

#L-655

0029L

6/13/85

First Supplement to Memorandum 85-60

Subject: Study L-655 - Probate Referee System

Background

California law requires that within three months after appointment of a personal representative, the personal representative must file with the court an inventory and appraisal of property in the decedent's estate. Prob. Code § 600. The appraisal must fix the value of the property at the date of the decedent's death.

The appraisal appears to have a number of uses in the course of the administration proceedings. It has been stated that the appraisal enables the judge to make decisions involving such matters as abatement of devises at date of death values, sales of real and personal property, investment decisions by fiduciaries, creditors' claims, the division of property, the accuracy of accountings, the proration of taxes and expenses, interest to be paid on delayed distributions, appropriateness of property management fees, fees for extraordinary services, fees for preparation of tax returns, sale of real estate, and the like. See Memorandum 85-60 and Exhibit 1 of this supplementary memorandum (letter from California Probate Referees Association).

Whether the initial appraisal actually and necessarily serves these purposes is subject to debate. For example, the statutes in most cases are silent as to whether valuation for a particular purpose must be current or as of the date of the decedent's death. In a few instances the statutes make clear that date of death values must be used. See, e.g., Sections 6573 (share of omitted child), 645.3, 649.4, 980 (interspousal debt allocation and limitations on liability), 901 (commissions and fees). In a few other instances the statutes make clear that some other date must be used. See, e.g., Sections 784 (for sale of real property, appraisal must be within one year of sale), 102 (value at date of transfer for purposes of quasi-community property recapture). In the remaining situations

presumably current market value is important. See, e.g., Section 1001 (preliminary distribution may be made if it can be done without loss to creditors).

In any event, the Commission has not yet completed its initial redraft of the Probate Code, and so it is not yet clear the extent appraisals will be useful or essential in the future. This we can only determine when our basic draft is complete.

#### Probate Referee

In making the initial appraisal of property in the decedent's estate, existing California law requires the personal representative to value liquid assets and requires all other property to be appraised by a probate referee. Probate Code Section 605 provides:

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

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

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

(2) All assets other than those appraised by the executor or administrator pursuant to paragraph (1) shall be appraised by a probate referee appointed by the court or judge, except with respect to the following:

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

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

(C) Such cases in which the court waives, for good cause, the appointment of a probate referee.

(3) If an executor or administrator seeks a waiver of the appointment of a probate referee pursuant to subparagraph (C) of paragraph (2), the executor or administrator, at the time of filing the inventory and appraisement pursuant to Section 600, shall file an appraisal of the fair market value of all assets of the estate and a statement which sets forth the good cause which justifies the waiver. The clerk shall set a hearing on the waiver not sooner than 15 days after the filing. A copy of the

inventory and appraisalment, the statement, and notice of the date of the hearing shall be served on and in the same manner as on, all persons who are entitled to notice pursuant to Section 926.

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

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

The probate referee must be appointed by the court from persons appointed by the State Controller to act as probate referee for the county. The State Controller determines how many and who will act as probate referees, and supervises training, performance, and ethics of the probate referees. The statute governing probate referees is set out as an appendix to this supplementary memorandum.

The reason for the State Controller's involvement is historical, relating to the role of the probate referee as an inheritance tax referee or appraiser in the case of decedents dying on or before June 8, 1982, the day the California Gift and Inheritance Tax was repealed.

Following repeal of the inheritance tax, legislation was enacted in 1982 to preserve the inheritance tax referees as probate referees. This legislation was intended as temporary only, pending the Law Revision Commission's study of the entire probate system, and the legislation included an express provision that the staff of the relevant legislative committees must review the Commission's progress and report back to the Legislature. Prob. Code § 1313. Legislation was introduced in 1983 to make the probate referee system optional rather than mandatory. This legislation was held in committee, due in part to the fact that the Commission study was still in progress.

As nearly as we can ascertain, the cost to the State of operating the probate referee system is small. The Controller contracts with the State Personnel Board to administer the qualifying examination, and the contract is funded out of applicants' fees. The supervisory functions of the Controller ordinarily are limited to data collection and preservation, a task which involves about 20% of the workload of a single state clerical employee. There are other occasional expenses involved in appointment or removal of probate referees.

Not every person who passes the qualifying examination is appointed a probate referee. There is some concern that the appointments by the Controller are political and of a patronage character. We have no information to verify or refute this, but numerous people who have spoken to us about the probate referee system have expressed this concern.

One problem we have encountered in trying to gather data and opinions for the Commission is that many people are reluctant to allow their names to be used in what they view as a sensitive political matter. For example, we have several letters from lawyers highly critical of the probate referee system which we have been unable to reproduce here because the authors have required that they be confidential. Many other persons have given us oral comments opposed to the probate referee system but have been unwilling to commit their thoughts to writing for the Commission. These people are concerned in part that they must continue to maintain a good working relationship with the probate referees in the future and don't wish to be blacklisted. As a consequence, we have in many cases in this memorandum simply repeated material people have told or sent us, without attribution.

#### Arguments For and Against Current Appraisal System

Whether, and the extent to which, appraisals should be done by the probate referee rather than by the personal representative or an appraiser employed by the personal representative, has been the subject of substantial debate over the past few years. All states in the United States require an appraisal as part of the administration proceedings, but 80 percent of the states provide for the appraisal to be made by the personal representative, often with the option to hire an independent appraiser for assistance. Only 10 states, including California, require an initial appraisal by an independent appraiser. See Memorandum 85-60 and the table attached to the memorandum.

In California, the State Bar Estate Planning, Trust, and Probate Law Section has conducted a survey of its membership concerning their opinion of the current appraisal system. When asked whether existing

law should be preserved, which provides for personal representative appraisal of liquid assets and probate referee appraisal of other assets, 684 respondents approved existing law and 428 disapproved. When asked whether the personal representative should be permitted to appraise all assets, 624 respondents approved and 611 disapproved. Although these results seem somewhat inconsistent, their import is clear: substantial numbers of practicing lawyers agree with the current appraisal system and substantial numbers believe it should be changed.

This division is also reflected in the letters on this matter that the Commission has received so far. Numerous letters attached as exhibits support the current probate referee appraisal system. Also attached are a few letters opposed to the current probate referee appraisal system. We anticipate receipt of additional letters from interested persons and groups before the June Commission meeting, as well as appearances at the meeting, that take positions for or against the current system.

We will not attempt to summarize here all the arguments that have been made for and against the current system. You should read the letters with care. Rather, we will go over what we consider to be the more significant arguments that have been made so far in this debate.

Reduced to its simplest terms, the debate over the probate referee system runs along the following lines. The proponents of the system state that throughout the course of administration of an estate reference must be made to value of property for one purpose or another, including sale, accounting, distribution, and taxation. The Probate referee gives an independent, unbiased, and reliable appraisal that is inexpensive and that enables the system to function with relatively little friction. The probate referee is particularly useful in estates where probate experts are not involved, since the referee can help guide the personal representative and attorney through the probate maze. Opponents of the probate referee system argue that the system adds expense and delay in every case even though it is useful in only a few cases. The relative inexpensiveness of the system for some estates is partly the result of overcharging other

estates and partly the result of a perfunctory valuation that is useless when valuation is a serious issue in a case or when a good appraisal is necessary for estate tax purposes. They point out that estate administration in the overwhelming majority of jurisdictions functions just fine without probate referees. They recognize that the probate referee can be useful in some estates, but believe that use of the probate referee should be an option available for those estates and should not be mandatory in all estates.

Fees. The major objection to use of the probate referee is that it imposes an additional cost upon every probate estate. The probate referee is allowed a statutory commission of 1/10 of one percent of the total value of the assets appraised, subject to a \$75 minimum fee and a \$10,000 maximum fee. In addition, the statute allows the referee actual and necessary expenses incurred in the appraisal. Prob. Code § 609. We do not have any information about the amount of expenses ordinarily allowed in a typical case, although we are seeking to obtain this information.

The claim has been made that this fee schedule is substantially lower than the fees that would be charged by an independent appraiser for comparable work. The Probate Referees Association is undertaking to provide us with statistical data to support this claim. An obvious question is, if this is true, how can the probate referees afford to do it so cheaply? One response is that because of the high volume of work, the probate referee is able to achieve economy of scale. This argument is not particularly convincing, since any appraiser should be able to achieve the same economy who does more than an occasional appraisal. A second response is that because all estates are appraised, the higher fees received in large estates enable the probate referee to tolerate the low fee generated by small estates. But this response in effect is that the probate referee's fees are not generally lower--only for the small estate, and that at the price of overcharging a large estate.

A more likely reason the fee of the probate referee is low is that the appraisal is not as detailed or extensive as the appraisal that would be given by a certified independent appraiser. This may be

due in part to the fact that an independent appraiser must be careful of malpractice liability, whereas the probate referee, as a court officer, may be immune (although the law is not clear on this point). Of course, when the appraisal is quick and cheap, the probate referee cannot act completely independently but tends to simply accept the valuation suggested by the personal representative or attorney. This observation has been made to us by practicing lawyers on a number of occasions. Also, with a pro forma appraisal, the possibility of error increases and the usefulness and reliability of the appraisal decreases. This issue is discussed below under the heading of "accuracy."

Another likely reason for the generally low fees is that the value of some items such as stock may be easily determined. What the referee saves in time in valuing these items can be applied to valuing more difficult items, so there is an apparent net savings in valuing the entire estate.

Despite the fact that the probate referee's fee may be low, concern has been expressed at having to pay any fee at all in an estate where there is no need for the appraisal. In many situations there is simply no occasion to use an appraisal because there will be no sale of the property, no taxes are due, there is no dispute over distribution, and the personal representative has waived fees. Questions have been raised over the propriety of requiring an appraisal in this situation; it is claimed that there are thousands of estates like this in which the appraisal is an unnecessary expense. This point is also made by Assemblyman Rogers, who remarks, "Unfortunately, in the small estate involving a family house or other limited assets, a minimum fee of \$75.00 still must be paid to the Probate Referee because it will cost this much in additional fees or cost of time to go through the order to show cause procedure to eliminate the \$75.00 cost. In these small family home cases, the sole child many times must advance his own money for fees and costs to get title into his or her name as the house may be the sole asset in the estate." See Exhibit 2. And in some cases handled by the public administrator, the cost of the \$75 appraisal may exceed the value of

the estate. See letter from Yolo County Public Guardian/Administrator (Exhibit 5).

In other cases an appraisal may be necessary for one purpose or another, such as estate taxes, but the personal representative plans to hire a private certified appraiser to ensure the accuracy and acceptance of the appraisal. In this situation, the probate referee's appraisal is superfluous and is just another expense imposed on the estate.

Delay. Does the appointment of and appraisal by the probate referee delay the probate proceedings? We have heard from practicing lawyers that this may be the case in some estates as to the initial appraisal. There is a remedy if a particular referee is causing delay--removal by the controller or disciplinary action by the Probate Referees Association. If the workload in a county is too great, causing widespread delays, the Controller may appoint more referees.

The more frequent cause of delay appears to be the requirement that the probate referee appraise property for sale purposes. We have been informed that this may add from 10 to anywhere as much as 30 to 45 days to the sale process. We have no general statistics on this point.

Accuracy. Is the appraisal of the probate referee any more or less accurate than the appraisal of the personal representative or any other independent appraiser? Among the letters sent to the Commission and attached as exhibits to this supplementary memorandum, there are numerous testimonials to the validity and accuracy of the probate referee's appraisal. The correspondents note that they have used the probate referee's appraisal for many years and found them to be uniformly good. The critical point made by these letters, for our purposes, is that the probate referee's appraisal is independent and neutral among the various forces contending for high and low appraisals, and therefore the probate referee fulfills a vital function. See, e.g., Exhibits 10 ("An impartial valuation of the probate assets is the basis for an intelligent and informed overseeing of the administration of the estate. The lack of such valuation gives rise to an opportunity for fraud and deception while self appraisal



can raise conflict of interest problems." Myron Siedorf), 4 ("1. Being appointed to the position and assigned to each case independently, they are under no pressure to fix values to suit any special interest. 2. Values of property in probate proceedings will always be of interest to various conflicting interests. Therefore, having a neutral appraisal is healthy." Judge David C. Lee), 12 ("Without an independent party establishing appropriate values for estates held in these accounts there is no question but what fraud will be committed against beneficiaries." WestAmerica Trust Co.).

However, other commentators question the independence and accuracy of the referee's appraisal. There is some indication that some probate referees may simply value property at the value requested by the personal representative. In connection with our research on real property sales procedures, we received a number of unsolicited comments about the accuracy of the probate referee's appraisal. Judge Robert R. Willard, Superior Court, Ventura, stated:

[A]ppraisals by probate referees are not a very good indication of fair market value. Referees in Ventura County historically have been attorneys engaged in general practice. They tend to appraise within a range requested by the personal representative or his attorney. If a sale is arranged it is customary to secure a reappraisal, if necessary, to legitimize the sales price.

The Probate Clerk of San Joaquin County stated:

In San Joaquin County, the Court/law required Inventory & Appraisal from our locally appointed Probate Referees is notorious for matching, to the penny, the amount bid on a return of sale petition. I have seen more than one property eventually sold in an overbid situation at more than four times the original bid.

The Yolo County Public Guardian/Administrator (Exhibit 5) comments that "many of their appraisers are not properly trained. Only members of the American Society of Appraisers have this formal training . . . . Also, as a practical matter, most Probate Referees either rely on the Public Guardian's appraisal of the property or wait until the property is sold before they place a value upon it."

We are informed by Federal Estate Tax Examiners and by private attorneys that since the probate referee's appraisal is no longer the basis for State taxation, the appraisal is now viewed as suspect and not particularly reliable for estate taxation purposes.

What Items Must Be Appraised? Probate Code Section 605 requires appraisal by the probate referee of all non-liquid assets of the estate, with the fee based on the value of the appraised assets. This has generated concerns by critics of the system that the system benefits the probate referee without any corresponding benefit to the estate or the heirs or devisees. For example, it is alleged that requiring the probate referee to value all estate property on a percentage fee adds an unnecessary expense for those items that require no extra work or special expertise to appraise. The most commonly cited case is stock of a publicly-owned company traded on a major exchange, for which market values are published daily. In order to value \$100,000 worth of stock as of the date of decedent's death, the personal representative need only look up the published exchange price. But the law requires the probate referee to do this and to charge the estate a \$100 commission for doing it. Another actual example given us was a \$2.5 million estate consisting almost entirely of one block of stock in a single large publicly-owned corporation. The estate had to pay the probate referee a \$2,500 fee for looking up a single value.

Why Is Independent Appraisal Necessary? If we assume, for now, that appraisals are necessary for some purposes in probate administration, the question still remains—Why must the appraisal be done by the probate referee rather than by the personal representative or an appraiser employed by the personal representative? The answer given by proponents of the probate referee system is that it is important for a number of reasons to have a disinterested appraisal. Assuming also for now that the probate referee's appraisal is in fact disinterested (see discussion above of "Accuracy"), let us examine these reasons.

The first set of reasons involve a potential conflict of interest of the personal representative. The fees of the personal representative are based on the value of the estate--the greater the value, the greater the fees. To allow the personal representative to appraise the estate would invite unreasonably high appraisals by personal representatives seeking higher fees. There may be some merit

to this argument, although because the personal representative fee is such a small proportion of the value of the estate, the estate would have to be greatly overvalued to make any substantial difference in the fee of the personal representative. Moreover, in many cases the personal representative waives the fee; and yet the law still requires the probate referee to make the appraisal and charge a commission.

There is another concern that the staff believes has not been adequately addressed. If it would be a conflict of interest for the personal representative to value the estate, why isn't it a conflict of interest for the probate referee to value the estate? After all, the probate referee's fee is also based on the value of the estate, and the same incentives to overvalue are there. The conflict of interest argument seems to require valuation by a truly independent appraiser working on an hourly basis rather than by the probate referee. And in fact, the various appraisal societies take the position that it is unethical for an appraiser to take a fee based on appraised value, as probate referees do.

Related to the conflict of interest concern is the fear that if the personal representative appraises the property for purposes of sale, the personal representative will fraudulently undervalue the property in order to enable friends and relatives to pick up the property cheaply. This argument assumes that there will be no protections in the form of overbidding or court confirmation, that the heirs and devisees will exercise no review of the actions of the personal representative, that there is no adequate bond to cover malfeasance by the personal representative, and that the interests of the personal representative and the heirs and devisees are in conflict. The staff does not know how realistic this concern is, but once again, if it is assumed that the personal representative will act fraudulently for the benefit of friends and relatives, why will not the probate referee act likewise?

Another reason given for the need for an independent appraisal is to ensure accuracy for taxation purposes. It is clear that there may be a motivation for the heirs or devisees to overvalue or undervalue property depending upon the character of the property, its

depreciability, estate tax consequences, income tax consequences, and the like. If we assume that the personal representative is susceptible to pressure from the heirs or devisees (or is himself or herself an heir or devisee), this could be a concern. Some letters we have received indicate that the probate referee's appraisals are honored by the Internal Revenue Service. See, e.g., Exhibits 11 (appraisal as to capital gains questions have "special force and effect since it came from an agent of the State of California", Robert W. Pendergrass), 7 ("has helped enormously in federal tax valuation inquiries", James B. Merzon), 8 ("We have found that the quality of work is such that we have very little problem with valuation questions at the time of the audit procedures for our federal estate tax returns." Robert Zeilenga).

Opposed to this we have received comments from other practitioners to the effect that the valuation by the probate referee does not avoid the need to provide qualified appraisals. The personal representative will have to provide detailed information regarding value to the IRS irrespective of what the referee decides. In the case of a federal estate tax return, all of the values in Form 706 are self-appraised, but documentary support must be attached. Opponents argue that probate referee has no function in the federal tax evaluation process; the referee's appraisal is available to the federal government but the federal estate tax attorneys all make their own determination on evaluation and perform their own federal audit. The federal taxation system functions well in states that do not use an independent appraiser, and we have no reason to believe that California estates have less trouble with the feds than estates from other jurisdictions. In addition, the existing probate referee scheme requires an appraisal for all estates, even though many estates clearly will not be subject to estate taxation.

Federal Estate Tax Examiners inform us that the appraisal of the probate referee is a starting point, but there is no presumption in its favor, particularly since the appraisal is no longer used by the state for tax purposes. They do not give the probate referee's appraisal any greater credence than they do an appraisal by a qualified private appraiser, except on an individual basis.

Waiver. Although the California probate referee system is referred to as a mandatory appraisal system, in fact the law was amended in 1982 to provide that the court may "waive", for good cause, appointment of a probate referee, and the personal representative may self-appraise the property. Prob. Code § 605(a)(3). The application to the court is made at the time of filing the inventory, and hearing may not be held before 15 days after filing. Some lawyers, we understand, routinely waive the probate referee in every case and do a self-appraisal, relying on an appropriate appraisal expert where that is desirable for estate tax purposes. This may be feasible in a large estate that can afford to go to court for the waiver.

The existing waiver scheme has been criticized on a number of grounds, however. It has been pointed out that for the small estate, the waiver is illusory since it will cost as much in additional fees or cost of time to go through the court procedure as it will simply to pay the probate referee the \$75 minimum appraisal fee and be done with it. Exhibit 2 (Assemblyman Rogers). The timing of the waiver application is confusing--in some cases an early application may be appropriate and in other cases a late application may be appropriate. The main complaint the staff has heard, though, is that it is not clear what will satisfy the "good cause" requirement; that the presumption should be reversed and no probate referee should be required unless there is a dispute between interested parties. In such a case the probate referee would serve a useful function and should be appointed upon request of a party.

Distribution conflicts. The proponents of the probate referee system point out that an appraisal by an independent probate referee gives all interested parties some common information to work with and can help resolve conflicts among the parties as to distribution or other treatment of estate assets. There seems to be no disagreement among opponents of the probate referee system that the appraisal can have this effect. Indeed, the most significant role for the probate referee, as seen by some opponents of the system, is to appraise for purposes of distribution in case of disagreement among heirs or devisees.

The question, once again, is not whether the appraisal would be useful in some cases but whether it should be required in all cases. Opponents of the probate referee system point out that it is a waste of an estate's money to have a probate referee appraisal in cases where there is no dispute or conflict. They see the probate referee as serving the function of a true referee, just as in other civil litigation. The referee could be appointed to help resolve disputes upon request of a party or upon the court's own motion if it appears the appraisal would be helpful.

Aid to parties. The probate referee can also function as an aid to persons--attorneys as well as interested parties--who are not familiar with the probate system and who need advice or guidance. While this function of the probate referee is undoubtedly useful for some persons, it is of little importance to probate experts. Is this a reason in itself to require appraisal by a probate referee in every estate? Other areas of practice do not involve a special functionary to offer advice and guidance to interested persons and attorneys.

#### Options For Dealing With Probate Referee System

The foregoing arguments and considerations suggest a number of alternative approaches to dealing with the current probate referee system. These alternatives are outlined briefly below.

(1) Leave existing law unchanged. There is certainly substantial support in the letters we have received for the existing probate referee system. Of course, as we noted in connection with the State Bar survey, there is also substantial sentiment to abandon the existing system in reliance upon self-appraisal.

(2) Keep existing system but remove selection process from State Controller. Numerous letters attached to this supplementary memorandum point out that the probate referee is a court officer who serves an important function assisting the court. If this is so, why isn't the probate referee panel appointed by the court rather than the controller? And why isn't the removal process subject to court control? The effect of this change would be to (possibly) depoliticize the selection process, although the effect would more likely be to move the political pressures from state to local level.

If this concept were adopted, qualifications could be determined efficiently by continuing to have the State Personnel Board administer the qualifying examination, on a self-supporting fee basis.

(3) Keep existing system but base fee of referee on reasonable fee rather than value of appraised property. This proposal would eliminate some of the complaints about a system that allows a large fee to be awarded for very little work and that involves a conflict of interest. One problem is that it would result in relatively higher expenses in small estates, which are now subsidized somewhat by fees from larger estates. But why should small estates be subsidized by large estates; shouldn't each pay its own way?

(4) Keep existing system, but allow personal representative to appraise publicly traded stock. This proposal would eliminate some of the abuses in the current system that irritate people.

(5) Allow will or heirs or devisees to waive probate referee. This would be analogous to waiver of a bond by the will or heirs or devisees.

(6) Retain probate referee but only upon demand of a party. If any interested party demanded use of a probate referee, appointment would be mandatory. This would preserve the probate referee in the area where all people concerned seem to agree it would be most useful--in case of a conflict among interested parties. In this situation the probate referee would be acting in the same manner as a referee appointed in other civil matters.

(7) Make use of probate referee optional. This would involve self-appraisal by the personal representative, with the option to employ the probate referee if desired. The personal representative would also have the option to employ another competent independent appraiser if necessary. The personal representative could employ the probate referee or independent appraiser for appraisal of the whole estate or for specific property and specific purposes.

(8) Eliminate probate referee system. The probate referee system could simply be dismantled, and reliance placed on self-appraisal by the personal representative with the assistance of private appraisers where necessary. The great majority (80%) of the states utilize this approach.

These are the main approaches that have occurred to the staff. There are probably others, as well as refinements of the main approaches. For example, in connection with making the probate referee system optional, the probate referee could be given statutory immunity as a court officer. This would have the effect of giving the probate referee a competitive advantage without forcing the choice on a person who desires appraisal by a certified appraiser.

Commission decision is somewhat premature at this point, since we have not completed our initial redraft of the Probate Code and do not yet know in what areas an appraisal would be either necessary or desirable, nor the quality of the appraisal required.

Respectfully submitted,

Nathaniel Sterling  
Assistant Executive Secretary



APPENDIX

**§ 1300. Probate referee defined**

Probate referee means the probate referee of the county of the superior court having jurisdiction.  
(Added by Stats.1982, c. 1535, § 13.)

**§ 1301. Jurisdiction and powers**

Upon his designation and appointment the referee has:

(a) Jurisdiction to require the attendance before him of the executor, administrator, any person interested in the estate, or any other person whom he may have reason to believe possesses knowledge of the estate.

(b) All the powers of a referee of the superior court.

(Added by Stats.1982, c. 1535, § 13.)

**§ 1302. Subpoenas**

The referee may issue subpoenas compelling the attendance of any person before him for the purpose of appraising any property included in the estate.  
(Added by Stats.1982, c. 1535, § 13.)

**§ 1303. Examination and taking testimony**

The referee may examine and take the testimony under oath of any person appearing before him concerning the value of the property.  
(Added by Stats.1982, c. 1535, § 13.)

**§ 1304. Noncompliance with subpoena; contempt**

Any person served with a subpoena issued by the referee requiring him to appear and testify before the referee in respect to any appraisement, or to produce any book or paper under his control or custody which is relevant to the appraisement, who refuses or neglects to do so, is guilty of a contempt of the court by whom the referee was designated and appointed.

(Added by Stats.1982, c. 1535, § 13.)

**§ 1305. Appointment of probate referees; term of office; qualified applicants; inheritance tax referees to serve as probate referees**

The Controller shall appoint from among persons passing a qualification examination administered by the State Personnel Board at least one person in each county to act as a probate referee for the county. Such appointments shall be on the basis of merit without regard to sex, race, religious creed, color, national origin, ancestry, marital status, or political affiliation. In the event there are less than three regularly qualified applicants to serve in a county, the Controller may designate a probate referee from another county or in the event there is no regularly qualified applicant, make an interim appointment, to serve until the vacancy has been filled by a regularly qualified applicant.

As soon as practical after the operative date of this chapter, the Controller shall appoint the then appointed inheritance tax referees to serve out their current terms as probate referees. Thereafter, the term of office of a probate referee shall be four years, expiring June 30. In increasing the probate referees in any county thereafter, the Controller shall stagger the terms of the new appointees so that one-quarter or as close to one-quarter as possible of the terms of the probate referees expire on June 30 of each succeeding year. For purposes of this section, any person who has passed the qualification examination for inheritance tax referee shall be deemed a qualified applicant. Once qualified, an applicant remains eligible for appointment for a period of five years from the date of his examination. Once appointed, a probate referee remains eligible for reappointment.

(Added by Stats.1982, c. 1535, § 13.)

**§ 1306. Qualification examinations; list of passing applicants**

(a) Qualification examinations for applicants for appointment as a probate referee shall be held at such times and at such places within the state as the Controller determines.

(b) The Controller shall contract with the State Personnel Board to administer such examination. Each applicant shall pay a fee for taking the examination as is established by the State Personnel Board.

(c) The administration of such examinations shall include:

(1) Development of standards for passage of such examination.

(2) Preparation of examination questions.

(3) Giving such examinations.

(4) Scoring examinations.

(d) The State Personnel Board shall transmit to the Controller a list of candidates that have received a passing score in such examinations. Such list shall be a public record.

(Added by Stats.1982, c. 1535, § 13.)

#### **§ 1307. Standards of training, performance and ethics**

The Controller may establish and amend standards of training, performance and ethics of probate referees. Such standards are public records.

(Added by Stats.1982, c. 1535, § 13.)

#### **§ 1308. Removal**

(a) A probate referee may be removed for noncompliance with any standard of training, performance or ethics established under Section 1307. Any removal under this subdivision shall not be subject to notice or a hearing, but shall be reviewable by writ or mandate to a court of competent jurisdiction.

(b) Notwithstanding the provisions of subdivision (a) or Section 1305, within any one year the Controller may also remove, at his pleasure, at least one probate referee, but not more than 10 percent of the probate referees in any one county. The Controller, notwithstanding the provisions of subdivision (a) during calendar year 1983, within any quarter of the year, may also remove, at his or her pleasure, at least one probate referee, but not more than 10 percent of the probate referees in any one county.

(Added by Stats.1982, c. 1535, § 13.)

#### **§ 1309. Cessation of authority**

The authority of any person to act in any capacity as a probate referee ceases immediately upon the expiration of that person's term of office, resignation, or other termination pursuant to law.

(Added by Stats.1982, c. 1535, § 13.)

**§ 1310. Taking unlawful payments; offense; punishment**

Any probate referee who takes any fee or reward not allowed him by law from any person liable for the payment of the whole or any portion of any tax imposed by this part is guilty of a misdemeanor, and upon conviction is punishable by a fine of not less than two hundred fifty dollars (\$250) nor more than five hundred dollars (\$500), or by imprisonment in the county jail for 90 days, or by both. In addition, the court shall dismiss him from service as a referee. (Added by Stats.1982, c. 1535, § 13.)

**§ 1311. Political activities prohibited; offense**

(a) A probate referee or any person who is an applicant for or seeking an appointment as a probate referee shall not, directly or indirectly, solicit, receive, or contribute, or be in any manner concerned in soliciting, receiving or contributing, any assessment, subscription, contribution, or political service for any campaign for the office of Controller of this state.

(b) A referee or any person who is an applicant for or seeking an appointment as a referee shall not, directly or indirectly, solicit, receive, or contribute or be in any manner concerned in soliciting, receiving or contributing, any assessment, subscription, or contribution for any campaign for any partisan public office of this state, other than for the office of Controller, exceeding two hundred dollars (\$200) to any party or candidate in any one year.

(c) Any violation of the provisions of this section is a misdemeanor.

(Added by Stats.1982, c. 1535, § 13.)

**§ 1312. Appointment of persons formerly engaged in prohibited political activities; application of section**

The Controller shall not appoint any person as a probate referee who has directly or indirectly solicited, received, or contributed, or was in any manner concerned in soliciting, receiving, or contributing, any assessment, subscription, contribution, or political service for any campaign for the office of Controller of this state or who has directly or indirectly solicited, received or contributed, or was in any manner concerned in soliciting, receiving or

contributing any assessment, subscription or contribution for any campaign for any partisan public office of this state, other than the office of Controller, exceeding two hundred dollars (\$200) to any party or candidate in any one year within the two-year period preceding the date of his appointment. The appointment of any such person as an inheritance tax referee shall be void; however, all acts performed by such person prior to his removal are valid. This section shall not apply to the above activities of a person prior to the operative date of this section.

(Added by Stats.1982, c. 1535, § 13.)

**§ 1313. Report; review of study on administration of decedents' estates**

The staff of the appropriate policy committees of the Senate and Assembly shall review the study conducted by the California Law Revision Commission regarding the administration of estates of decedents and shall prepare a report to the Legislature regarding the study by June 30, 1984.

(Added by Stats.1982, c. 1535, § 13.)

## EXHIBIT 1

# California Probate Referees Association

**OFFICERS**  
1983-1984

October 24, 1984

**ALBERT J. NICORA**

*President*  
Alameda County

**NANCY FERGUSON**

*Vice President, Division 1*  
Butte County

**MICHAEL McMAINS**

*Vice President, Division 2*  
Sonoma County

**STANLEY SPIEGELMAN**

*Vice President, Division 3*  
Riverside County

**LeVONE A. YARDUM**

*Vice President, Division 4*  
Los Angeles County

**RAYMOND SIMONDS**

*Director*  
Solano County

**ROGER McNITT**

*Director*  
San Diego County

**IRVING REIFMAN**

*Director*  
Los Angeles County

**VIRGINIA CARTER**

*Director*  
Los Angeles County

**LEWIS H. SILVERBERG**

*Past President*  
San Diego County

**F. D. GROTHE**

*Treasurer*  
Lake County

**WAYNE K. HORIUCHI**

*Secretary*  
Santa Clara County

California Law Revision Commission  
4000 Middlefield Road, Room D-2  
Palo Alto, CA 94306

Re: Role of Probate Referee

Dear Members of the Commission:

The California Probate Referee Association contends that the advantages of the Probate Referee System are such that the system should be preserved as a mandatory element of probate administration. The probate referee's role in the probate procedure provides many benefits.

(a) The present system of having probate judges supervise the distribution of the estates is especially necessary in today's strife-ridden society. The role of the probate referee as independent appraiser and judicial aide has been proven over the years to be an inexpensive, helpful and efficient part of the probate system. The referee's appraisal expedites the process without losing the benefits of judicial supervision.

(b) The probate judges and probate commissioners benefit from the independent appraisal system. Probate judges often have very lengthy calendars requiring them to deal with many cases or issues in a limited time period. The issues presented to the judge often require an immediate decision without sworn testimony. Many of these decisions cannot be made without confidence that the values represented on the petitions and inventories are accurate; this is best achieved by having assets independently appraised in all cases. Relying upon the independent appraisals of the probate referee, the judge can with confidence make decisions involving abatement of devises at date of death values, sales of real and personal property, investment decisions by

fiduciaries, creditor's claims, the division of property, the accuracy of accountings, the prorations of taxes and expenses, interest to be paid on delayed distributions, appropriateness of fiduciary and legal expenses as well as the appropriateness of property management fees, fees for extraordinary services, fees for preparation of tax returns, sale of real estate, etc. Many estates cannot afford expensive "outside" appraisals. The probate judge, however, needs the information, and having it in all cases expedites the probate process without lessening the accuracy and reliability of the judicial decisions on these many issues.

(c) The probate procedure, since it does require an inventory, will always need someone to verify the values on that inventory. The referee serves as a clearing house to help detect and correct problems with inventories (such as inadequate preparation of inventories, improper legal descriptions by members of the public, attorneys, paralegals, etc.) The referees, therefore, help to insure the expeditious presentation of all inventoried items at the earliest possible point in the probate process, before the inventory ever gets to the judge's attention. Without the referee providing this function, the courts would become bogged down in improper and imprecise reports, inventories, appraisements, etc. The present procedure is fast, simple, expeditious and accurate.

(d) The local referee is a statutory officer of the court working for the local probate judge. As an independent professional, unencumbered by the bureaucracy, the referee serves as a helpful intermediary between local citizens and the probate court. As a result, the appraisal system works efficiently and with individual attention to the needs of the beneficiaries, fiduciaries, professionals and court personnel involved.

(e) It is especially important to point out that the referees minimize litigation. The referees are independent appraisers. The judge does not have to question whether their appraisal is being presented in an adversary context, solely to obtain a desired result. In addition, the conflict which results when different sides retain their own appraisers to prove a point does not present itself. Were there no independent referees, various parties would be required to present their own appraisals in an adversary context and the reliability of the appraisal would be questionable. As a result, other parties, who do not approve of the value, would

be placed in the position of retaining their own appraisers at a substantial cost to contest the appraisal of the original party.

(f) Referees are located in all counties of the State and have an efficient system for using ancillary services. The ranks of the referees include appraisers, attorneys, accountants, brokers and other professionals. Each has an operating staff and office. These offices are in contact with the local professionals, realtors, ranchers, business people, judges, etc. Dismantling this efficient system and putting in a new system would be expensive and would be a financial loss to the general public without any gain.

(g) The referee deals with small estates as well as large, with heirs and fiduciaries who do not have attorneys, and with new attorneys who are unfamiliar with probate procedure as well as sophisticated law and accounting firms. The referees are especially helpful to those persons who may be struggling from inexperience.

(h) The qualifications of probate referees have been determined and tested. They are usually professionals from all walks of life who have substantial experience in business matters. They are required by law to pass an examination prior to appointment.

(i) Allowing self-appraisal invites abuse. In addition, to the conflicts and the expense of litigation that result, self-appraisal may leave probate courts without much confidence that such opinions are reliable. By having independent appraisals, the probate calendars can be handled without requiring testimony and other evidence which would require additional time and additional probate judges, commissioners and staff.

(j) The costs of the system to any one estate is insubstantial, and small estates benefit from the same appraisal services as large estates at the same relative costs. The reason for this low cost is that the mandatory element spreads the costs among all users. Without being mandatory, the system could not be so inexpensive and efficient.



California Law Revision Commission  
October 24, 1984  
Page Four

The benefits of mandatory appraisal by the Probate Referee are such that it should remain in effect as part of the California Probate Code.

CALIFORNIA PROBATE REFEREE'S ASSOCIATION

BY: Edward V Brennan

TITLE: Association Representative



st. Supp. to Memo 85-60

EXHIBIT 2

# Assembly California Legislature

SACRAMENTO ADDRESS  
STATE CAPITOL  
SACRAMENTO, CA 95814  
TELEPHONE: (916) 445-9496

## DISTRICT OFFICES

412 - 18th STREET  
BAKERSFIELD, CA 93301  
TELEPHONE: (805) 395-2927

116 SOUTH "M" STREET  
SUITE 3  
TULARE, CA 93274  
TELEPHONE: (209) 688-2864

DON ROGERS

ASSEMBLYMAN, THIRTY-THIRD DISTRICT

July 15, 1983

Mr. John H. DeMouilly  
Executive Secretary  
California Law Revision Commission  
4000 Middlefield Road, Room D-2  
Palo Alto, CA 94306

Dear Mr. DeMouilly:

I would like to suggest that the California Law Revision Commission make an immediate recommendation for the revision of Section 657 of the Probate Code as set forth in Assembly Bill 816 (1983). See copy enclosed.

Since repeal of the California Inheritance Tax by the people of the State of California, the Legislature has changed the Inheritance Tax Referees to "Probate Referees" and has required a complicated procedure to waive the mandatory appraisal of all but specified estates. (See Section 605 of the Probate Code).

Thirty-four states have eliminated the required use of a court-appointed referee to appraise assets. The personal representative of the estate makes the appraisal and can use a referee if he decides he needs one.

Unfortunately, in the small estate involving a family house or other limited assets, a minimum fee of \$75.00 still must be paid to the Probate Referee because it will cost this much in additional fees or cost of time to go through the order to show cause procedure to eliminate the \$75.00 cost. In these small family home cases, the sole child many times must advance his own money for fees and costs to get title into his or her name as the house may be the sole asset in the estate.

I understand the administrative part of the Probate Code is under consideration for revision, but it may be two years before this full study is completed. During this two-year period, beneficiaries in small estates will continue payment of fees for appraisals that are not needed since there is no inheritance tax

JOHN DE MOULLY

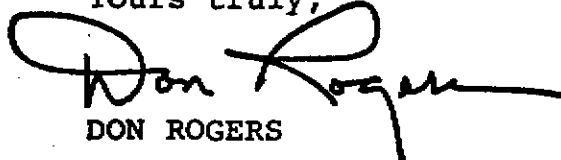
-2-

JULY 15, 1983

and no need for an accounting or for values to be established in these small estates.

Thank you for your cooperation.

Yours truly,

A handwritten signature in black ink, appearing to read "Don Rogers", with a stylized, sweeping flourish extending from the end of the name.

DON ROGERS

DAR:BJC  
ENCL.



# Assembly California Legislature

PLEASE RESPOND TO:

☒ SACRAMENTO ADDRESS  
STATE CAPITOL  
SACRAMENTO, CA 95814  
TELEPHONE: (916) 445-8498

DISTRICT OFFICES

☐ 1328 H STREET  
BAKERSFIELD, CA 93301  
TELEPHONE: (805) 395-2927

☐ 115 SOUTH "M" STREET  
SUITE 3  
TULARE, CA 93274  
TELEPHONE: (209) 686-2864

COMMITTEES: 1985-86

Vice Chairman  
Natural Resources  
Local Government  
Public Safety

DON ROGERS

ASSEMBLYMAN, THIRTY-THIRD DISTRICT

May 29, 1985

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

Dear Mr. DeMouilly:

The purpose of this letter is to add my support to the Commission in its efforts to revise the Probate Code regarding the need and use of Probate Referees.

As you know, after the successful elimination in June 1982 of the State inheritance and gift tax, I immediately followed up with a legislative attempt to allow the appraisal of the decedent's estate by a personal representative and/or the need for a referee at the discretion of the court. I was unable to get the bill out of committee.

I am aware that eighty percent of the states in our country allow an appraisal to be made by a personal representative. I am convinced that the probate referee system we now have in California should not be mandatory, but that a referee should be used only when deemed necessary by the Court.

The work of your Commission in trying to reduce the cost and complexity of California's probate process is commendable. I wish you success in your efforts.

Yours truly,

  
DON ROGERS

DAR:BJC

EXHIBIT 3

GRIFFIN, CONWAY & JONES

ATTORNEYS AT LAW

1008-12TH STREET

MODESTO, CALIFORNIA

JOHN E. GRIFFIN  
THOMAS BOONE CONWAY  
JACK R. JONES  
JOHN E. GRIFFIN, JR.  
NORMA J. WOLLESEN  
KENNETH C. COCHRANE

AREA CODE 209  
TELEPHONE 577-6100

MAILING ADDRESS:  
P. O. BOX 966  
MODESTO, CA 95353

September 20, 1983

LAW REVISION COMMISSION

Re: Probate Referee System

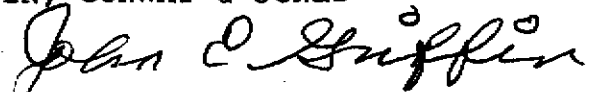
Gentlemen:

I support the Probate Referee system which provides me with an independent appraisal at a very fair and nominal price. I would not like to undertake the appraisal myself but to get an independent person's thoughts on the values of properties so I can compare my own, which I think is a much better service for my clients.

Very truly yours,

GRIFFIN, CONWAY & JONES

By

  
John E. Griffin

JEG:sgb

EXHIBIT 4  
SUPERIOR COURT  
STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

CHAMBERS OF  
DAVID C. LEE  
JUDGE

HAYWARD HALL OF JUSTICE  
24405 AMADOR STREET  
HAYWARD, CALIFORNIA 94544  
(415) 881-6837

20 September 1983

Mr. John H. DeMouilly  
California Law Revision Commission  
4000 Middlefield Road  
Palo Alto, CA 94306

Dear Mr. DeMouilly,

I am aware that the Commission is now studying the use of referees/appraisers in probate proceedings.

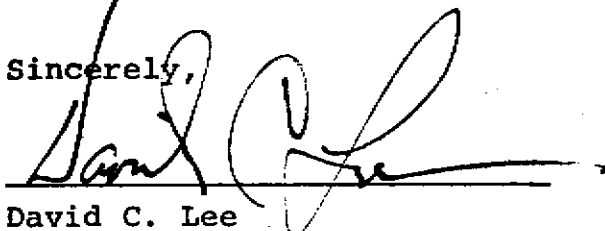
I would like to put in my independent two cents worth. I am aware that there are those who strongly feel the position is no longer necessary. However, I would like to urge retention of the position for several reasons:

1. Being appointed to the position and assigned to each case independently, they are under no pressure to fix values to suit any special interest.
2. Values of property in probate proceedings will always be of interest to various conflicting interests. Therefore, having a neutral appraisal is healthy.
3. Costs are minimal under our present system whereas private appraisers are very expensive. If items of unique value are involved, private specialty appraisers can be used anyway. However, over the ten years that I was in our probate court, I seldom had use for any other than the ITR appraisalment.

I feel that retention of the inexpensive, independent appraisers will continue to give the court invaluable and reliable estate values so that it will be able to do those tasks which require knowing values in estate supervision. (i.e.: fix fees, apportion assets, etc.)

I shall be happy to respond to any questions you or the Commission may have.

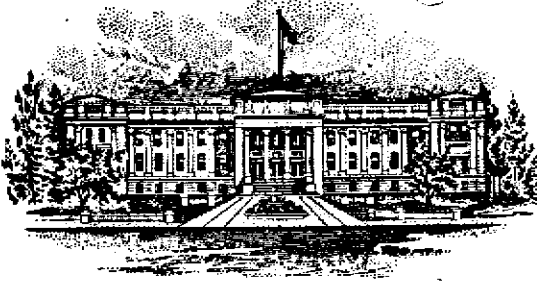
Sincerely,



David C. Lee  
Judge of the Superior Court

DCL:jch

EXHIBIT 5



# COUNTY OF YOLO

## Woodland, California 95695

DOUGLAS A. KAPLAN  
PUBLIC GUARDIAN/ADMINISTRATOR  
P.O. Box 785, 220 Fourth Street  
Woodland, California  
(916) 666-8100

October 9, 1984

David Rosenberg  
c/o Californians Against Proposition 41  
1112 Eye St., #200  
Sacramento, CA 95814

Dear David:

Congratulations on your appointment as Deputy Campaign Manager for the Californians Against Proposition 41 Committee. I am sure you will do an excellent job and defeat this intolerable initiative. I am pleased to let you know that at the Fall Conference of the California Public Guardians/Conservators and Administrators Association, we voted unanimously to oppose Proposition 41. Please feel free to use our Association name as one of those groups opposing Prop 41, and if I can be of any special assistance, please let me know.

As per your request, I would like you to consider the attached legislation for review by the Law Review Commission. In a nut shell, Probate Referees were allowed to raise their minimum fee from \$25 to \$75 to appraise the property of persons under probate conservatorship. This has lead to a problem when we have a minimum estate of at least \$50 and we have to pay for an outside appraisal which costs a minimum of \$75.00. This has placed an exceptional burden on the limited resources of many of our conservatees. We, therefore, request that the law be revised to be consistent with the appraisal policies for persons under an L.P.S. conservatorship, or at least not having a Probate Referee appraisal for estates valued under \$1,500, which is the MediCal/SSI threshold. Current law only required an outside appraisal for L.P.S. conservatees if the property belonging to the estate is to be sold. Otherwise, it is the Public Guardian/Conservator's responsibility to set a value on the estate. We believe this is a fair and reasonable way to protect the interests of those persons under conservatorship.

In the process of drafting the language for this legislation, I had the opportunity to speak with representatives of Assemblyman Tom Hannigan's office, who considered authoring this proposed legislation. In this process, the Probate Referees were contacted by the Assemblyman and asked if they would lower or waive their \$75 minimum fee on these small estates. It was reported to me that the president of the Probate Referees' Association would write a letter to their membership requesting that they lower or waive their fees on these small estates. To the best of my knowledge, this letter was never sent, and many appraisers are still refusing to lower or waive their minimum fee, even though the estate they just appraised does not have the money in it to pay their fee.

David Rosenberg  
October 9, 1984  
Page 2

The other objection raised for the Probate Referees was that "They believe it is very important that an unbiased appraisal be done by a trained appraiser regardless of the estate's value. They cite potential abuse of my proposal, including a conservator who has strong ties to the conservatee, values an estate at \$1,500 and then sells the estate for a much higher price". In response, many of their appraisers are not properly trained. Only members of the American Society of Appraisers have this formal training. Also, many Public Guardians/Administrators are experienced at making appraisals, since we regularly sell property belonging to decedents' estates and, therefore, have a strong sense of fair market value of used merchandise. Also, as a practical matter, most Probate Referees either rely on the Public Guardian's appraisal of the property or wait until the property is sold before they place a value upon it. And in regard to an improper appraisal and sale of property, under the proposed law, all property to be sold must be re-appraised by the Probate Referee and as a further safeguard, an accounting must be submitted to the court which would have the Public Guardian's appraisal, the Probate Referee's appraisal and the selling price of the property. I believe this provides adequate safeguard to the conservatee without imposing undue hardship on the conservatee.

Thank you, David, for considering our problem with the Probate Referees, and I hope we can find a solution that will be acceptable to everyone. If you have any further questions or need additional documentation, please do not hesitate to call me, and I will be happy to assist you if necessary.

Sincerely,



DOUGLAS A. KAPLAN  
Public Guardian/Administrator  
County of Yolo

DAK:cp

Attachment



THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2610 of the Probate Code is amended to read:

2610. (a) Within 90 days after appointment, or within such further time as the court for reasonable cause upon ex parte petition of the guardian or conservator may allow, the guardian or conservator shall file with the clerk of the court an inventory and appraisement of the estate, made as of the date of the appointment of the guardian or conservator.

(b) The guardian or conservator shall take and subscribe to an oath that the inventory contains a true statement of all of the estate of the ward or conservatee of which the guardian or conservator has possession or knowledge. The oath shall be endorsed upon or annexed to the inventory.

(c) The property described in the inventory shall be appraised in the manner provided for the inventory and appraisement of estates of decedents. The guardian or conservator may appraise the assets which an executor or administrator could appraise under Section 605.

(d) Notwithstanding subdivision (c), if, in the

opinion of the guardian or conservator, the fair market value of the property described in the inventory will not exceed one thousand five hundred dollars (\$1,500), and no sale of the estate will occur, the property may be appraised by the guardian or conservator and need not be appraised by a probate referee.

~~(d)~~

(e) If a conservatorship is initiated pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) and no sale of the estate will occur:

(1) The inventory and appraisal required by subdivision (a) shall be filed within 90 days after appointment of the conservator.

(2) The property described in the inventory may be appraised by the conservator and need not be appraised by a probate referee.

## EXHIBIT 6

ROY MCKERNAN  
JOHN D. LANAM  
RANDY L. BAKKE  
STEPHEN E. BENSON

LAW OFFICES  
OF  
MCKERNAN, LANAM, BAKKE & BENSON  
ATTORNEYS AT LAW

□ P.O. BOX 550  
732 FIR STREET  
PARADISE, CA 95969  
916-877-4961  
□ P.O. BOX 3496  
142 W. 2ND STREET  
CHICO, CA 95927  
916-891-0247

June 11, 1985

California Law Revision Commission  
4000 Middlefield Road, Room D-2  
Palo Alto, CA 94306

Re: Role of Probate Referee

Dear Members of the Commission:

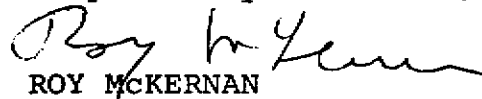
This firm, which has offices in both Chico and Paradise, handles many estate proceedings each year. I have found that the system of Probate Referees has worked both to the benefit of our office and of our clients.

The appraisals we have received over the years have generally been very good and have been at minimal cost to the estates.

The undersigned, having been in practice over 30 years in Butte County, has always had complete cooperation from the various Inheritance Tax Appraisers and Probate Referees that he has dealt with over the years.

To eliminate the present system would create an undue burden on heirs and representatives in estates because in many instances private appraisals would be much more expensive than the appraisal by the Probate Referee, and in addition, it has been our experience that Probate Referees have acted with dispatch and private appraisers, because of their workload, have not always been so prompt.

Respectfully submitted,

  
ROY MCKERNAN

RMCK/ef

EXHIBIT 7

SAN LUIS OBISPO COUNTY BAR ASSOCIATION  
P. O. BOX 585  
SAN LUIS OBISPO, CALIFORNIA 93406

1985 BOARD OF DIRECTORS:

JAMES B. MERZON, PRESIDENT  
DONNA M. BECK, VICE-PRESIDENT  
MARTIN J. TANGEMAN, SECRETARY  
TERRENCE J. O'FARRELL, TREASURER  
PATRICIA N. ASHBAUGH  
MICHAEL E. ZIMMERMAN  
JOHN A. GEISS

PLEASE REPLY TO:

- ☐ P. O. BOX 1101  
SAN LUIS OBISPO, CA 93406
- ☐ 1010 MILL STREET  
SAN LUIS OBISPO, CA 93406
- ☐

May 20, 1985

California Law Revision Commission  
4000 Middlefield Road, Room D-2  
Palo Alto, CA 94306

Re: Probate Referee Study

Dear Commissioners:

I wish to lend my full support to the retention of the present system of mandatory valuation of probate estates by probate referees.

In studying this question preparatory to this letter, I was struck by the letter to the Commission from the Referees Association dated October 24, 1984. The observations in that letter are absolutely "on target" and, from the vantage point of a practitioner like myself whose practice is heavily oriented to probate matters, the observations are rooted in practical experience.

In handling a "probate practice" over the last 17 years, I have uniformly found probate referees (inheritance tax appraisers) to be knowledgeable, openly helpful, accessible and an inexpensive source of independent and accurate valuation. Without question, the estate and its beneficiaries have received the benefit from this system.

On many, many occasions I have found that the referee's mandatory appraisal has aided in helping ease tension among heirs concerning valuation questions, has helped enormously in federal tax valuation inquiries, has kept statutory fees and commissions reasonable because of the conservative nature of most appraisals, and has been a source of stable continuity for practitioners in the probate field.

To make the system optional rather than mandatory would, in my opinion, emasculate the system. To eliminate the system would severely undermine the great benefit which it now offers to all estates.

I strongly urge that the mandatory nature of estate asset appraisal by probate referees be retained.

Sincerely,



JAMES B. MERZON  
President

EXHIBIT 8

LAW OFFICES

David, Zimmerman and Zeilenga

227 EAST BRANCH STREET

POST OFFICE DRAWER A

Arroyo Grande, California 93420

ANDREW DAVID  
MICHAEL ZIMMERMAN  
ROBERT ZEILENGA

AREA CODE 805  
TELEPHONE 489-4705

May 20, 1985

California Law Revision Commission  
4000 Middlefield Road  
Room D-2  
Palo Alto, CA 94306

Gentlemen:

This letter concerns the Commission's present evaluation of the role of the Probate Referee. Our office presently specializes in estate planning and trust and probate administration. At least fifty percent (50%) of our work deals with matters relative to trust and probate procedures.

It has been our experience that the Probate Referee's role is still a vital and necessary part of the probate proceedings. We feel the role of the Probate Referee, as an independent appraiser, is the most efficient and expeditious manner in which to handle valuation of assets. Without this independent appraisal, I can envision many hours of Court time being expended on matters relative to acceptance or rejection of appraisals made by someone other than a Probate Referee. Further, it has been our experience that the Probate Referee's appraisals are the most inexpensive manner in which to obtain valuation of assets.

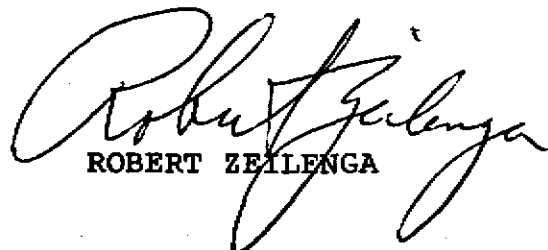
The Probate Referee, as a statutory officer of the Court, is an independent professional upon whom the Court can rely to provide a reliable and unbiased appraisal.

Our experience in the Counties where we practice has been that the Probate Referee's appraisals are extremely accurate and reliable. We have even found that the quality of work is such that we have very little problem with valuation questions at the time of the audit procedures for our federal estate tax returns.

We feel that it would be a grave mistake should the Probate Referee's position be eliminated.

Thank you for your courtesies and attention given to this letter.

Sincerely,



ROBERT ZEILENGA

RZ:dae

## EXHIBIT 9

THOMAS C. NELSON (1892-1975)  
THOMAS R. BOYD  
D. K. MACDONALD, INC.  
PETER E. MITCHELL  
TERREL J. MASON  
TODD C. HEDIN

## NELSON, BOYD, MACDONALD &amp; MITCHELL

A PARTNERSHIP, INCLUDING A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW  
COURTHOUSE SQUARE  
1000 FOURTH STREET, SUITE 375  
SAN RAFAEL, CALIFORNIA 94901-3188

AREA CODE 415  
TELEPHONE 453-0534

May 23, 1985

Law Revision Committee  
4000 Middlefield Road  
Palo Alto, CA 94303

Gentlemen:

It is my understanding that you are considering changes in the provisions relating to the services to be rendered by Probate Referees in the State of California.

Having practiced law 29 years in Marin County with major emphasis in the estate planning and probate area in the last 15 years, it is my opinion that changes in the probate statutes are moving too fast, and in the effort to simplify matters, are removing important protections that are needed by heirs, beneficiaries, and creditors. It should be remembered that California has been quite free of scandals in this area which have been all too numerous in other jurisdictions, and it is my belief that recent changes should be assimilated for a considerable period of time to determine whether or not the desire to streamline and expedite is worth the potential consequences.

In the area of the responsibilities of the Probate Referee, as well as in many other areas, I would urge you, with all due respect, to slow down the process of change and carefully monitor the results of those changes already made.

Very truly yours,

NELSON, BOYD, MacDONALD, MITCHELL,  
MASON & HEDIN

By



D. K. MacDonald

DKM:eh

## EXHIBIT 10

May 23, 1985

California Law Revision Commission  
4000 Middlefield Road, Rm. D-2  
Palo Alto, CA 94306

Dear Commissioners:

In my position as chief inheritance tax attorney for the state for the past seventeen years and as an inheritance tax attorney for a number of years prior to that, I became well acquainted with the California probate system due to the fact that the inheritance tax determination, prior to repeal, was integrally involved with the probate process.

It has come to my attention that the role of the probate referee in probate proceedings is currently under study. I understand that the question of whether the present system of probate referees should be retained will come before the commission for consideration in the near future. I urge the commission to recommend retention of the present system.

The purposes of a probate proceeding are to protect heirs and creditors, to assure that the decedent's wishes are carried out or that the laws of intestacy are followed and to provide an orderly devolution of the assets of the decedent. An impartial valuation of the probate assets is the basis for an intelligent and informed overseeing of the administration of the estate. The lack of such valuation gives rise to an opportunity for fraud and deception while self appraisal can raise conflict of interest problems. The valuation is, perhaps, the most important tool the court has in supervising the accounting and administration of an estate.

If a person does not want court supervision of his or her estate, other options are available, i.e., joint tenancy, intervivos trust, intervivos gift, insurance, POD bonds, etc. In these instances, the person has, in effect, begun distribution of his or her estate during lifetime and can personally supervise or oversee its progress. However, if a person does not wish to avail himself or herself of the various options to avoid probate, it should be assumed that he or she wants the court supervision provided for in the law with its attendant protections.

One other point should be made. The appraisal by the probate referee provides an impartial basis on which to determine the fees of the personal representative and attorney for the estate as well as bonding requirements.

Thank you for taking the time to consider my views.

Sincerely,


  
Myron Siedorf  
3159 Purdue Avenue  
Los Angeles, CA 90066



EXHIBIT 11

LAW OFFICES

PENDERGRASS & PERRY

SUITE 303

1200 FOURTH STREET

SAN RAFAEL, CALIFORNIA 94901

ROBERT W. PENDERGRASS  
WARREN R. PERRY

TELEPHONE  
(415) 454-7264

May 24, 1985

Law Review Commission  
State of California  
4000 Middlefield Road  
Palo Alto, California 94303

Re: Probate Referees

Dear Commissioners:

For general purposes, in the hope that it is of some interest to you, I felt that I as an attorney practicing frequently in the field of wills, estates, probate, etc., would make some comments on our present Probate Referee system.

I recall, after the essential abrogation of the inheritance tax law of 1982, I was wondering what role the Referees would be playing in the future. It was not long before I came to see that it would be a substantial role and one which should continue on for good and valuable reasons.

It became instantly apparent that it was vital to have them making their appraisals and completing inventories to be filed in probate proceedings, of course. Then it became apparent that they served a useful function in making appraisals for community property set aside proceedings in court (Probate Code, Sections 649.1, 650). This has continued to be the case even after it was optional to state the values of the community property assets in presentation of the petition to the court. Apart from the below tax reasons, I have found that in dealing not only with surviving spouses that also in answering questions of other relatives the definiteness and clarity of being able to talk in values has been of assistance.

It soon became obvious also that, for purposes of having documents of record which would be honored by the Internal Revenue Service, as future post death sales of real property occurred and capital gains questions arose, the determination of value by the Probate Referee made in the instance of joint tenancy proceedings,

Law Review Commission  
Palo Alto, California 94303  
May 24, 1985  
Page 2

community property set aside proceedings, and under distributions of inter vivos trusts on death, served a real need, and also with special force and effect since it came from an agent of the State of California.

The usefulness of a Probate Referee's appraisal also extends to establishing values for purposes of multi-party distributions under inter vivos trusts which is becoming of a more and more recurrent situation.

I am sure I could go on further, but in the interests of brevity, wish to point out the above. I will say as well that I have used our Marin County Referees as well as those outside of Marin County many times since 1982, and feel that their good services are a necessity.

Yours very truly,

  
ROBERT W. PENDERGRASS

RWP:sf

P.S. As an afterthought, I am also remembering that the appraisals which have been made prior to the filing of the Federal Estate Tax Return are ordinarily used by the preparer of such Federal Return. The ultimate result where a tax is payable to the United States under such a return, then is reflected in the affairs of the State of California when the pick-up tax by California is exacted from the State death tax credit, under the California Estate Tax Return.

R.W.P.

EXHIBIT 12



**WESTAMERICA  
TRUST COMPANY**

AFFILIATE OF WESTAMERICA BANCORPORATION  
MEMBER FEDERAL RESERVE SYSTEM

May 28, 1985

Law Review Commission  
4000 Middlefield Road  
Palo Alto, California 94303

Gentlemen:

It is my understanding that the Law Revision Committee is reviewing the Probate Code with a view of making a number of substantial changes. One of the changes being proposed, so I understand, is to do away with the Probate Referee.

It is my personal opinion that such a recommendation would not be in the best interests of the public. It is my view that the Probate Referee performs a crucial function in assuring that death estates, conservatorships and guardianships are properly accounted for and that there is control over the administration of these accounts. Without an independent party establishing appropriate values for estates held in these accounts there is no question but what fraud will be committed against beneficiaries. The current practice of inventorying estates, submitting the inventory to the Probate Referee for valuation and filing with the court is a crucial control point in assuring the honest and forthright administration of these accounts.

I strongly urge that no attempt be made to do away with the vital services of the Probate Referee.

Sincerely yours,

H. M. Knight  
President

HMK:mab

EXHIBIT 13

LAW OFFICES

OGLE, GALLO & MERZON

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

770 MORRO BAY BOULEVARD

MORRO BAY, CALIFORNIA 93442

(805) 772-7353 • 772-7379

MAIL TO: POST OFFICE BOX 720

SAN LUIS OBISPO OFFICE  
(805) 543-1662

CHARLES E. OGLE, INC.  
RAY A. GALLO, INC.  
JAMES B. MERZON, INC.  
WILLIAM A. BOOTH  
SHARON K. GARRETT

May 29, 1985

California Law Revision Commission  
4000 Middlefield Road, Room D-2  
Palo Alto, California 94306

Re: Role of Probate Referees

Members of the Commission:

I was recently advised that the Commission is currently studying the question of whether there should be mandatory valuation of probate estates by referees.

My firm has specialized in probate administration, taxation and estate planning in San Luis Obispo and many other counties throughout California for more than thirty years. As a result of this experience, I would appreciate your considering the following comments concerning my firm's opinion of the role of probate referees and the benefit of the present referee system to the people of this state.

1. The vast majority of probate referees are highly-trained, experienced, knowledgeable individuals whose services are available at negligible cost compared to their counterparts--professional appraisers in private practice who are not subject to statutory regulation of their fees. Moreover, probate referees are officers of the Court; as such, they are totally independent of any special interest or influence. Thus, their services have been relied upon alike by such often conflicting interests as the Courts, federal and state taxing authorities, the legal profession, and individual estate beneficiaries. Dismantling this system will eliminate that pool of truly disinterested, independent appraisers. My opinion is that the inevitable result will be that the burden of ascertaining and settling the fairness of conflicting asset valuations will fall squarely on the courts, increasing the burden on a judicial system already overburdened with the proliferation of litigation.

OGLE, GALLO &amp; MERZON

May 29, 1985

2. The current trend of the law is to abbreviate the Probate Court's involvement in the details of estate settlement. Residents of the state have benefited substantially by this trend in savings of attorney time, court time, and the corresponding decrease in legal costs associated with the simplification of probate procedures and availability of summary administration. However, if probate referees are eliminated as an inexpensive source of independent, competent appraisal services, costs of administration of estates will more than certainly increase. It is likely that in many estates more than one private appraisal will be required to satisfy conflicting interests, with the resulting necessity of arbitration by the Court. Increased legal costs will certainly follow from the introduction of this new arena, as counsel become obligated to press for valuations favorable to their clients. More importantly, this former, rather orderly area of estate administration will acquire an adversarial aspect, encouraging self-serving valuations, increasing the potential of abuse in income and estate tax reporting, and pioneering new opportunities for litigation.

Accordingly, it is my opinion and that of my firm that eliminating mandatory valuation of estates by probate referees will result in no benefit to our current system of estate settlement and will instead have a deleterious effect on both the judicial system and the residents of the State.

Our suggestion is that, rather than reduce or eliminate the statutory function of probate referees, their scope of services be broadened to include mandatory appraisals of property in contested dissolution proceedings, and as well, to authorize the Court to require referee appraisals in a variety of civil actions where valuation of assets is at issue, which could obviously be used to advantage in a multitude of different actions. In this way, the inexpensive, specialized services of referees can be retained and efficiently utilized for the benefit of the legal system and the citizens of the State.

Very truly yours,

OGLE, GALLO & MERZON

CHARLES E. OGLE

ez

cc: Honorable William R. Fredman  
Harold Miossi, Probate Referee

EXHIBIT 14

SMITH & BROOKS

JAMES A. SMITH  
CLAUDIA M. BROOKS

ATTORNEYS AT LAW  
130 WEST VINE STREET  
POST OFFICE BOX 672  
REDLANDS, CALIFORNIA 92373-0581

TELEPHONE  
(714) 793-3333

May 29, 1985

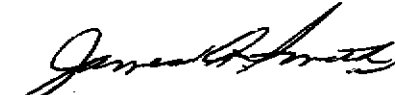
California Law Revision Commission  
4000 Middlefield Rd., Room 2-2  
Palo Alto, CA. 94306

Dear Members of the Commission:

We are hopeful that the present system of State Probate Referees will be continued. It is most important for persons requiring appraisals to be able to rely upon the skilled independent services of a state referee.

Yours very truly,

SMITH & BROOKS



James A. Smith

JAS:as

EXHIBIT 15

ANDRE, MORRIS & BUTTERY

A PROFESSIONAL LAW CORPORATION

1304 PACIFIC STREET

P. O. BOX 730

SAN LUIS OBISPO, CALIFORNIA 93406

PETER R. ANDRE  
MICHAEL J. MORRIS  
JAMES C. BUTTERY  
DENNIS D. LAW  
J. TODD MIROLA

TELEPHONE:  
(805) 543-4171  
TELECOMER:  
(805) 543-4173

June 3, 1985

California Law Revision Commission  
4000 Middlefield Road, Room D-2  
Palo Alto, CA 94306

Re: Mandatory Appraisal of Probate Assets  
by Probate Referees

Dear Members of the Commission:

As an attorney who practices regularly in the probate area, I wish to add my support for the retention of the present referee appraisal procedure whereby there is mandatory valuation of probate assets by referees. This system has provided an inexpensive, efficient and reliable means of determining the value of probate assets.

The need for valuation of probate assets will exist regardless of whether or not there is mandatory valuation by probate referees. Both the determination of basis and the establishment of executors commissions and attorneys fees are dependent upon proper evaluation.

The present system provides attorneys with a reliable and uniform basis for determining these values. Additionally, the expense to the estate is generally nominal compared to the service which is rendered. The current system is one which works extremely well in San Luis Obispo County and I recommend to you that it be retained.

Very truly yours,



MICHAEL J. MORRIS

MJM:kcm

EXHIBIT 16  
SUPERIOR COURT OF CALIFORNIA  
IN AND FOR THE  
COUNTY OF RIVERSIDE

CHAMBERS OF  
FRANK MOORE  
JUDGE OF THE SUPERIOR COURT

COURT HOUSE  
INDIO, CALIFORNIA  
92201

June 6, 1985

California Law Revision Commission  
4000 Middlefield Road  
Room D-2  
Palo Alto, CA 94306

Re: Role of Probate Referee

Gentlemen:

I should like to add my voice to those who believe the referee provision of the Probate Code should be retained.

30 years of probate work, including 15 years as a Superior Court Judge, has convinced me of the wisdom in having a neutral expert available to the Court for making appraisals of certain types of assets in estates.

To now open an area for appraisals by persons not accountable directly to the Courts could be a great disservice to beneficiaries.

I urge you to retain this valuable procedure for use by the Courts.

Sincerely,



FRANK MOORE

FM:pb  
cc: Stanley Spiegelman



EXHIBIT 17

ERWIN & ANDERHOLT

A PROFESSIONAL LAW CORPORATION

74-090 EL PASEO

POST OFFICE BOX 789

PALM DESERT, CALIFORNIA 92261

TELEPHONE (619) 568-2611

PALM SPRINGS OFFICE

960 EAST TAHQUITZ-MCCALLUM WAY

SUITE 203

PALM SPRINGS, CALIFORNIA 92262

TELEPHONE (619) 322-2466

DAVID J. ERWIN  
J. JOHN ANDERHOLT  
JEFFERY S. R. PATTERSON  
MICHAEL J. ANDELSON  
DOUGLAS S. PHILLIPS

GREGORY A. SWAJIAN  
CHARLES M. ELLIS  
LANTSON E. ELDRED  
JOHN L. SUPPLE  
CAL MCINTOSH  
BARBARA E. KRISTAL  
WILLIAM K. HANLIN \*  
BRIAN F. CAINE

\*MEMBER BRITISH COLUMBIA, MANITOBA AND  
CANADIAN BAR, NOT ADMITTED IN CALIFORNIA.

June 7, 1985

California Law Revision Commission  
4000 Middlefield Road, Room D-2  
Palo Alto, California 94306

Re: Role of Probate Referee

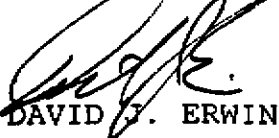
Gentlemen:

A large part of my practice is in probate and estates and I would like to take this opportunity to voice my opinion that probate referees are a vital, essential and necessary part of this particular portion of a legal practice.

I have reviewed the letter written to you by Edward V. Brennan, a representative of the California Probate Referees Association, dated October 24, 1984 (a copy of which is enclosed for your easy referral) and I agree totally with the contents of this letter.

If you should desire further information in this regard, please feel free to contact me.

Yours very truly,



DAVID J. ERWIN

DJE/vcd  
enclosure

EXHIBIT 18  
DUFFY & PRESTON  
A LAW CORPORATION  
924 FIRST STREET WEST  
P. O. BOX 1225  
SONOMA, CALIFORNIA 95476

PETER M. DUFFY  
RONALD K. PRESTON

AREA CODE 707  
996-8484

June 7, 1985

Law Review Commission  
4000 Middlefield Road  
Palo Alto, California 94303

Re: Probate Code  
Appointment of Probate Referees

Ladies and Gentlemen:

Our office does a substantial amount of administration of estates. We support the present method for the appointment of Probate Referees. We have been able to rely on the Probate Referees' impartial appraisals in establishing values for federal estate tax purposes and federal income tax purposes. We have found that these appraisals are relied on by the taxing authorities (to a lesser or greater degree depending on the Referee). We believe if the procedure were significantly changed and that a substantial portion of practitioners did not utilize the services of a Referee, the usefulness of the appraisals to those that continued to utilize the services of the Referees would be significantly reduced, i.e., the values would be more closely scrutinized.

Respectfully submitted,

DUFFY & PRESTON

  
Ronald K. Preston

RKP:btw

ALBERT P. BEHRENS, JR.  
A PROFESSIONAL CORPORATION  
CLYDE A. NELSON, JR.  
A PROFESSIONAL CORPORATION

EXHIBIT 19  
LAW OFFICES  
BEHRENS & NELSON  
A PARTNERSHIP OF PROFESSIONAL CORPORATIONS  
36 FIFTH STREET  
PETALUMA, CALIFORNIA 94952  
(707) 763-1911

MAILING ADDRESS:  
P. O. BOX 262  
PETALUMA, CA 94953

June 10, 1985

Law Review Commission  
4000 Middlefield Road  
Palo Alto, CA 94303

Gentlemen:

The purpose of this letter is to recommend that the present Probate Referee system be retained.

I have practiced extensively in the probate, gift and estate planning area for over thirty years. I find the present Probate Referee appraisal system to be:

- a) Extremely cost efficient to the client - costing less than 1/3 of a private fee appraisal.
- b) Useful and necessary in filing the estate inventory with the court, and filing federal estate and gift returns.
- c) The probate referee service is rendered to the public in an expedient, economic and courteous manner. I have dealt with these gentlemen in many counties and, without exception, have been given excellent treatment.
- d) At perhaps very little cost to the State a very large service is rendered to the public in their estate and gift requirements.

Please feel free to telephone or see me if you wish to further discuss the above.

Sincerely,

BEHRENS & NELSON

  
Clyde A. Nelson, Jr.

CN:sw