

First Supplement to Memorandum 86-75

Subject: Study L-655 - Estate and Trust Code (Inventory and Appraisal
--comments of Study Team No. 1)

Attached to this supplementary memorandum are comments from State Bar Study Team No. 1 concerning the draft statute on inventory and appraisal. These comments have not been reviewed by the State Bar Executive Committee. The study team makes the following points:

§ 406. Political activities of probate referee. The study team would like to emphasize by statute that subdivision (a)(1) prevails over subdivision (a)(2).

The staff believes that this is obvious by virtue of reading the two provisions together. In any case, as the study team notes, the interrelation of the two provisions is pointed out in the Comment.

§ 8851. Claims against personal representative. The study team would refer to "just" claims of the decedent against the personal representative in this section. "The word 'just' indicates to us that the personal representative may raise any just and rightful defenses."

The staff has two problems with this suggestion: (1) The term "just" is not the best shorthand for "valid" or "legally sufficient". (2) If we refer to "just" claims here rather than simply to claims, will this cast doubt on the meaning of the term everywhere else it is used? The staff would refer simply to "claims" without trying to qualify it.

§ 8903. Waiver of appraisal by probate referee. The most recent draft requires a petition for waiver of a probate referee to be made by the personal representative within four months after letters are issued to the personal representative. Study Team No. 1 objects to the four month requirement. The team points out that the petition for waiver must be accompanied by a proposed inventory and appraisal, and in many cases it is impossible to accomplish this within four months. The study team strongly recommends that the four month limitation be deleted.

§ 8941. Report of status of appraisal. The study team questions the need for subdivision (b)(4), which permits removal of a personal representative whose failure to supply necessary information hinders completion of the appraisal by the probate referee. The study team refers to general provisions on removal. The general grounds for removal set out in Section 8502 include "the personal representative has wrongfully neglected the estate" and "removal is necessary for protection of the estate or interested persons."

One way to handle this would be to delete the removal provision from Section 8941 and note in the Comment that removal is an available remedy where the personal representative fails to supply necessary information.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

LAW OFFICES OF
DIEMER, SCHNEIDER, JEFFERS, LUCE & QUILLINAN

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

444 CASTRO STREET, SUITE 900
MOUNTAIN VIEW, CALIFORNIA 94041
TELEPHONE (415) 989-4000
TELEX 171854 IBC LTOS

HARVEY DIEMER
MICHAEL E. SCHNEIDER
WILLIAM A. JEFFERS
JAMES G. LUCE
JAMES V. QUILLINAN
MICHAEL R. MORGAN
T. MICHAEL TURNER
DAVID L. MARTIN

August 13, 1986

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

Re: Memo 86-75, Inventroy and Appraisalment

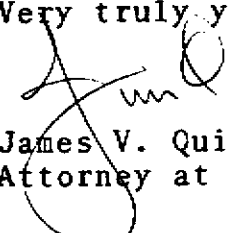
Dear John:

Please find enclosed a copy of Study Team No. 1's report on Memo 86-75.

This report represents the opinion of the team only. The report has not been reviewed by the executive committee. I am sending it to for your information and comment.

See you in September.

Very truly yours,


James V. Quillinan
Attorney at Law

JVQ/hl
Encls.

cc: Chuck Collier Jim Opel
 Jim Willett Jim Devine
 Irv Goldring Lloyd Homer

MEMORANDUM

TO: JAMES V. QUILLINAN
CHARLES COLLIER
JAMES WILLETT
IRV GOLDRING
JAMES DEVINE
JAMES OPEL
LLOYD HOMER
THE EXECUTIVE COMMITTEE IN GENERAL

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

DATE: AUGUST 8, 1986

SUBJECT: REPORT OF STUDY TEAM NO. 1 on LRC Memo 86-75
L-1040-Estates and Trust Code (Inventory and Appraisal
-- Draft of Tentative Recommendation)
New Estates and Trust Code §§ 400 through 453 and 8800
through 8963

Conference Call: A conference call was held on Thursday, August 7, 1986. Robert Schlesinger and Richard S. Kinyon did not participate, but the other three members, Charles Collier, W. S. "Gus" McClanahan and William V. Schmidt participated.

This LRC Memorandum 86-75 covers the same new Estates and Trust Code proposed Sections (Sections 400 through 453 and 8800 through 8963) previously covered in LRC Memorandum 86-58. In response to LRC Memorandum 86-58, Study Team No. 1 prepared a Revised Memorandum dated June 16, 1986. We note that many of our recommendations in this Revised Memorandum have been incorporated into these Sections as they are set forth in LRC Memorandum 86-75. We know that other suggestions, although not adopted, were considered by the Commission.

Generally, we feel good about these Sections as presented in LRC Memorandum 86-75 and will, therefore, have only a few comments in regard to them. We feel strongly only on one Section. That Section is 8903. If we could only talk about one Section, that clearly is the Section we wish to address. We unanimously feel that it needs to be changed in one respect.

The Sections which we feel deserve comment are set forth below in numerical order, and we have the following comments in regard to them.

Section 406: In LRC Memorandum 86-58 this was Section 407. We suggested that the words "other than the office of the State Controller." be added to the end of subsection (a)(2) to make it clear that no sum, even if it is less than \$200, is appropriate for any campaign for the office of the State Controller. We do note, however, that this is covered in the comment.

Section 8851: As proposed in LRC Memorandum 86-58, this Section used the words "debt or demand." These words have now been changed to the word "claim", which we feel is a definite improvement. We noted that existing Probate Code Section 602 refers to "any just claim", and we have stated our preference for those words. The word "just" indicates to us that the personal representative may raise any just and rightful defenses. We recommend that the word "just" be added, but we do not feel strongly about this recommendation.

Section 8903: It should be noted that proposed Section 8800 requires the personal representative to file the inventory and appraisal within four months after letters are issued, or within a further time allowed by the court for reasonable cause. LRC Memorandum 86-58 had set forth a three month requirement for Section 8800. Its note to that Section stated that the existing

three month requirement was the subject of substantial criticism, that the Commission had received comments from lawyers that this three month period is unrealistically short, and that the period is ignored more than it is observed. The note continued to give specific suggestions to modify or remove the requirement. One of the suggestions was to modify the time period to a "reasonable time", and Study Team No. 1 recommended this modification. However, at the June 14, 1986 meeting of the Executive Committee (at which all of its members recognized that the existing three month requirement is unrealistic in many cases, and that it is more often ignored than observed), the Committee decided that we had lived with the three month requirement under existing law for many years, that the system seemed to work well, and that the three month period probably should be retained as it did no harm to those personal representatives who worked diligently, but provided a legal ground upon which an objection could be made to remove or reprimand those personal representatives who did not work diligently.

At the same meeting, the Executive Committee expressed the opinion that the language in the then proposed Section 8903 stating that a petition for waiver of referee be made no "later than the time the Inventory and Appraisement is filed pursuant to Section 8800" needed to be clarified. If it referred to three months, they strongly objected, as three months is unrealistic in most cases. If it referred to such other "reasonable times as the court may allow", then the meaning of those words was unclear as they applied to a petition for waiver of appraisal by the probate referee.

Section 8903, as it now appears in LRC Memorandum 86-75, has an absolute requirement. It states that the petition for waiver (together with a copy of the proposed inventory) must be filed no later than four months after letters are first issued to the personal representative. This is unrealistic. The personal representative in many, many situations cannot prepare an

inventory in four months. He or she simply may not have sufficient information to do so. Please note that this is not a problem under existing law as existing Probate Code Section 605(a)(3) permits the personal representative to file the petition for waiver of appointment of referee "at the time of the filing of the Inventory & Appraisement pursuant to Section 600."

As we all know, a Federal Estate Tax Return is required where the gross estate exceeds \$500,000 (\$600,000 in 1987). This return is required to be filed nine months after date of death. Many personal representatives working with reasonable diligence cannot meet this nine month requirement and request an extension to file the Federal Estate Tax Return. This is not uncommon. In these cases it would be an impossible task to file such a petition for waiver together with a copy of the proposed inventory within four months.

This four month period would prevent a waiver in many situations where it would otherwise be desired and preferable. If the waiver of appraisal is a good concept, as the commission has decided and the State Bar agrees, then it should not be severely curtailed as a practical matter by an artificial time limit.

We strongly recommend that the first sentence to subsection (b) be modified by ending it after the words "probate referee" and by deleting the words "or four months after letters are first issued to a general personal representative, whichever occurs first."

Section 8941: We note that subsections (3) and (4) to subsection (c) are new. We approve new subsection (3). In regard to subsection (4), we wonder if this is appropriate in view of other existing Sections which provide for the removal of the

probate referee. However, we do not feel strongly that subsection (4) should be deleted from the subsection.

Respectfully submitted,

STUDY TEAM NO. 1

By:



WILLIAM V. SCHMIDT,
Captain