

Memorandum 90-100

Subject: Study L-619 - Statutory Will

In preparing the new Probate Code, the Commission made a careful review of the Probate Code. However, one portion was not given a careful review. This portion is the provisions relating to the California Statutory Will (Probate Code Sections 6200-6248).

The provisions relating to the statutory will were drafted by the California State Bar. A substantial number of statutory will forms have been sold by the State Bar. Many lawyers believe that the statutory will forms create more problems than they resolve. However, since few of these wills have been probated, it is too early to determine the problems that the use of the forms create. Some time ago a newspaper article was published that indicated the form is next to impossible to complete, even by a highly educated person. One may question whether the basic concept of the existing statutory form should be retained.

The State Bar Estate Planning, Trust and Probate Law Section has been engaged in preparing new statutory will forms.

We have received a letter (attached to this Memorandum) from Harold I. Boucher, of Pillsbury, Madison & Sutro, urging that the Commission review the statutory will form, and suggesting that the probate lawyers have a conflict of interest that precludes them from preparing a useful and understandable statutory form. His letter notes that, according to a recent study, the existing California form ranks last among the states that have a statutory form. He calls our attention to a law review article and a J.S.D. dissertation that constitutes a comprehensive study of this matter. The staff has not reviewed this material.

If the Commission decides to undertake to prepare new statutory will forms, the staff can review the background material referred to by Mr. Boucher and prepare a draft of a new statutory will form for consideration by the Commission. One of the members of the staff could devote the necessary time to prepare the new form(s). If the

background material referred to by Mr. Boucher is adequate, we doubt that preparing new form(s) would delay work on the administrative law study (we are waiting for the consultant to deliver the next portion of the study) or the Family Code study (only one staff member will work on that study). We would, of course, have the benefit of the expert assistance of the State Bar Section and the probate committees of local bar associations as well as the many probate and other lawyers that comment on our tentative proposals.

Does the Commission wish to undertake the task of preparing a new statutory will form(s) in cooperation with the state and local probate law sections and committees?

Respectfully submitted,

John H. DeMouilly
Executive Secretary

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May 26, 1990

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CA LAW REV COMM'N

MAY 30 1990

RECEIVED

Dear Mr. Sterling,

In accordance with our telephone conversation last week I enclose the following for your information:

Copy of Prof. Gerry W. Beyer's letter to me of 4/23/90 with copy of cover sheet of Dickinson Law Review

Copy of Prof. Gerry W. Beyer's letter to me of 5/9/90 with copy of cover sheet of his Dissertation and and next page

You can readily obtain a copy of Prof. Beyer's article in the Dickinson Law Review.

You should write him direct about obtaining a copy of his Dissertation.

Undoubtedly few lawyers in California will participate in enacting legislation that will put them out of business. But the one field of law that could be cleaned up for the benefit of society (an environmental cleanup) is Probate. Prof. Beyer's Dissertation reveals that of the four Statutory Will states California's Statutory Will form rates last. Maine's form received the best acceptance in Prof. Beyer's "market tests" because of the many options it offers the testator.

Sincerely,
Harold I. Boucher
Harold I. Boucher

ST. MARY'S UNIVERSITY



April 23, 1990

Mr. Harold I. Boucher
Pillsbury, Madison & Sutro
Post Office Box 7880
San Francisco, California 94120

Dear Harold:

Enclosed please find a reprint of the article I recently published in the Dickinson Law Review entitled Statutory Will Methodologies--Incorporated Forms vs. Fill-In Forms: Rivalry or Peaceful Coexistence?

I have just been notified by the University of Illinois that my J.S.D. dissertation has been accepted and I will graduate in May. I will send you a complete copy of my dissertation as soon as it is printed.

Again, sincere thanks for your assistance in supplying materials on the development of the California statutory will and for your support in obtaining the ACPC grant.

Best regards.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gerry".

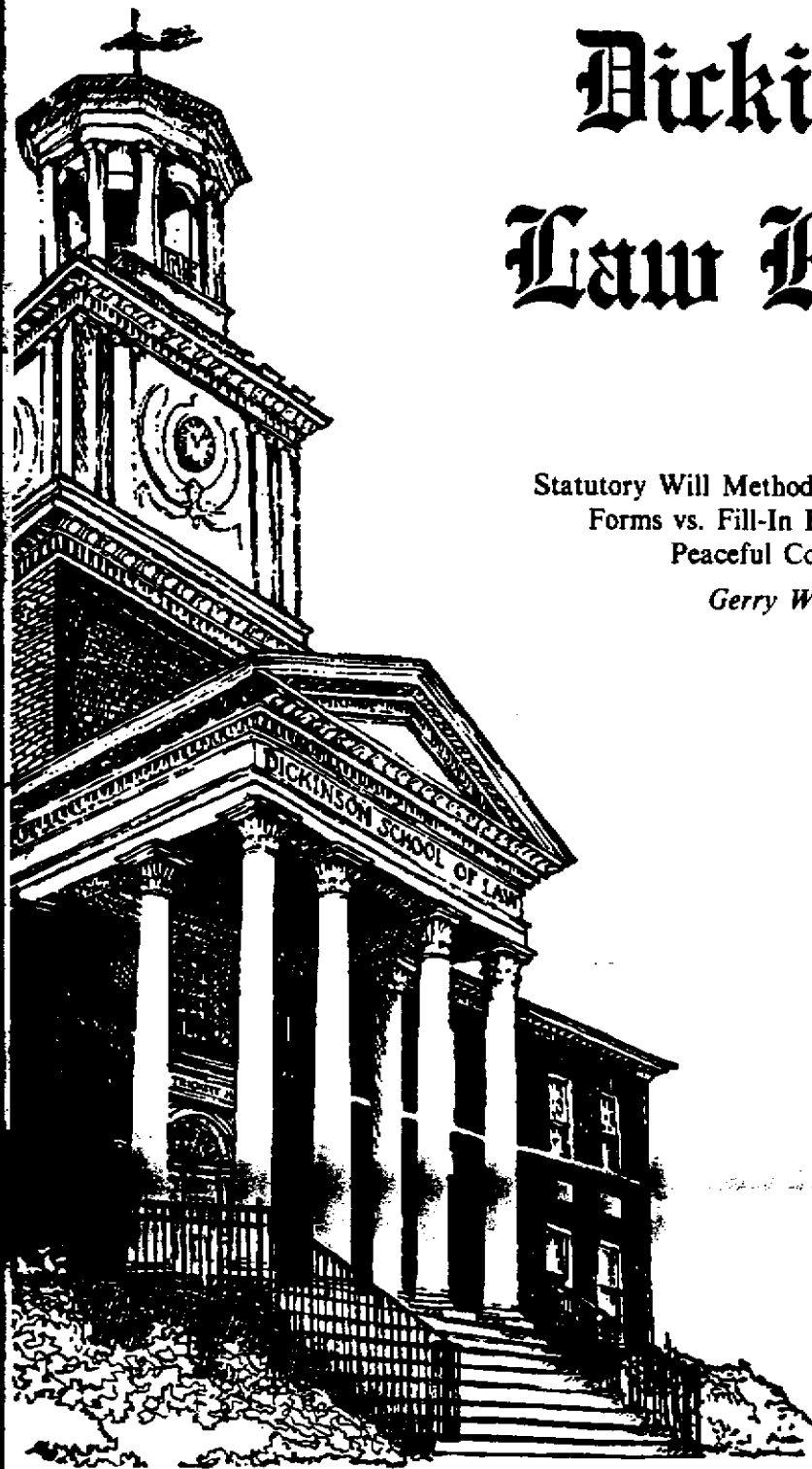
Gerry W. Beyer
Professor of Law

GWB:mmb
Enclosure

Dickinson Law Review

Statutory Will Methodologies—Incorporated
Forms vs. Fill-In Forms: Rivalry or
Peaceful Coexistence?

Gerry W. Beyer



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ST. MARY'S UNIVERSITY



May 9, 1990

Mr. Harold I. Boucher
Pillsbury, Madison & Sutro
Post Office Box 7880
San Francisco, California 94120

Dear Harold:

I enjoyed speaking with you earlier this week. As per your recommendation, I have sent copies of the Dickinson Law Review article to Irving Kellogg and Francis Collin.

Shortly after speaking with you, I received the envelope which contained your correspondence with the Chase Bank as well as additional drafts of the various documents relating to estate planning and trusts. I was amused by Mr. Polk's March 15, 1990 letter especially since after assuming you were no longer with us that he would now like to "have you" for dinner seeming to imply that you would be on the "menu." If your travels take you to New York and you visit Mr. Polk, may I recommend extreme caution.

Enclosed please find a reprint of my completed J.S.D. dissertation entitled Statutorily Enacted Estate Planning Forms: Development, Explanation, Analysis, Studies, Commentary, and Recommendations. I think you will find Chapter X discussing the statutory will study and Chapter XII discussing the statutory will survey to be of special interest.

As always, thank you for your untiring assistance and support of my work.

Best regards.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gerry".

Gerry W. Beyer
Professor of Law

GWB:mmb
Enclosure

**STATUTORILY ENACTED ESTATE PLANNING FORMS:
DEVELOPMENT, EXPLANATION, ANALYSIS, STUDIES,
COMMENTARY, AND RECOMMENDATIONS**

GERRY W. BEYER

STATUTORILY ENACTED ESTATE PLANNING FORMS:
DEVELOPMENT, EXPLANATION, ANALYSIS, STUDIES,
COMMENTARY, AND RECOMMENDATIONS

BY

GERRY WAYNE BEYER

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THESIS

Submitted in partial fulfillment of the requirements
for the degree of Doctor of the Science of Law
in the Graduate College of the
University of Illinois at Urbana-Champaign, 1990

Urbana, Illinois