

Third Supplement to Memorandum 86-84

Subject: Study L-655 - Inventory and Appraisal (Letter from
Matthew S. Rae, Jr.)

Enclosed is a copy of a letter from Matthew S. Rae, Jr., relating to the procedure for waiver of a probate referee. The letter takes the position that it was inappropriate for the Governor to veto the bill to require appointment of a probate referee in all cases and service of any waiver petition on the appointed probate referee.

Mr. Rae also suggests that the Commission consider recommending an alternative provision that would require any waiver petition to be served "on the representative of the California Probate Referee's Association appointed by the Court to receive such service." Mr. Rae's concept is that since a probate referee is an officer of the court, the Association could recommend to the court an Association representative to receive service in all cases; the court, by local rule in compliance with the statute, could designate that person, or another if the court deemed proper, to receive service of notice in all cases. The Association would then, through its internal structure, review the petition for sufficiency and accuracy and advise the court of any problems it finds. This would be done at the expense of the Association and not the estate.

The staff believes that expansion of the role of the probate referee is a controversial question. The Commission's other recommendations would substantially improve the law in this area, and to include a further expansion of the role of the probate referee would jeopardize the other recommendations both in the Legislature and the Governor's office. A measure of the sort suggested by Mr. Rae might more appropriately be pursued by the Association, if it is interested.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

ARTHUR K. MARSHALL
JUDGE OF THE SUPERIOR COURT
(RETIRED)
300 SOUTH GRAND AVE., TWENTY-NINTH FLOOR
LOS ANGELES, CALIFORNIA 90071
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October 29, 1986

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

Dear John:

Enclosed is a letter (and attachments) dated October 14, 1986 to me by Mr. Rae regarding procedure to waive a referee. Mr. Rae suggested that I forward the material to you for your consideration and I am herewith doing so.

With best regards,

Sincerely,


Arthur K. Marshall

AKM:kab
Enclosure

HUGH W. DARLING
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AREA CODE 2.3
627-8104

October 14, 1986

Honorable Arthur K. Marshall
300 South Grand Avenue, 29th Floor
Los Angeles, California 90071

Re: Procedure to Waive a Referee

Dear Art:

This letter is a follow-up to our conversation at the Stock Exchange Club last week. I understand the Law Revision Commission probably will be adopting the provisions regarding the Inventory and Appraisal at its meeting the end of this week. I earnestly request the Commission to give consideration to the serious problem which the Court has in attempting to determine whether good cause exists for the waiver of a Referee when requested by Noticed Petition. I pointed out this problem in my letter to the Governor urging him to sign AB 2896, a copy of which I enclose. Unfortunately, my effort apparently was insufficiently articulate because his veto message expressed the belief that the Bill would increase the administrative burden on the Courts and create additional expenses for those involved. The facts are directly the reverse. The Courts are now faced with an administrative burden which they have proven incapable of meeting with existing personnel. The result, according to all of the information reaching me, is that most Courts, and especially those in major urban areas, are making no effort to comply with the statutory requirement of determining good cause. My information is that Petitions for Waiver are being routinely granted with no investigation as to the propriety of the request or the accuracy of the self-appraisal submitted with the Petition, and in most cases with no hearing. By this statement, I do not mean to be critical of the Courts because I can understand the enormity of the problem facing them without any provision for adequate assistance. AB 2896 would have provided this assistance.

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To refresh your recollection of what was intended by the Bill as originally proposed before it became enmeshed in the legislative process, and particularly before it had engrafted upon it a Public Administrator's Bill which the Governor previously had vetoed, I enclose a marked copy of AB 2896 as introduced. Incidentally, I cannot help but believe that the Governor's veto of the previous Bill dealing with a totally unrelated matter must have had some bearing on his veto of AB 2896 as it eventually reached his desk. The notations on the enclosed copy of the Bill are the suggestions which I presented, in writing, (albeit in a more neat form) to the author, Assemblyman Elihu M. Harris. As you can see, the suggestion, had it been adopted, would have provided the Court with the pro bono services of a Referee in each case to advise the Court on the accuracy of the self-appraisal submitted with the Petition and whether good cause existed for the waiver. No cost would have been incurred for such service by the Court or the estate.

I recently have heard an objection to my proposal which I do not recall having previously been voiced. That was the fear of a confrontation with the Referee in every case in which a waiver is requested and a resulting hostility between the estate and the Referee appointed if the Petition for Waiver were denied. Although I think this fear is unjustified, I can understand it. If this is a concern of the Commission, I would suggest that consideration be given to providing the Court the necessary pro bono expertise of the Referee's Association without, in most instances, the review of the Petition for Waiver being made by the Referee who eventually might be assigned to the case in the event the Petition is denied. I believe it would be possible for the Referee's Association to designate a member in each County of the State to receive service of notice of a hearing on a Petition for Waiver, together with a copy of the Petition and the self-appraisal. The Association then could, through its own internal structure, have the Petition reviewed for sufficiency and accuracy of the appraisal and advise the Court, by a written report, of any problems it finds with the Petition. For simplicity,

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failure to file a report in advance of the hearing would indicate the Association's belief that the Petition showed good cause. In essence, the Report of the Association would be very similar to what occurs in Los Angeles County with Commissioner's Notes which advise the Judge of any problems with any Petition set for hearing. There would be no confrontation, the possible appearance of self-interest by any particular Referee would be avoided. The Petitioner would have the same opportunity to try to explain or cure any deficiencies reported to the Court by the Association as a Petitioner does in the case of Commissioner's Notes. I recognize the fact that in a one Referee County this suggestion does not cure the perceived problem, but then again in that circumstance, if there is a problem it exists under the present law for any attorney consistently filing unwarranted Petitions for Waiver.

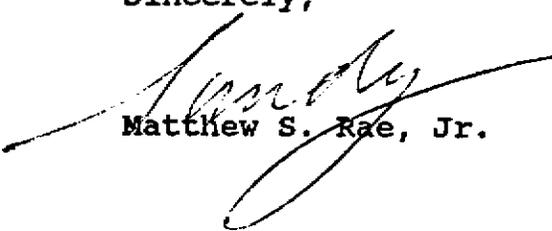
If the Commission should think well of my suggestion, it perhaps could be accomplished by a simple amendment to Section 605 by adding at the end of Paragraph (a)(3) the following phrase, "and on the representative of the California Probate Referee's Association appointed by the Court to receive such service." My concept is that since the Referees are officers of the Court, the Association would recommend to the Court the representative of the Association to receive service in all cases and the Court, by local rule in compliance with the statute, would designate that person, or if the Court saw fit some other Referee, to receive service of notice in all cases.

Time has not permitted me to discuss this suggestion with the State Bar Estate Planning, Trust and Probate Law Section or with the California Referee's Association. I make the suggestion solely in my capacity as a member of the Bar specializing in the practice of Probate law.

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Thank you for your consideration.

Sincerely,



Matthew S. Rae, Jr.

MSR:lgc
Enclosure

ccs: Commissioner Ann E. Stodden
Lloyd W. Homer, Esquire
Irving Reifman, Esquire
James Quillinan, Esquire

HUGH W. DARLING
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AREA CODE 213
627-6104

September 4, 1986

Governor George Deukmejian
State Capitol
Sacramento, California 95814

Re: A. B. 2896

Dear Governor Deukmejian:

I am writing to you in my capacity as an attorney who has been specializing for some thirty years in the area of probate law. In the best interests of that portion of the public who become involved in the probate process, which over a period of time is virtually all of us, I urge you to sign Assembly Bill 2896.

I have been personally involved in the development of this Bill and am fully familiar with its contents and intent. During the legislative process the Bill has had added to it provisions sought by the public administrators to expedite their handling of small estates. These provisions are beneficial, but in this letter I direct my attention, particularly, to the clarification of the law relating to the use of the probate referee.

The probate referee, as an independent officer of the court, performs an extremely valuable function in the California probate system by assuring those interested in probate estates of a fair valuation and by protecting executors and their attorneys against undue pressure by those heirs who would benefit from grossly inflated values for income tax purposes. The probate referee system operates at no cost to the general taxpayer and at an extremely limited cost to the estate.

Existing law provides for the waiver of the use of a probate referee in certain very limited circumstances after a noticed court hearing and upon a showing of good

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cause. I was extensively involved in working for the passage of Chapter 1535 statutes of 1982, which created the present procedure, and I was personally involved in drafting the amendment to Probate Code Section 605, which authorized this limited waiver. It was contemplated that this limited possibility of a waiver of use of a probate referee would permit the avoidance of an independent appraisal in an appropriate and unique situation, such as where the estate consisted almost entirely of listed securities, or at the other end of the spectrum, where the estate consisted almost entirely of rare and extremely hard to value assets, which in any event, would require the services of a specifically skilled appraiser.

As sometimes happens with legislation which its authors believe to be quite clear and unambiguous, the use of amended Section 605, in practice, proved to be erratic and subject to the differing practices of judges of varying degrees of probate expertise in courts around the state. A. B. 2896 is designed to cure that problem and make procedures for waiver of a referee uniform statewide.

One of the drawbacks disclosed by experience under existing Section 605 was that although the section required the presentation to the court of a complete self-appraisal as a portion of the proof of the propriety of waiving the use of the probate referee, the court was not provided with any expertise by which it could judge the accuracy of the appraisal. A. B. 2896 cures this problem by requiring the appointment of a probate referee in all cases, and requiring that the probate referee be given notice of the hearing of a petition to waive the use of the probate referee. This enables the referee to review the self-appraisal filed with the court and to inform the court in those cases where it is inaccurate, insufficient or clearly not within the intent of the waiver provisions. This service is to be performed without charge to the estate or the court as a part of the referee's total responsibility as an independent officer of the court. It is interesting to note that in those instances under the existing law where the court has called upon the expertise of a referee or where such expertise has been volunteered in determining the propriety of a petition to waive the use of a referee, the self-appraisal filed with the court has proven to be

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erroneous in most, if not all instances, and the petition has been denied with resulting benefit to the estate.

A. B. 2896 is consumer protection legislation in the highest sense of the term, because it provides protection to all persons interested in an estate without any added cost. It is strictly technical and not partisan legislation, despite the vociferous misunderstanding of it by one assemblyman. Insofar as the probate referee system is concerned, it makes no major substantive change in the law, it simply clarifies existing procedures and provides assistance to the court in expediting its work. There is a minor substantive change which adversely affects the probate referee and benefits the public by exempting from appraisal specified small estates subject to public administration and by waiving any referee fee for small estates consisting solely of household furniture, furnishings or personal effects.

If you or your staff have any questions concerning this Bill, I would appreciate a telephone call.

Sincerely,



Matthew S. Rae, Jr.

MSR:cs

Fund.

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

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

1 SECTION 1. Section 605 of the Probate Code is
2 amended to read:

3 605. (a) The appraisement shall be made by the
4 executor or administrator and a probate referee as
5 follows:

6 (1) The executor or administrator shall appraise at fair
7 market value moneys, currency, cash items, bank
8 accounts and amounts on deposit with any financial
9 institution, and the proceeds of life and accident
10 insurance policies and retirement plans payable upon
11 death in lump sum amounts, excepting therefrom such
12 items whose fair market value is, in the opinion of the
13 executor or administrator, an amount different from the
14 ostensible value or specified amount.

15 As used in this subdivision, "financial institution"
16 means a bank, trust company, federal savings and loan
17 association, savings institution chartered and supervised
18 as a savings and loan or similar institution under federal
19 or state law, federal credit union or credit union
20 chartered and supervised under state law.

21 (2) *A probate referee shall be appointed in all cases.*
22 All assets other than those appraised by the executor or
23 administrator pursuant to paragraph (1) shall be
24 appraised by a probate referee appointed by the court or
25 judge, except with respect to the following:

26 (A) Interspousal transfers, as provided in Section 650.

27 (B) Estates subject to summary probate proceedings
28 pursuant to Section 630.

29 (C) ~~Such cases in which the court waives, for good~~
30 ~~cause, the appointment of a probate referee, upon motion~~
31 ~~of the probate referee or representative duly made~~
32 ~~after the appointment of the probate referee, the probate~~
33 ~~referee may be dismissed, provided the court finds that~~
34 ~~the services of the probate referee will not be needed.~~

Do NOT
DELETE

an appraisal of all such assets by

1 (3) If an executor or administrator seeks a waiver of
2 the appointment of a probate referee pursuant to
3 subparagraph (C) of paragraph (2), the executor or
4 administrator, at the time of filing the inventory and
5 appraisement pursuant to Section 600, shall file an
6 appraisal of the fair market value of all assets of the estate
7 and a statement which sets forth the good cause which
8 justifies the waiver. The clerk shall set a hearing on the
9 waiver not sooner than 15 days after the filing. A copy of
10 the inventory and appraisement, the statement, and
11 notice of the date of the hearing shall be served on and
12 in the same manner as on, all persons who are entitled to
13 notice pursuant to Section 926, and on the probate referee appointed

14 (b) The executor or administrator shall furnish to the
15 referee such information concerning the assets appraised
16 by him or to be appraised by the referee as the referee
17 shall require.

in the case.

18 (c) The executor or administrator or his attorney shall
19 not be entitled to receive compensation for extraordinary
20 services by reason of appraising any asset pursuant to this
21 section.

22 ~~SEC. 2. Reimbursement to local agencies and school~~
23 ~~districts for costs mandated by the state pursuant to this~~
24 ~~act shall be made pursuant to Part 7 (commencing with~~
25 ~~Section 17500) of Division 4 of Title 2 of the Government~~
26 ~~Code and, if the statewide cost of the claim for~~
27 ~~reimbursement does not exceed five hundred thousand~~
28 ~~dollars (\$500,000), shall be made from the State Mandates~~
29 ~~Claims Fund.~~