

Second Supplement to Memorandum 91-23

Subject: Study L-603 - Self-Proving Will (Letter From LA Bar)

Attached to this Supplement as Exhibit 1 is a letter from Carol Reichstetter for the Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association. The Executive Committee "unanimously opposes" the revised draft attached to the First Supplement. Instead, the Executive Committee supports the draft statute attached to the basic memo.

Two of the proponents of this draft, Harold Boucher and Richard Kinyon, suggested some minor drafting changes to the draft attached to the First Supplement. The staff agrees that these are improvements:

8220.5. (a) . . . [No changes]

(b) . . . [Signing in presence of witnesses]:

"The testator signed this will instrument in our presence, all of us being present at the same time. . . ."

(c) . . . [Signing of testator's name by some other person]:

"The testator's name was signed on this instrument by some other person in the testator's presence, by the testator's direction, and in our presence, all of us being present at the same time. . . ."

(d) . . . [Testator's acknowledgment of signature]:

"The testator acknowledged to us, all of us being present at the same time, that the signature on the will this instrument is the signature of the testator. . . ."

(e) . . . [Testator's acknowledgment of signature by some other person]:

"The testator acknowledged to us, all of us being present at the same time, that the testator's name was signed on this instrument by some other person in the testator's presence and by the testator's direction. . . ."

(f) . . . [No changes]

(g) . . . [No changes]

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

CAROL A. REICHSTETTER
ATTORNEY AT LAW
1163 WEST 27TH STREET
LOS ANGELES, CALIFORNIA 90007
(213) 747-6304
FAX (213) 746-3431

JUN 6 1991

May 30, 1991

Robert J. Murphy III
Staff Counsel
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Re: Study L-603 (Self-Proving Will)

Dear Mr. Murphy:

The Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association has reviewed Memorandum 91-23 and the First Supplement thereto.

As was indicated in my prior response to the proposal that a statutory form of attestation clause be deemed to satisfy the proponent's burden of proof of due execution, the Executive Committee supports the concept of providing some degree of uniformity throughout California and supports the language in proposed Probate Code Section 8220.5, including the language permitting an acknowledgement to the witnesses by the testator. However, the Executive Committee unanimously opposes the draft proposed in the First Supplement limiting the Court's discretion. It is felt that it is appropriate to allow the Court the discretion to require proof of subscribing witnesses if good cause exists, particularly where the requirement is not onerous.

Thank you for your consideration of these comments. I expect to attend the June meeting and will be glad to answer any questions that may arise.

Very truly yours,



Carol A. Reichstetter

cc: Members of the Executive Committee