

First Supplement to Memorandum 88-31

Subject: Study L-2009 - AB 2841 (1988 Probate Legislation--comments on bill)

Attached is a letter from the State Controller noting another problem in Section 406 (political activities of probate referee). Under the Commission's draft of subdivision (c), an applicant for appointment, a referee, and a person eligible for reappointment must file an annual compliance statement. The Controller states that present practice is to require a compliance statement on passage of the qualifying examination and on appointment. Since persons remain eligible for appointment and reappointment for five years, the Controller believes that annual statements are unwarranted except on appointment or reappointment, and during tenure as probate referee. "Under the circumstances, we believe it places an unnecessary burden on [unappointed] persons to require filing of annual statements, as well as an unnecessary burden on the Controller to establish a control and follow-up function to insure the annual statements are filed." The Controller requests that the draft be amended to read:

(c) Upon a person's ~~application for~~ appointment as a ~~probate referee,~~ and thereafter annually ~~during the person's eligibility for appointment,~~ during the person's tenure as a probate referee, ~~and during the person's eligibility for reappointment,~~ the person shall file with the Controller a verified statement indicating whether the person has done any act described in paragraph (1) or (2) of subdivision (a) during the preceding two-year period.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary



CA LAW REV. COMMISSION

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RECEIVED

GRAY DAVIS

Controller of the State of California

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April 12, 1988

Mr. Nathaniel Sterling
California Law Revision Commission
4000 Middlefield Rd., Rm. D-2
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Dear Mr. Sterling:

Thank you for your letter of April 4 concerning A.B. 2841.

After my March 29 letter, another provision in the bill pertaining to probate referees was called to my attention. Subdivision (c) of proposed § 406 (pp. 34-35 of the amended bill) requires verified statements to be filed with the Controller concerning compliance with the prohibitions on political activity. This filing requirement applies:

"Upon a person's application for appointment as probate referee, and thereafter annually during the person's eligibility for appointment, during the person's tenure as a probate referee, and during the person's eligibility for reappointment [sic] . . ."

Our current practice is to have everyone passing the probate referee qualifying examination complete and sign a Personal Data Questionnaire which includes questions paraphrasing the statutory language of the prohibitions in Probate Code Sections 1311 and 1312. Thereafter, if the applicant is actually appointed as referee, the person is again required to sign a statement that the applicant has "read, understand and will, without reservation, comply with Sections 1311 and 1312."

If a person passes the qualifying exam, he or she remains eligible for appointment for a period of five years. Many persons not initially appointed, may never actually receive

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appointments as referees. Under the circumstances, we believe it places an unnecessary burden on these persons to require filing of annual statements, as well as an unnecessary burden on the Controller to establish a control and follow-up function to insure that the annual statements are filed.

In our view, the current practice is adequate in obtaining such statements upon passing of the examination and prior to appointment. The same would seem to be true with respect to a referee whose term has expired and is subsequently reappointed. A statement of compliance with the statutory prohibitions would be obtained as a condition of reappointment.

As to the proposal for annual statements from referees during their tenure, we would have no objection to this requirement. Such a statement could be incorporated with the annual income report that referees must presently file with the Controller's Office.

For the reasons discussed above, therefore, we request that subsection (c) of proposed § 406 be amended to read:

Upon a person's appointment, and thereafter annually during the person's tenure, as probate referee, the person shall file with the Controller"

Please let me know if there is additional information I can provide on this matter.

Very truly yours,

GRAY DAVIS, STATE CONTROLLER

By


Lawrence E. Gercovich
Deputy Controller

LEG:df

cc: Mr. Tucker
: Mr. Siedorf