 600 are to be commended.

Section 8801: The second section in the comment refers to Section 8805 for enforcement of the four month time period to file the supplemental Inventory and Appraisement. However, Section 8805 contains no reference to Section 8801 or to a supplemental Inventory and Appraisement.

Section 8802: The first sentence in the comment states that "Section 8802 restates the fifth sentence of former Probate Code § 600." I believe that it does so without the substantive change, but the fifth sentence of former Probate Code § 600 uses the words "fair market value thereof at the time of the decedent's death in dollars and cents." Should this "dollars and cents" requirement be deleted? If so, should there be a reference in the comment to its deletion?

Section 8804: Satisfactory.

Section 8805: See our comment to Section 8801 above.

Section 8850: The words "appraised as a single item" as found in Section (b)(2) are taken from the words "to be appraised as a single item", which are found at the end of the third sentence of existing Probate Code Section 600. However, such words in their former location referred to the assets now described in Section 8850(b)(1) and (2). The concept seems to be that each of the items described in (b)(1) and (2) should be appraised separately as a single item and not collectively. We would recommend that the Section be reworded so that this concept applies to the assets described in (b)(1) as well as the assets described in (b)(2).

Section 8851: Satisfactory.

Section 8873: Satisfactory.

Section 8900-8903: Satisfactory.

Section 8904: We note this Section is new. We feel that it is a good Section, and its content is satisfactory. We wonder only if the Section should make any statement or reference to the form or format of the appraisal by the independent appraiser. The appraisal by the referee and the appraisal by the personal representative are required to be on certain standard Judicial Council forms. Should the appraisal of an independent appraiser be required to be on a form as well? We have seen appraisals by independent appraisers come in many sizes, shapes and forms.

Sections 8905-8908: Satisfactory.

Section 8920: Satisfactory.

Section 8921-8963: Satisfactory.

Respectfully submitted,

STUDY TEAM NO. 1

By:


WILLIAM V. SCHMIDT, Captain

WVS:ckt

EXHIBIT 33

LAW OFFICES

OGLE, GALLO & MERZON

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

770 MORRO BAY BOULEVARD
MORRO BAY, CALIFORNIA 93442
(805) 772-7353 • 772-7379
MAIL TO: POST OFFICE BOX 720

SAN LUIS OBISPO OFFICE
(805) 543-1662

CHARLES E. OGLE*
RAY A. GALLO*
JAMES B. MERZON*
SHARON K. GARRETT
CHARLES G. KIRSCHNER

*A PROFESSIONAL CORPORATION

March 10, 1987

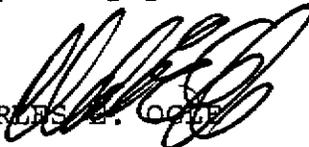
California Law Revision Commission
4000 Middlefield Rd., Suite D-2
Palo Alto, CA. 94303-4739

Dear Sirs:

I wish to add my name to the list of those attorneys approving the Tentative Recommendation relating to Probate Law and Procedure - Inventory and Appraisal -- January, 1987.

I hope my somewhat tardy reply has not caused any inconvenience.

Very truly yours,


CHARLES E. OGLE

CEO:JS

RUSSELL G. ALLEN

610 NEWPORT CENTER DRIVE, SUITE 1700
NEWPORT BEACH, CALIFORNIA 92660-6429
TELEPHONE (714) 669-6901 • (213) 669-6901

March
13th
1 9 8 7

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Re Tentative Recommendation Relating
to Probate Law and Procedure:
Inventory and Appraisal (January 1987)

Ladies and Gentlemen:

As indicated in my response to the earlier questionnaire, I do not favor retention of the probate referee system. I must concede, however, that your decision to recommend retention is a reasoned and reasonable one. Given my basic bias in the other direction, I have several additional comments for your consideration.

I question whether the four-month period identified in proposed Section 8800 (and specified in current Section 600) continues to be appropriate. For larger estates for which a federal estate tax return is required, submission of the inventory and appraisal when the federal estate tax return is due rather than earlier would bring the statutory scheme much closer in line with what I think is common practice by many attorneys. Insofar as my own experience is concerned, only in those cases in which I expect a significant potential for controversy between the personal representative and the beneficiaries of an estate have I filed an inventory within the four-month period. Much more often, I have filed the inventory (or the final of a series of inventories) at about the same time I filed a federal estate tax return. I suggest modifying proposed Section 8800 to provide that an inventory must be filed within thirty days after the date (including any extension) for filing a federal estate tax return if one is required, within six months if no return is required, or an inventory (but not necessarily an appraisement) within thirty days after demand by any

person interested in the estate (but in no event earlier than four months after the issuance of letters).

My limited experience with Probate Code Section 613 leads me to suggest that you consider modifying proposed Section 8870 to allow the court to direct an individual to appear before a notary public and provide, in effect, a deposition. If the individual refuses to answer questions in that setting, then relief could be sought from the court as in the case of a civil discovery proceeding. As it is, I have found it cumbersome (and a questionable use of the court's time) to require all of the questioning to take place in the courtroom.

If one is to retain a probate referee system, I question the mandatory allocation of appraisal responsibilities to the probate referee contemplated by proposed Sections 8901 and 8902. Your concern about "error" is ill-founded. With the advent of services provided by banks, brokerage firms and other financial institutions for routine evaluation of publicly traded securities, the inaccuracies because of changes in value on the date of death, failures to take into account ex-dividend dates and mis-identification of stock are much less likely than they were in the past. Similarly, if the personal representative obtains an appraisal from a qualified appraiser of real property or any other asset to satisfy the executor's responsibilities for federal estate tax purposes, I see little reason to require "independent" appraisal by the probate referee. My fundamental objection, however, is to the assertion that the beneficiaries of all estates should share on a pro rata basis the cost of maintaining a referee system for those instances in which there is a need or desire to use a "low cost" appraiser. I think much sounder policy would be to allow personal representatives (or beneficiaries) to retain the services of a probate referee when circumstances warrant and impose on the beneficiaries of those estates the costs of maintaining the probate referee system, rather than allocating that cost among the beneficiaries of all estates. (Indeed, this policy would be consistent with the addition to the provisions for waiver of appraisal with respect to "unique, unusual, or special item[s] of tangible personal property.")

The notion that one would submit a proposed inventory and appraisal and a request that the court

waive the requirement of an appraisal by the probate referee concurrently with a petition for appointment of a personal representative limits the ability to avoid a separate petition to the simplest of estates. If waiver is appropriate because of the circumstances of the estate, one should be able to explain those circumstances to the court at the time of the petition for appointment without having to defer filing the appointment petition until an inventory and appraisal can be prepared. I suggest Section 8903 be amended to "unhinge" the proposed inventory and appraisal from a request that appraisal by the probate referee be waived. In addition, I suggest we specifically approve seeking waiver of appraisal in a final account and report.

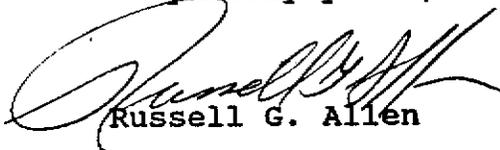
I must also take issue with the policy set forth in proposed Section 8906. If the personal representative or counsel for the personal representative devotes substantial time and effort to the appraisal of an asset, then that individual should be compensated for doing so. My impression is that testators frequently identify business associates or others enjoying substantial confidence because of their financial expertise to act as personal representatives. Often times in the closely-held business context or real estate investment context, those persons are the most qualified to gather and assess the significance of factors that affect the value of assets. It makes little sense to provide these particularly qualified people with an incentive to "farm out" the work to a probate referee or other independent appraiser, simply because someone else can get paid for the work while the personal representative or his or her counsel cannot.

By contrast to all of the relatively derogatory things I have said up to this point, I think proposed Section 8921, allowing a personal representative to request the appointment of a particular referee, makes singularly good sense if we are to retain the probate referee system.

In closing, proposed Section 8963 contemplates appraisal by more than one referee. As currently drafted, it does not contemplate a situation in which one referee begins the appraisal process, leaves office, and that process is completed by another referee. Having been faced with that circumstance once and

needing an interpleader action to resolve it, I suggest the proposed section might be amended to allow the court (in the exercise of its probate jurisdiction) to allocate fees in that circumstance, as well as where more than one referee completes appraisal of part of the assets.

Very truly yours,



Russell G. Allen

RGA/br