

Third Supplement to Memorandum 88-8

Subject: Study L-2009 - AB 2841 (1988 Probate Legislation--Probate Referee Proposed Amendments)

A number of amendments to AB 2841 have been proposed by probate referees. Exhibit 1 is a suggestion from a group of Los Angeles County Probate Referees that if there is going to be a \$250 cap on the commission for appraising listed stocks, then the probate referee's general commission should be raised from 1/10 to 1/9 of one percent of the appraised value of the estate.

The California Probate Referees Association proposes 16 amendments to the bill. See Exhibit 2. We will go through the proposed amendments at the meeting.

Respectfully submitted,

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Assistant Executive Secretary

for group of Kenneth Ross - (213) 450-5666
LA Probate Referees

*lobbied
for 20 years
old legislative*

SUGGESTED AMENDMENT TO PROBATE CODE TO OFFSET
REDUCTION IN INCOME OF PROBATE REFEREES FROM
\$500 CAP PLACED ON APPRAISING OF STOCKS & BONDS

Section 609 of the Probate Code is Amended to read:

Section 609. Referee Compensation

Each referee shall receive from each estate appraised by him as compensation for his services a commission of ~~one-tenth~~ one-ninth of one percent of the total value of the assets appraised, but in no event less than a minimum fee of seventy-five dollars (\$75) or more than ten thousand dollars (\$10,000) for each estate appraised. In addition to the commission, each referee is entitled to receive actual and necessary expenses, to be allowed by the court; and he must file, with the inventory, a verified account of his disbursements. In no event shall a probate referee receive any compensation from the state for any services performed.

Excepting the minimum fee provided for in this section, the fee shall not apply to items appraised by the executor or administrator under the provisions of paragraph (1) of subdivision (a) of Section 605.

Upon application of the referee, the court may allow a fee in the excess of the maximum of ten thousand dollars (\$10,000) if the court determines that the reasonable value of the referee's services exceeds such amount.

AVERAGE 1987 INCOME UNDER THE PRESENT FEE
SCHEDULE TO PROBATE REFEREES WHO SERVE ON
THE CENTRAL PANEL OF LOS ANGELES COUNTY

now \$250.-

<u>Categories of Assets Appraised</u>	<u>Average Compensation Under Present Law</u>	<u>Average Compensation with \$500 Securities Cap</u>	<u>Average Compensation With \$500 Securities Cap and .0011 Appraisal Fee</u>
Real Estate, Sole Proprietorships, Partnerships, Corporations and Notes	\$43,125,000 .001 \$ 43,125	\$43,125,000 .001 \$ 43,125	\$43,125,000 .0011 \$ 47,438
Stocks & Bonds	\$ 7,000,000 .001 \$ 7,000	\$ 1,540,000 .001 1,540	\$ 1,540,000 .0011 \$ 1,694
Other Assets	\$ 7,375,000 .001 \$ 7,375	\$ 7,375,000 .001 \$ 7,375	\$ 7,375,000 .0011 \$ 8,113
Total Gross Income	\$ 57,500	\$ 52,040	\$ 57,245

AB 2841
JANUARY 26, 1988

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AMENDMENTS

February 25, 1988 version

1. Page 30; Line 25.

Section 403(a):

"(a) The term of office of a probate referee is four years, expiring June 30. A person may be appointed to complete the unexpired term of office of a probate referee whose appointment is revoked or is otherwise terminated. For a period of five years from the date of expiration of the term of office, a person who had been appointed to act as a probate referee is eligible for reappointment".

Comment:

This amendment clarifies the intent of the statute.

2. Page 30; Line 38

Section 404(a):

"(a) The Controller shall establish and may amend standards of training, continuing education, performance, and ethics of probate referees. The standards shall be a public record."

Comment:

The Controller advises that this is consistent with current policies.

3. Page 31; Line 1

Section 404(b):

"(b) The Controller may revoke the appointment of a person to act as a probate referee for noncompliance with any standard of training, continuing education, performance, or ethics established under subdivision (a). The 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:

This conforms this enforcement section to the amendment to Section 404(a).

4. Page 31, Line 21

Section 405:

Add new subsection (c):

"(c) Any former probate referee who willfully refuses to comply with the provisions of this section or any court order issued under this section may be subject to the imposition of damages under Code of Civil Procedure Section 128.5, in addition to all other fines and penalties which may be imposed by law and applicable court order".

Comment:

This enforcement provision is necessary to reduce difficulties experienced by the Controller upon termination of referees.

5. Page 33, Line 7

Section 453(b):

"(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. The court, upon the showing of good cause, may award the probate referee costs and attorneys fees, in conjunction with seeking and obtaining an order to show cause and any other order under such a proceeding."

Comment:

This amendment is consistent with other provisions of this section. The hearing is for the benefit of the estate, and upon a proper showing, the referee should not be expected to bear the expense of the proceeding.

6. Page 111; Line 10

Section 8800(a):

"(a) The personal representative shall file with the court clerk an inventory of property to be administered in the decedent's estate and together with an appraisal of the property in the inventory. An inventory and appraisal may shall be combined in a single document".

Comment:

The single document due in six months is less costly, less complex and in all probability, more enforceable than the original proposal. In many cases three months is too short a time to file a meaningful inventory.

7. Page 111; Line 15

Section 8800(b):

"(b) The inventory ~~shall be filed within three months,~~ and the appraisal shall be filed within six months, after letters are first issued to a general personal representative. The court may allow such further time for filing an inventory ~~or an~~ and appraisal as is reasonable under the circumstances of the particular case".

Comment:

This amendment conforms section to amendment of Section 8800(a).

8. Page 111; Line 21

Section 8800(c):

"(c) The personal representative may file partial ~~inventories~~ or partial inventory and appraisals where appropriate under the circumstances of the particular case, but all ~~inventories~~ inventory and appraisals shall be filed before expiration of the time allowed under subdivision (b)".

Comment:

This amendment conforms section to amendment of Section 8800(a).

9. Page 111; Line 26

Section 8801:

"If the personal representative acquires knowledge of property to be administered in the decedent's estate that is not included in a prior inventory and appraisal, the personal representative shall file a supplemental inventory and an appraisal ~~or supplemental appraisal~~ of the property in the manner prescribed for an original inventory and ~~an original appraisal~~. The supplemental inventory shall ~~be filed within three months,~~ and the ~~supplemental appraisal~~ shall be filed within six months, after the personal representative acquires knowledge of the property. The court may allow such further time for filing a supplemental inventory ~~or a supplemental~~ and appraisal as is reasonable under the circumstances of the particular case."

Comment:

This section is modified to conform to the amendment to Section 8800.

10. Page 111; Line 40

Section 8802:

"The inventory and appraisal shall separately list each item. ~~The appraisal shall state the fair market value~~ appraisal of each item in the inventory at the time of the decedent's death shall be stated in monetary terms opposite the item".

Comment:

This amendment conforms the section to the amendment of Section 8800.

11. Page 117, Line 7

Section 8903(c)(4):

"(4) The probate referee, if a probate referee has been appointed. If the petition lists an interest in real property and no probate referee has been appointed the court shall appoint a probate referee to receive the notice of the petition for waiver".

Comment:

There have been many reports of mistake, collusion or fraud, especially involving commercial, industrial, residential income, agricultural and mining property. The referee's review will assist the courts determination of the appropriateness of a waiver and provide an important check and balance for the court and heirs of the estate.

12. Page 117, Line 12

Section 8904(a):

"(a) A unique, artistic, unusual, or special item of tangible personal property that would otherwise be appraised by the probate referee may, at the election of the personal representative, be appraised by an independent expert qualified to appraise the item. This election must be made prior to the delivery of the inventory to the probate referee".

Comment:

This amendment is consistent with the other provisions of this section. Once the referee has commenced his work, he is entitled to a fee.

13. Page 117; Line 17

Section 8904(b):

"(b) The personal representative may make the election provided in subdivision (a) by a notation on the inventory delivered to the probate referee indicating the property to be appraised by an independent expert. The probate referee may, within five days after delivery of the inventory, petition for a court determination whether the property to be appraised by an independent expert is a unique, artistic, unusual, or special item of tangible personal property. On the determination, the court shall ~~may~~ award litigation expenses, including reasonable attorney's fees, to the prevailing party".

Comment:

As written, the provision places mandatory sanctions on a representative or referee proceeding in good faith. This will have a chilling effect on both good faith elections and good faith objections, which clearly does not serve the interests of the estate. Sanctions are still available in proper instances upon court determination under the amendment.

14. Page 119; Line 37

Section 8922:

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

Comment:

This section is much too vague and should be deleted. The language as it now reads invites favoritism and intimidation of one or more referees, especially in counties which have a small number of referees. No referee should be subject to removal or suspension without some minimal itemization of standards for removal or suspension from appointment. Referees should be given notice of the type of conduct which will subject them to the penalty provided by this section.

15. Page 122; Line 32

Section 8961(b):

~~"(b) Actual and necessary expenses for each estate appraised. The referee shall file with the inventory a verified account of the referee's expenses".~~ The referee shall list on the inventory and appraisal a verified account of the referee's expenses.

Comment:

This conforms to present practice. There is no need for the referee to file a separate verified account with the court.

16. Line 122; Line 35

Section 8962:

~~"Notwithstanding Section 8961, the commission and expenses received by the probate referee for appraising securities listed as of the date of the decedent's death on the New York Stock Exchange, the American Stock Exchange, or the Pacific Stock Exchange shall not exceed two hundred fifty dollars (\$250) in the aggregate."~~

Comment:

The restriction on fees is inconsistent with the overall staff findings about the low cost, efficient type of appraisals made by referees. Testimony indicated that there was some sharing of the burden of maintaining the referee system economically through all estates and that in many instances larger estates subsidized smaller estates. Restriction of referees' fees for publicly traded securities is inappropriate without taking into account the wider issue of referee income.