

#L-655

6/19/85

## Second Supplement to Memorandum 85-60

Subject: Study L-655 - Probate Referee System (More Information and Comments)

Attached to this supplementary memorandum are additional comments and information we have received concerning the probate referee system. The contents of each attached item is summarized briefly below, but the attachments bear scrutiny.

Exhibit 1 is an article from the Sacramento Bee of August 2, 1982, concerning the fate of the probate referees after repeal of the inheritance tax. The article is particularly interesting for the light it sheds on the negative attitude of the State Controller towards the probate referee system, the use of the system for political patronage, the politics involved in maintenance of the system, the qualifying examination, and the economics of probate refereeship.

Exhibit 2 is a supplementary letter from the California Probate Referees Association. The letter includes a copy of the association's standards of training, performance, and ethics. The letter points out the service to the public the probate referee may perform in assisting non-specialists through the probate process, and includes a letter from a member of the public expressing appreciation for such assistance. The letter also points out that while the appraisal fee may appear to be a burden in a small case, the Section 630 and 650 procedures take many small estates out of the probate referee system.

Exhibit 3 is a letter from the Los Angeles County Bar Association Probate and Trust Law Section's Executive Committee. The Committee takes the position that the probate referee system should be retained, subject to a few specific changes: (1) Something should be done about referees who do not do their work properly or promptly. (2) The personal representative should be able to appraise cash in brokerage

accounts, refund checks, and lump sum payments of life insurance proceeds.

Exhibit 4 is a letter from a probate referee including copies of letters received in the referee's office that purportedly express appreciation for the probate referee's assistance. As you will note from scanning the letters, the expression is pretty minimal.

Exhibit 5 is a collection of letters recently received from lawyers in support of the probate referee system. These letters make the same points essentially as earlier letters--that the system works well, is inexpensive, is an aid to lawyers, and is useful for estate tax purposes.

Exhibit 6 is a letter from the Executive Committee of the Estate Planning, Trust and Probate Law Section, State Bar of California. The Executive Committee supports the existing system, with clarifications: (1) Whether non-cash items to be appraised by the probate referees includes treasury notes, treasury bills, treasury bonds, tax refunds, refunds on utilities, insurance, etc., money market accounts, and securities listed on an exchange. (2) Waiver of the referee as to specific assets should be authorized. (3) The waiver procedure should be improved. (4) A backup report by the referee should be obtainable for estate tax purposes.

Respectfully submitted,

Nathaniel Sterling  
Assistant Executive Secretary

EXHIBIT 1

★ ★ The Sacramento Bee • Monday, August 2, 1982

## Inheritance Referees: What Now With Tax Gone?

By Claire Cooper  
Bee Capitol Bureau

The California inheritance tax passed into history June 8, but 175 inheritance tax referees, earning up to \$130,000 a year, seem destined to live on against formidable odds.

"You have an industry who are living off the dead," said state Controller Ken Cory. "I've never felt there was any reason to have referees," even when there was an inheritance tax.

Cory is a major beneficiary of the referee system, one of the few out-

right political spoils systems in the state.

Since 1975, he has selected all referees, often using the appointments to cement political friendships.

Opposition to leaving the referees in their jobs is coming also from another notable source: the author of the bill that would give them a new lease on life by converting their titles to "probate referees."

Assemblyman Tom Bane, D-Van Nuys, disowned the legislation June 28 by removing his name from it.

But the bill, pending before the

Assembly Judiciary Committee, is unlikely to remain an orphan for long, said its principal advocate, State Bar probate authority Matthew Rae.

The legislative leadership "is still in favor of the bill and still wants the bill," so either the leadership or the Bar "will provide an author," Rae said. At that prospect Assemblyman Don Rogers is up in arms. The Bakersfield Republican sponsored the initiative that repealed the inheritance tax June 8.

"This is just a blatant rip-off,"

Rogers said. "The people won't stand for it."

The current flap is the latest episode in a history of controversy that has surrounded the business of appraising estates in California since the gold rush.

First, there were probate appraisers, appointed by courts to evaluate estates before distribution of the proceeds. When the state inheritance tax was enacted in 1893, the court-appointed probate appraisers were given the additional, related

See REFEREES, Back Page, A12

Continued From Page A1

duty of deciding how much tax should be paid on each estate.

The appointment power was shifted early this century to the state controller to free the system from patronage scandals. But while the scandals ended, the controversy did not.

The shift gave the controller a golden opportunity to bestow political favors. And, traditionally, California's controllers have seized that opportunity (though the last two people to hold the office, Democrat Cory and his Republican predecessor Houston Flournoy, also pushed legislation to limit appraisers' fees, require applicants to pass merit examinations, prohibit referees from making contributions to controllers and otherwise clean up the system).

For example, soon after Cory took office in 1975, he appointed 73 referees, including some of his predecessors' appointees whose four-year terms had expired. Among those who got the plums were friends and relatives of Cory's political supporters. Three out of four referees currently in office were first appointed by Cory.

While the job has been labeled "inheritance tax referee," the appointees have continued to do double duty by serving as probate referees. And, in the eight weeks since Californians abolished the inheritance tax, the referees have remained in business, making probate

evaluations. But their status is clouded.

The State Bar is trying to lift the clouds by winning enactment of the bill now before the Assembly Judiciary Committee. In doing so it has kicked up a new storm.

Why preserve the inheritance tax referees when there's no tax for them to referee?

For Rae, the answer was simple: The state's entire, vast body of probate law relies on the independent evaluation of assets, no matter how small an estate may be. Junking the system would require creating a new one or scrapping the legal code, Rae said.

Rogers, however, argued that in most cases, estates don't have to be appraised: "Would you need a professional appraiser to tell you how much \$1,000 in a savings account is worth?" The assigning of a referee should be made optional with the probate court, Rogers said.

Bane agreed with Rogers that the bill should be amended to make appraisals optional, but the Bar did not. That's the main reason Bane dropped the bill.

There seems to be no disagreement about a related issue: Even if the Bar gets its way in preserving the present system, as now seems likely, the number of referees will have to be reduced because repeal of the inheritance tax lightened the workload.

However, bigger than the controversy over whether all the referees

always are needed is the dispute over whether any referees were ever needed.

Cory has said no. As a legislator, he co-authored a bill that would have eliminated them and instituted the federal system of appraising estates, where heirs fill out a form stating the value of the assets, knowing that the Internal Revenue Service may audit the form.

Cory referred to the appointments as "community scholarships" that did him little good because "all you got in appointing these people was one ingrate and 15 people ticked off because they didn't get the job."

He charged that the Bar's real motive in sponsoring the bill was to preserve a "buddy system ... to service their industry."

The system, supporters and detractors agree, allows probate lawyers and referees to negotiate mutually satisfactory appraisals without wasting time and money by slugging it out in court.

"They maximize their profit by minimizing their argument," Cory said.

A former referee, who asked to remain anonymous, confirmed all that Cory said and more. He was, he said, "a caretaker referee." By all accounts, his situation was not uncommon.

"A good percentage of them are essentially caretaker referees. They hire a staff to do all the work. They then just sign things, at most," the ex-referee said.

A staff could be hired for \$20,000 and overhead expenses would cost another \$10,000, he said. That could leave the referee with a \$20,000 profit "at very minimal effort if you handle it properly." The "minimal effort" involved signing reports and checks and appearing at a few functions of the referees' association "so you look like you're active."

A referee is paid by the estate at a rate of one-tenth of 1 percent for the first \$500,000 of assets and one-twentieth of 1 percent above that, with a \$5,000 cap except in unusual cases.

There were a number of ways of simplifying the work, the ex-referee said. He added that the whole job can be done in four or five hours a day.

He said he never was pressured to repay Cory for appointing him.

"Cory wants people to do their job and not get caught doing anything embarrassing . . . I don't recall ever being called to give money to Cory," he said.

But legislators and other politicians were another story. Those who had prevailed on Cory to appoint certain referees expected the referees "to show their appreciation," for example, by attending their political fund-raisers.

Gerald L. Scott, a Flournoy appointee who is president of the referees' association, demurred on some of his former colleague's observations but conceded other points.

While it is true that referees may be caretakers, Scott said, they must supervise the work because they must take the blame for anything that's done wrong.

Scott, who makes a full-time job of refereeing, denied that the work is easy.

"The job is very complex in that you get involved in so many different areas," from evaluating antique cars to evaluating corporations, he said.

Several sources interviewed by The Bee noted that the state examination administered to all referee candidates acts as a brake on the appointment of the politically strong but mentally weak.

A 195-minute, 36-page multiple-choice test given by the Personnel Board last October seems to bear out that contention. On most of the 135 questions about property appraisal and tax laws, regulations and procedures, neither the questions nor the answers were comprehensible to a layman.

Seventeen of those who took the October test passed it, and 13 failed. Personnel Board records indicate that a pass-fail ratio of about 3 to 2 has held for the last three years.

Some legislative friends of Cory have been unable to get referee appointments for their friends, one source said, because they don't know anybody who can pass the test.

## EXHIBIT 2

# California Probate Referees Association

OFFICERS  
1984-1985

June 10, 1985

LeVONE A. YARDUM

*President*  
Los Angeles County

NANCY FERGUSON

*Vice President, Division 1*  
Butte County

WAYNE K. HORIUCHI

*Vice President, Division 2*  
Santa Clara County

STANLEY SPIEGELMAN

*Vice President, Division 3*  
Riverside County

LEE LEADER

*Vice President, Division 4*  
Los Angeles County

HARRY TELLALIAN

*Director*  
Tulare County

MICHAEL C. McMANS

*Director*  
Sonoma County

BARRETT W. FOERSTER

*Director*  
San Diego County

MARILYN D. ANTICOUNI

*Director*  
Santa Barbara County

ALBERT J. NICORA

*Past President*  
Alameda County

F. D. GROTHE

*Treasurer*  
Lake County

RICHARD MELTVEDT

*Secretary*  
Los Angeles County

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

Attention: John Demouilly

Re: Probate Referee

Dear John:

First of all, I would like to thank the members of the Commission for agreeing to dedicate a significant amount of time to discuss the future role of the California Probate Referees at the Commission meeting on June 27, 1985 in San Francisco.

My letter of October 24, 1984 summarizes the position of the California Probate Referees Association. In addition, with reference to the importance and value of the referee, I would like to refer you and the Commission members to Probate Code §§ 1300-1313 regarding the role of the Probate Referee. As set forth in §1301, the Probate Referees have all the powers of a Referee of the Superior Court, and as you know, presently have many statutory responsibilities. Under § 1308, Referees who do not fulfill their responsibilities may be removed for noncompliance with any standard of training, performance or ethics established under §1307.

For your reference, I am enclosing a copy of the Standards of Training, Performance and Ethics which has been promulgated by the State Controller in the California Administrative Code. The California Probate Referees' Association, through its Board of Directors and Ethics Committee, regularly reviews any breach of these standards.

In order to assist the Commission, I have been authorized to provide each member of the Commission and each staff member with a copy of the California Probate Referee's Office Procedure Manual with

updated portions through May, 1985. I will be providing these manuals to the Commission and staff members at the meeting on June 27, 1985.

The Referees' Manual contains valuable information, including tables illustrating the use of Consumer Price adjustments; a statement of those items to be appraised by Referees, treasury elvaluation tables at 6% and 10%, all inheritance and gift tax forms for estates that were subject to inheritance and gift tax, principles of valuation of real estate, businesses, precious gems, royalties, municipal bonds and promissory notes.

The Probate Referees' Office Procedural Manual is just one resource. Another aid is the booklet entitled Probate Referees' Procedures Guide which is made available to all members of the State Bar, banks and members of the public. A copy of this will also be made available to the Commission at the hearing on June 27, 1985.

The Referees' Association has been in existence for more than 20 years and has accumulated a wealth of information and organizational benefits for the Referees who serve the people of the State of California.

Many states, of course, allow the personal representative to appraise the assets. We believe, however, that such a loose system allows abuse, fraud, inaccuracies, conflicts, uncertainties and confusion in many, many estates.

One important function of the Referee is to assist members of the public who are not represented by sophisticated law firms and probate specialists. Members of the Probate, Trust and Estate Planning Section of the State Bar may be able to perform some of the functions of the Probate Referee themselves or through their paralegals, but lay people, general practitioners and personal representatives without counsel need the Referee. These duties must be performed by someone, if not by the Probate Referee, then by bankers or by the attorneys and their paralegals or by the lay person struggling to represent

himself or herself. Undoubtedly, there will be some additional charge allocated to these services by lawyers performing these functions. Members of the public should be entitled to utilize the probate system if they wish, without the benefit of expert legal counsel. Under the present system, the Probate Referee is able to provide certain assistance to personal representatives who elect to probate estates without benefit of such counsel.

One example of how the public at large truly appreciates the assistance of the Probate Referee is illustrated by the attached copy of a letter to my office, dated May 15, 1985. This is one of the most recent of such letters I have received, but Referees receive these letters of appreciation on a regular basis. The letter dated May 15, 1985 is from a widow who paid a significant appraisal fee in the amount of \$355.98. Her only comment is that she wishes to commend the understanding, considerate and efficient manner in which my office handled the matter. She is one of thousands of people who have been greatly assisted by the Probate Referees and who truly appreciate this service.

As previously discussed, the cost of the Referee appraisal is low. One reason for this low cost is that private appraisers and private appraiser associations require excessive validation detail and other protective procedures in order to avoid exposure to liability. This problem is facing all professionals including fiduciaries. The Referees enjoy a judicial immunity which protects them from such liability and avoids excessive validation procedures and high fees.

Nevertheless, in some small estates the representative may feel burdened by the expense of a Referee appraisal. It is submitted that the expansion of §§ 630 and 650 will limit these cases. The present avoidance procedure of § 605(a)3 is also available in a truly burdensome case. I must say that in many small Public Administrator Estates, some referees have been waiving the fee in selective estates where the cost of the appraisal appears to be burdensome. However, it should be noted that the appraisal of assets worth \$100,000 costs only \$100 and estates of less than \$60,000 will not be appraised unless they involve real estate. In such cases, the minimum fee of \$75 will apply.

It is submitted that the mandatory element of the appraisal system requiring all estates to utilize the Probate Referee is



California Law Revision Commission  
June 10, 1985  
Page Four

the optimum system because it is a low-cost efficient system which helps to prevent conflict, delay and abuse.

Thank you for your consideration.

Very truly yours,

*Edward V Brennan*

EDWARD V. BRENNAN, Representative  
Probate Referees Association

EVB:rlb

Enclosures

Road  
72069

May 15, 1985

Edward V. Brennan  
Probate Referee  
8060 La Jolla Shores Drive Ste 2.  
La Jolla, Ca. 92037

Dear Sir,

Enclosed, please find a check in  
the amount of Three hundred fifty-five  
Dollars and ninety-eight cents (\$355.98),  
for your services in appraising the Estate  
of my late husband,

May I take this opportunity to thank  
you, and also to commend the understanding,  
considerate and efficient manner in  
which the Probate Tax Assistant,  
Mimi Hambrick handled this matter.

Thank you.  
Respectfully,

Vi

720

PROBATE REFEREE STANDARDS OF  
TRAINING, PERFORMANCE AND ETHICS

Section 1307, Probate Code

ETHICS

The conduct and professional activities of the Probate Referees should reflect credit to the profession and adhere to the common rules of integrity applying to all officers of the Court. Their official activities must be conducted in such an impartial manner that all persons understand that no Referee can be influenced by other than proper methods. Referees must avoid situations where prejudice, bias or opportunity for improper personal gain could influence their decisions. They must equally avoid circumstances suggesting that favoritism or improper personal gain must be a motivating force in the performance of their statutory responsibilities.

Consistent with such objectives a Probate Referee shall not:

(a) Advertise the position of Probate Referee in conjunction with any other profession, business or occupation; or use in any way the title of Probate Referee in connection with any public or private matter which is unrelated to the Referee's duties, functions or responsibilities.

(b) Directly or indirectly acquire or negotiate to acquire, either as principal or agent, an interest in property appraised by said Referee in his or her official capacity as Probate Referee, until there has either been a bona fide sale or transfer of said property to a third person, a lapse of three years from date of appraisal, or judicial approval after the Court has been given full knowledge of all facts concerning the Referee's official involvement with the property.

(c) Engage in any employment, activity or enterprise, or have any interest, financial or otherwise, direct or indirect, which is inconsistent, incompatible, in conflict with, or inimical to his duties, functions or responsibilities as a Referee.

(d) Receive or accept, directly or indirectly, any gift (including money, property or other thing of value) under circumstances from which it reasonably could be inferred that the gift was intended to influence the performance of official duties or was intended as a reward for official action.

(e) Engage in any political activity which is contrary to the provisions of Probate Code Section 1311 or 1312.

(f) Engage at any time in conduct or behavior which causes discredit to the Office of Probate Referee, including, but not limited to, dishonesty, intemperance or conviction of a felony or conviction of a misdemeanor involving moral turpitude.

#### PERFORMANCE

A Probate Referee shall:

(a) Promptly perform all duties required by law in a competent and efficient manner.

(b) Use accepted appraisal practices and procedures in determining the fair market value of assets to be appraised.

(c) Employ necessary staff personnel to guarantee that all work is properly performed without unreasonable delay and be responsible for conformance to these standards by his or her staff.

(d) Obtain an advisory appraisal by a Probate Referee of another county when:

(1) An interest in real property is located in another county;

(2) Appraising an interest in a business entity (partnership, corporation, trust, etc.) owning an interest in real property in such other county when the Referee concludes that such property should be appraised in order to value the decedent's interest in the business entity. (The request for an advisory opinion should indicate the property's inclusion in a separate entity.) If property is located in two or more such counties, the advisory appraisal of the entire parcel may be obtained from the Referee in any such county.

(3) An advisory appraisal is not required if either:

(A) A parcel of property is situated partly in the county of decedent's domicile and partly in an adjoining county;

(B) Consent to appraise the real property without an advisory appraisal is first obtained from all Probate Referees of the county in which the real property is located;

(C) It appears from all available evidence that the value of the interest in the real property does not exceed \$10,000.00; or

(D) The appraisal is a "reappraisal for purposes of sale" and the Probate Referee is satisfied from all available information that the sale price is consistent with the prior appraisal and the sale is a bona-fide sale.

(e) Maintain an office which will be open to the public during normal business hours, and/or have a telephone that will be answered during normal business hours, in person or by a recording machine, so that the Referee can render reasonable services as dictated by the population and size of the county in which he operates.

## TRAINING

(a) A Probate Referee shall complete a minimum of ten hours per year of acceptable continuing educational study as defined by the Office of the State Controller.

(b) A Probate Referee shall be responsible for providing adequate training to his or her staff to insure that the official duties will be performed in a competent and efficient manner.

EXHIBIT 3

**Los Angeles County  
Bar Association**

**Probate and Trust Law Section**

617 South Olive Street  
Los Angeles, California 90014  
213 627-2727

Mailing address:  
P.O. Box 55020  
Los Angeles, California 90055



June 11, 1985

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

Re: June Meeting

Dear Commissioners:

The Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association submits the following comments regarding matters to be discussed at your upcoming meeting June 27-28 and in future meetings.

Study L-655 - Probate Referee System (Memorandum 85-60)

We have considered at length the matter of the present Probate Referee system in California and have concluded that it should be retained. Referees provide a useful service in the administration of probate estates, guardianships and conservatorships. On the whole, their work is done professionally and at a rate of compensation which is reasonable. In addition, their neutral position helps maintain the relatively high degree of integrity in probate and probate related matters which the public enjoys in this State.

We recognize that there are Referees who do not do their work properly or promptly and this should be corrected. We also recognize that changes to improve the System may be useful. As an example, we would support a redefinition of cash items to be appraised by the personal representative to include cash in brokerage accounts, refund checks and lump sum payments of life insurance proceeds. However, we reiterate that the Probate Referee system as a whole has been a satisfactory part of the probate procedure in California for many years and we see no reason to remove it from the process at this time.

We trust that these comments will be useful in your work. If you require clarification on any points, please contact Richard Stack, Darling, Hall & Rae, 606 South Olive Street, Suite 1900, Los Angeles, California 90014. (Telephone: (213) 627-8104).

Sincerely,

EXECUTIVE COMMITTEE, PROBATE  
AND TRUST LAW SECTION

By:   
Richard L. Stack

EXHIBIT 4

KENNETH CORY  
CONTROLLER  
STATE OF CALIFORNIA

R. E. NEUMAN  
PROBATE REFEREE  
351 CALIFORNIA STREET, SUITE 1101  
SAN FRANCISCO, CA 94104  
(415) 956-4131



June 15, 1985

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303

We are sending you copies of letters of appreciation received recently in our office to give you an idea of the ways in which probate referees help in the administration of estates.

Thank you for your consideration.

*Dorothy H. Futch*  
Dorothy H. Futch  
Assistant to R. E. Neuman

cc: Ed Brennan, Probate Referee  
8060 La Jolla Shores  
La Jolla, CA 92037



HAND DELIVERED

June 11, 1985

Ms. Dorothy Futch  
Offices of Richard Newman  
351 California Street, #1101  
S.F., CA

Dear Ms. Futch:

Enclosed please find the completed "Inventory and Appraisement" form, per your request. I have enclosed a copy of the bond that was filed at the time the court appointed Mr. Zafrani conservator. (As all this transpired a while ago, two additional bonds in the amounts of \$500,000 each have been filed by Mr. Zafrani in his capacity as Special Administrator and Executor of the Estate.)

I'd like to remind you at this time that we agreed the personal effects at the time of the conservatorship included only household furniture, valued at \$500 by the representative. (\$1000.00 divided in half). Also, you need to change the amount you have assigned to the Promissory note on Attachment 2.

Thank you for all your help and cooperation in this matter. I am looking forward to working with you again.

Very truly yours,

RECEIVED JUN 12 1985

May 17, 1985

R. E. Neuman  
Probate Referee  
351 California Street, Ste. 1101  
San Francisco, CA 94104

Re: Estate of Stanley R. Jorgensen; No. 239033

Dear Mr. Neuman:

Please find enclosed herewith the Inventory and Appraisement for the Estate of Stanley Jorgensen and as many supporting documents as I have been able to gather. I realize that it has been quite some time since Mr. Jorgensen's death, however, as you will see upon examination of his property disclosure, Mr. Jorgensen held many interests in limited partnerships and other investment entities.

I spoke with Dorothy, a woman in your office, over a month ago. She was extremely helpful in enumerating the information necessary for evaluation of investments in limited partnerships. I passed along those requirements to as many of the limited partnerships as I could and enclose herewith their response to my requests for information.

One of Mr. Jorgensen's investments had been in oil holdings in Oklahoma. I have not been able to gather any information beyond what is included herewith. To my knowledge Logos Oil Inc. has filed bankruptcy. The address I have for Logos Oil is 3105 E. Skelly Drive, Suite 60, Tulsa, Oklahoma 74105. I have included with the Logos information a letter written December 27, 1984, to a Mr. Grabel in Tulsa, Oklahoma. It is my understanding that Mr. Grabel is the trustee in bankruptcy for Logos. I tried to call him at least two other times and received no response to my calls.

Other than the Logos account, I believe that there are sufficient supporting documents filed herewith to evaluate the holdings of Mr. Jorgensen. I am somewhat concerned about the method of valuing limited partnership holdings. It is my understanding that, as with all property held by decedents, that those interests shall be evaluated as of the date of death. I feel that the evaluation is somewhat unrealistic. If these partnership interests were to be sold on the open market, a greater amount would be allotted to their future value due to the fact that most investments are expected to act as tax shelters for the first few years and then will see greater returns later.

RECEIVED MAY 23 1985

As to the investment with Mr. Hugh McLaughlin, Blind Hill Spring Mining Company (No. 23), I have been informed that Mr. McLaughlin has negotiated with Ms. Millar, another party to the transaction, to repay the entire amount of the investment to Mr. Jorgenson's estate as part of his purchase price in reacquiring his interest in the property.

As to the two pieces of real property held as tenants in common by Stanley Jorgensen and Calvin C. Enderlin, it is my understanding that since the date of death there have been cosmetic improvements made to both pieces of property. I have not received a breakdown from Mr. Enderlin as to what these improvements were, but if you would require such information, please contact me and I will be happy to furnish it.

If there is any further information which I may be able to provide, please contact me at [REDACTED]

Sincerely,

[REDACTED]

[REDACTED] IN

[REDACTED] e

Enclosures.

[REDACTED]

April 19, 1985

[REDACTED]

Mr. R. E. Newman  
Probate Referee  
351 California Street, Suite 1101  
San Francisco, California 94104

Re: Estate of Emma Louise Monson

Dear Mr. Newman:

Enclosed find check for \$184.00 in payment of your  
fee upon the appraisal of 730 Quintara Street in San Francisco.

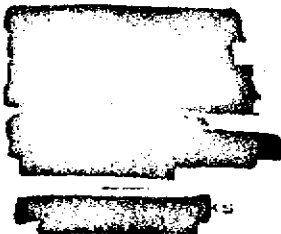
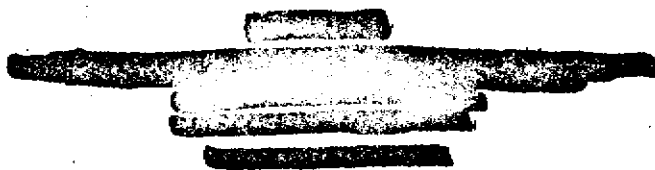
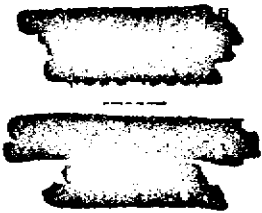
Thank you and your office for the very good and courteous  
service.

Very truly yours,  
[REDACTED]

[REDACTED]

1 Enclosure

RECEIVED APR 22 1985

  
  
  
August 14, 1984

Mr. Arthur L. Hyatt  
Manager, Secretary's Office  
American Express Company  
Office of the Secretary  
American Express Plaza  
New York, NY 10004

Estate of Roberto F. Escamilla

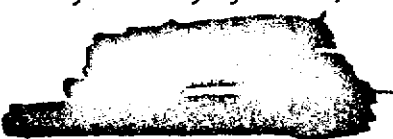
Dear Mr. Hyatt:

Herewith, Certificate numbered SPO 1167 for 48 shares of \$1.50 American Express Convertible Preferred, which are tendered to you for redemption pursuant to your letter of July 23, 1984.

I also enclose certified copy of Letters Testamentary of the executrix who uses this office as her address.

If anything further is needed, please send it to me.

I am delighted that Ms. Futch was able to solve this riddle as our prior efforts with Morgan Guaranty Trust Company were unavailing.

Very truly yours,  


Enclosure

RECEIVED AUG 16 1984  
B. E. NEUMAN

EXHIBIT 5

MERCEDES Z. WHEELER  
ATTORNEY AT LAW  
195 SOUTH SECOND STREET  
POST OFFICE BOX 57  
BRAWLEY, CALIFORNIA 92227-0057  
TELEPHONE (619) 344-2360

June 14, 1985

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

Re: Probate Referee System

Dear Members of the Commission:

In the course of my law practice I have handled a substantial number of probate cases and have come to have great respect for the Probate Referee system. There are several advantages to the system I would like to make note of here.

The expense of hiring an appraiser from the private industry sector, as opposed to using a Probate Referee, could make probate of many small estates impracticable, if not impossible. The statutory fee of the Probate Referee, based on the value of the estate involved, makes our California court process more available to the less affluent members of our society who are in need of such process.

In most cases the Internal Revenue Service accepts the appraisal of a Probate Referee as qualified. This fact promotes efficiency - less expenditure of time for the I.R.S. - less expenditure of funds for estates because they are not required to obtain additional appraisals.

The Probate Referee system permits a lawyer to have all assets appraised by one appraiser rather than having to contact various appraisers for the varied assets. This too curbs expense and work load.

Because a Probate Referee has been required to pass an examination before being appointed, an estate is less susceptible to poor appraisals by unqualified appraisers.

The Probate Referee system is one which I would not like to lose. If you have any questions, please feel free to contact me.

Very truly yours,

*Mercedes Z. Wheeler*  
Mercedes Z. Wheeler

MZW/sc

June 17, 1985

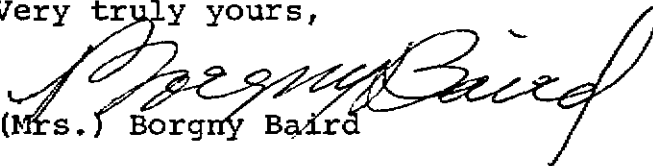
California Law Review Commission  
4000 Middlefield Rd., #D2  
Palo Alto, California 94303

Gentlemen:

It is my understanding that at your meeting on June 27th you will consider the question of the California Probate Referee system.

As an attorney who has practiced in the probate field for over 25 years, I would urge that the present system be retained. At a time when many estates are handled under the Independent Administration of Estates Act, having a probate referee involved adds to the orderly process of a probate proceeding. It also results in a fair and realistic valuation of estate assets. Self-evaluation by personal representatives would open the door to many problems.

Very truly yours,

  
(Mrs.) Borgny Baird

ml

GEORGE R. JOHNSON  
ATTORNEY AT LAW  
60 ELM AVENUE  
LONG BEACH, CALIFORNIA 90802  
TELEPHONE (213) 437-2973

June 17, 1985

California Law Revision Commission  
4000 Littlefield Road, Suite D-2  
Palo Alto, California 94303

Reference: California Probate Referees

Dear Sirs:

I understand that the Commission is currently considering the future of the Probate Referees and evaluating a variety of alternative courses of action, ranging from abolishing Referees entirely to continuing their present status unchanged.

I would like to volunteer my opinion that the system is working very well as it is, and I question the advisability of making any changes. I would apply the old axiom, "If it ain't busted, don't fix it."

In my own probate practice, I find the appraisals by the Probate Referee very useful, even though we are no longer concerned with the state inheritance tax. Unfortunately, we do still have federal estate tax, and I find it helpful to have a Probate Referee's valuations as at least a starting point in deciding what values to adopt in preparing the Form 706. My observation and experience is the IRS examiners still give considerable weight to the Referees' opinions.

Of course, in the event there is no federal estate tax return to be filed, the Referee's opinion is still helpful in determining basis for capital gains and losses in the event of future sales of assets acquired by inheritance from a decedent.

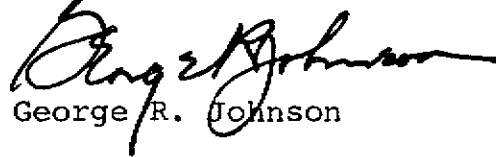
Finally, the Referee's valuations are always helpful in determining executor's commissions and attorney's fees and can be helpful in working out distributions in kind among several distributees.



June 17, 1985

To this I would only add the admonition that the burden of proof should rest on the proponents of change rather than the opponents. As a practitioner who has gone gray and partially bald in the practice, I have, of course, acquired my share of prejudices and biases which may affect my objectivity, but I would like to express the opinion that it appears to me that the legislature sometimes seems to favor change for change sake.

Very truly yours,

A handwritten signature in cursive script, appearing to read "George R. Johnson".

George R. Johnson

GRJ:mm

LAW OFFICES  
EDWARD J. BOESSENECKER  
690 MARKET STREET  
SUITE 1400  
SAN FRANCISCO, CALIFORNIA 94104  
TELEPHONE (415) 392-3374

June 18, 1985

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

Gentlemen:

I am advised that you are presently considering legislation concerning the probate referee system in California. I am presently engaged in a predominately probate practice and am keenly interested in the retention of the probate referee as a part of the probate system in California.

The probate referee is a convenience to the attorneys and their clients involved in probate estates and the abolishment of the office of probate referee could cause a substantial increase in the cost of administering estates and could complicate rather than simplify the system.

At the present time, the appraisals of the probate referee, while not binding on the Internal Revenue Service, are given great weight by the Internal Revenue Service in connection with the estate tax returns. In the absence of a probate referee, it would be necessary to employ various appraisers to appraise the different types of assets in a given estate.

Real estate would have to be appraised by a professional appraiser, known as a M.A.I. appraiser, whose charges would range upward from \$750 per parcel, regardless of value. The Internal Revenue Service would not likely be willing to accept an appraisal by the average real estate broker, but would in all probability insist upon a professional appraisal.

Stocks, bonds and other securities would either have to be appraised by stock brokerage firms or involve extensive research into the Wall Street Journal by the executor or his attorney. Closely held corporations or other businesses would necessitate the employment of an accountant to arrive at an estimate of value.

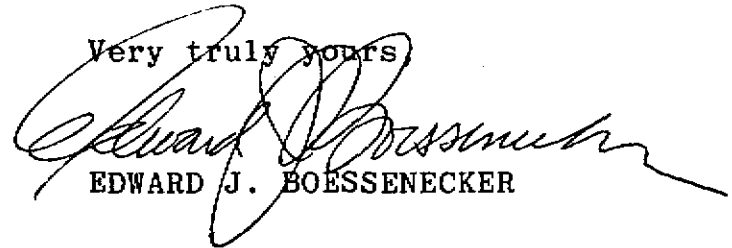
The result of so called "self-appraisal" would be a

California Law Revision Commission  
Page Two  
June 18, 1985

proliferation of various specialized appraisers at a substantial increase in cost to the estate with an increased likelihood of audit of the estate tax return by the Internal Revenue Service. The work of the attorney in dealing with these various experts, or in researching stock exchange quotations for the purpose of self appraisal, could lead to an increase in fees sought for extraordinary services by the attorney and the executor.

Based upon 35 years of experience in this field, it is my belief that the present system of probate referees, while not perfect, is worthwhile and its retention is to the advantage of those interested in estates in California.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Edward J. Boessenecker', written over the typed name below. The signature is fluid and cursive, with a large initial 'E' and 'B'.

EDWARD J. BOESSENECKER

EJB/asw

## EXHIBIT 6

# ESTATE PLANNING, TRUST AND PROBATE LAW SECTION

## THE STATE BAR OF CALIFORNIA

*Chair*  
KENNETH M. KLUG, Fresno  
*Vice-Chair*  
JAMES A. WILLETT, Sacramento

*Advisors*  
COLLEEN M. CLAIRE, Newport Beach  
CHARLES A. COLLIER, JR., Los Angeles  
JAMES D. DEVINE, Monterey  
K. BRUCE FRIEDMAN, San Francisco  
JAMES R. GOODWIN, San Diego  
JOHN L. McDONNELL, JR., Oakland  
WILLIAM H. PLACEMAN, JR., Oakland  
JAMES F. ROGERS, Los Angeles  
HARLEY J. SPITLER, San Francisco  
ANN E. STODDEN, Los Angeles



555 FRANKLIN STREET  
SAN FRANCISCO, CA 94102-4498  
(415) 561-8200

*Executive Committee*  
KATHRYN A. BALLSUN, Los Angeles  
D. KEITH BILTER, San Francisco  
HERMIONE K. BROWN, Los Angeles  
THEODORE J. CRANSTON, La Jolla  
JOHN S. HARTWELL, Livermore  
LLOYD W. HOMER, Campbell  
KENNETH M. KLUG, Fresno  
JAMES C. OPEL, Los Angeles  
LEONARD W. POLLARD, II, San Diego  
JAMES V. QUILLINAN, Mountain View  
ROBERT A. SCHLESINGER, Palm Springs  
WILLIAM V. SCHMIDT, Costa Mesa  
CLARE H. SPRINGS, San Francisco  
H. NEAL WELLS, III, Costa Mesa  
JAMES A. WILLETT, Sacramento

June 18, 1985

VIA EXPRESS MAIL

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

Re: Memorandum 85-60 - Probate Referee System

Dear John:

This letter sets forth the views of the Executive Committee of the Estate Planning, Trust and Probate Law Section, State Bar of California, on the probate referee system. These views are as follows:

1. California has had an independent referee system for many decades.
2. The system generally has worked quite well.
3. Probate referees are now appointed only after they pass an examination administered by the State Personnel Board.
4. While the level of competence varies among the referees, many of the referees are very efficient at appraisals.
5. The Probate Referees Association has developed internal policing procedures to ensure the quality of the referees and their service which has been helpful to the Bar.
6. The statutory compensation for a probate referee (Probate Code §609) is very low, even though it has been adjusted several times in recent years. A referee's fee in most instances is substantially below what would be charged if independent appraisals were obtained from other sources on all assets.

7. The independence of the referee in arriving at appraisal values is a protection to not only the personal representative but to those interested in the estate. It avoids problems of an unsophisticated personal representative, for example, undervaluing assets, selling them at less than their fair market value, etc.

8. The referee is a court officer and, as such, has powers of the referee of a superior court, including subpoena powers, the power to take testimony under oath, etc. (Probate Code §1300 and subsequent).

9. Political activities by the referees are prohibited, ensuring their independence (Probate Code § 1311).

10. The independent appraisal system is of significance in a state where statutory commissions and fees are based upon appraisal values, among other items.

11. Under current law a referee is not required in connection with transfers of property under Probate Code §630 or for interspousal transfers pursuant to Probate Code §650 (Probate Code §605(a)(2)(A)(B)).

12. Memorandum 85-48, Collection or Transfer of Small Estates Without Administration, was discussed at the May meeting of the Commission and, as this writer recalls it, was referred back to the Staff to redraft the provisions involving transfers of real property. A transfer of property valued at less than \$10,000 was to be based upon the appraisal of a probate referee, establishing the value. Such a transfer was to be by affidavit. If the total value of real and personal property was less than \$60,000 and the value of the real property was greater than \$10,000, again a probate referee's appraisal would be used in connection with a court petition for a court determination of transfer of the real property. Both of these emphasize the role of a referee in establishing values. In this case, it would essentially be for title purposes to ensure that the property transferred was within the limits allowed by law.

13. Under Probate Code §605(a)(2)(C), the court can, for good cause, waive the appointment of a probate referee. If that procedure is used, the personal representative must file a proposed inventory and appraisement with the court in connection with the petition for waiver of the appointment of a referee and set forth in some detail the basis of the appraisal of each asset. Further, no additional compensation is allowed to the personal representative or attorney

John H. DeMouilly  
June 18, 1985  
Page Three

in connection with such petition or appraisal. This section, which was added to the law several years ago, gives flexibility to an otherwise mandatory system.

14. Although the practice varies from county to county, it is believed that in most counties the probate referee is appointed by the court on a rotating basis, further ensuring the independence and impartiality of a particular referee.

15. As noted above, the cost of the system is low. The cost is borne by the estate itself. It is not subsidized by the State of California or by local government entities.

16. Since there is at least one probate referee in each county, there is the availability of a qualified local appraiser of assets in each county. In many smaller counties, except for the referee system, there might not be appraisers qualified to appraise assets in many estates.

17. A poll taken of section members in late 1983 and early 1984 as to appraisals by referees or self-appraisal was inconclusive. Slightly more persons voted for the present system of probate referees than voted for self-appraisal, but the votes were somewhat inconsistent and inconclusive.

18. The Executive Committee supports the existing system of probate referees.

Notwithstanding the general support for the existing system, that is, retention of the probate referees, the Executive Committee feels that there are areas that can be clarified to make the system more efficient. These areas of clarification include the following:

1. Probate Code §605(a)(1) states that the personal representative shall appraise various cash items. The Probate Referees Association has viewed this language very narrowly. Attached hereto as Exhibit 1 is a copy of the front page of the Probate Referees Guide as recently revised and copies of pages 8, 9, 10 and 11, dealing with cash items that are to be appraised by the personal representative or by the referee. Many items which are deemed cash equivalents are currently being appraised by the referees, including treasury notes, treasury bills, treasury bonds, tax refunds, refunds on utilities, insurance, etc., money market accounts, and so forth. To the extent there is criticism of referees, it is often that many of these cash-type items are still being appraised by the referees and a charge is being made therefor.

John H. DeMouilly  
June 18, 1985  
Page Four

2. A similar, but somewhat less vocal criticism, relates to the appraisal of listed securities by referees. This information is available from the Wall Street Journal or other publications and can be competently appraised by the personal representative in most instances.

3. Probate Code §605(a)(2)(C) speaks of waiver of the appointment of a probate referee. This section might be modified to provide for waiver of the appointment of a referee on only certain assets (such as listed securities). As presently written, it does not allow for a partial waiver of the referee.

4. The procedure under §605(a)(2)(C) and (a)(3) is somewhat awkward and should be clarified. In some counties a referee is appointed automatically by the court when the order for probate is made. In other counties the referee is appointed only if a separate petition is filed for appointment. Under these provisions of §605, the inventory and appraisement is being filed with the court concurrently with the petition. The mechanics of this are somewhat awkward. It would seem preferable, for example, for the petitioner to have attached to the petition a proposed inventory and then have the court make an order that the proposed inventory shall be deemed the inventory on file. If the court denies the petition to waive a referee, then, of course, the inventory on file would be superseded by a referee's inventory.

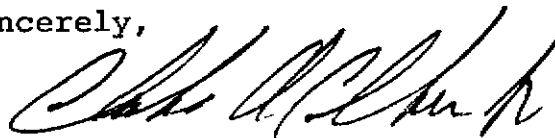
5. For purposes of the federal estate tax return, it is often helpful to have back-up data to support a valuation. The IRS in some instances will accept the particular referee's appraisal with little back-up information. In other instances, it will not. It would make the referee's services more valuable if upon request the referee were required to provide a back-up report as to how a particular value was determined, such as a listing of comparable sales considered by the referee in establishing a value. This would make the appraisals more useful for tax purposes. This is especially important now that the Internal Revenue Code has increased the penalties for understatement of values on assets.

As set forth above, the Executive Committee supports the retention of the referee system. There are a number of unique functions performed by the referees which assist the probate process. The ability to have a referee waived in particular instances gives flexibility to the system. However, as noted above, there are a number of areas where the system

John H. DeMouilly  
June 18, 1985  
Page Five

can be improved. We believe these areas require further study and at this point are not making specific recommendations on any of the possible improvements mentioned above.

Sincerely,



Charles A. Collier, Jr.  
for the Executive Committee

CAC:vjd

Enclosures

cc: Clare H. Springs, Esq. (w/encls.)  
Kenneth M. Klug, Esq. (w/encls.)  
James A. Willett, Esq. (w/encls.)  
Theodore J. Cranston, Esq. (w/encls.)  
James V. Quillinan, Esq. (w/encls.)  
William V. Schmidt, Esq. (w/encls.)



1985 REVISION

PROBATE  
REFEREES  
PROCEDURES  
GUIDE

CAC

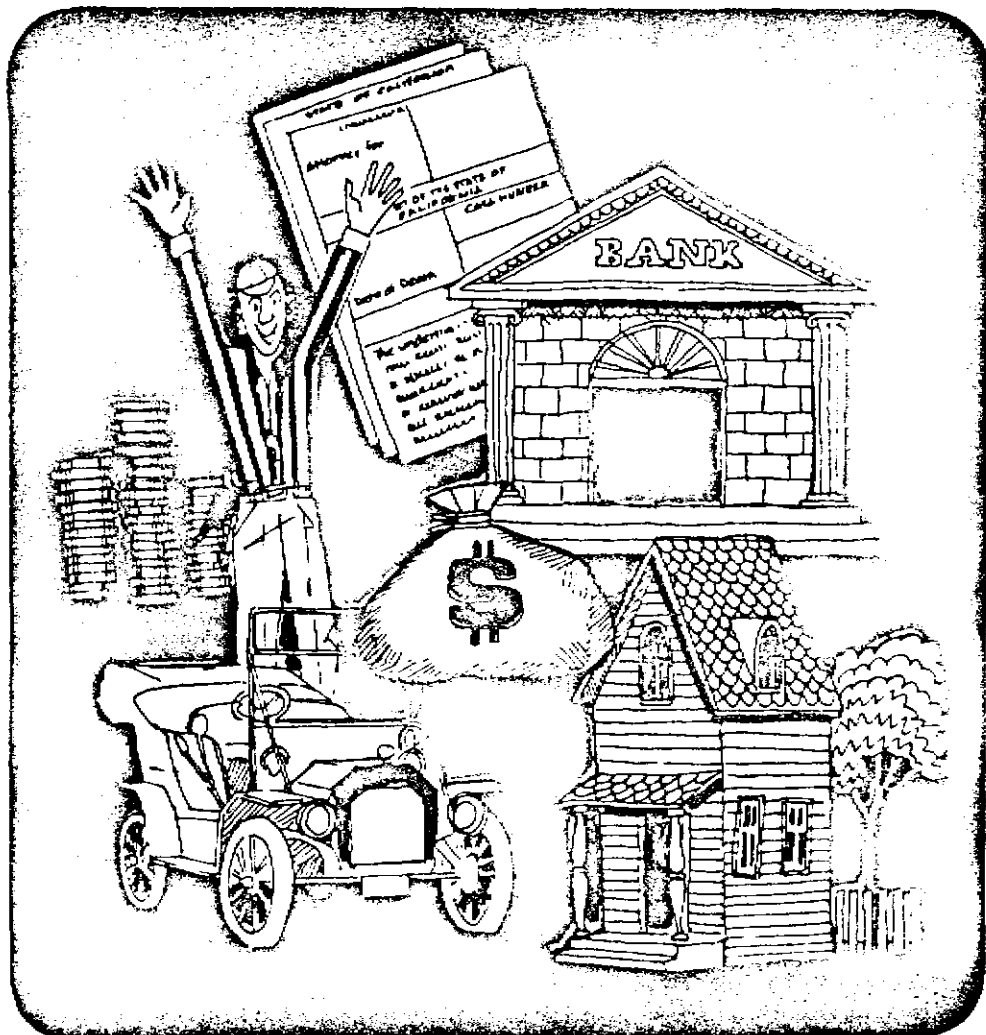


Exhibit 1



## THE INVENTORY SUGGESTIONS AND EXAMPLES

### Schedule A or Attachment 1

#### Cash, Bank, Savings and Loan Accounts

Effective July 1, 1971, money, cash items, bank accounts, cash receivables and similar items are to be appraised by the Executor or Administrator. The definition of these items was published in the Referees' Revised Appraisal Procedures Memorandum in July, 1971, and the 1975 printing of that Memo is reproduced in full herein.

#### REVISED APPRAISAL PROCEDURES MEMORANDUM

Effective July 1, 1971, Probate Code §605(a) reads as follows:

"(a) The appraisalment shall be made by the executor or administrator and an inheritance tax referee as follows:

- (1) The executor or administrator shall appraise at fair market value [A] moneys, currency, [B] cash items, [C] bank accounts and amounts on deposit with any financial institution, and [D] 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 mentioned in paragraph 1, and pointed by the

The Board of Referees made its interpretation of the Code the assessor and by the Referee.

#### A. MONEYS AND CURRENCY

##### To be appraised

1. U.S. coin and

##### To be appraised

1. Coins and currency, foreign coin and currency, and unissued coins, etc.

#### B. CASH ITEMS

A "cash item" is a cash item prior to decedent's death whose fair market value is calculated on the date of death.

##### To be appraised

1. Checks dated before death, cashier's checks, etc.
2. Cash dividends declared before decedent's death.
3. Bond coupons payable before decedent's death.
4. Money orders cashed before death.
5. Government warrants payable before death.
6. Drafts dated before death.
7. Social Security checks payable before death.



receivables and  
The definition  
al Procedures  
reproduced in

## ANDUM

Administrator and

et value [A]  
amounts on  
life and acci-  
death in lump  
et value is, in  
rent from the

ik, trust com-  
chartered and  
deral or state  
rvised under

- (2) All assets other than those appraised by the executor or administrator pursuant to paragraph (1) shall be appraised by an inheritance tax referee appointed by the court or judge..."

The Board of Directors of the California Probate Referees' Association has made its interpretation of this section and has listed below in the various categories of the Code the assets which should be appraised by the Personal Representative and by the Referee. This is not intended as an all inclusive list.

### A. MONEYS AND CURRENCY:

#### To be appraised by Representative:

1. U.S. coin and currency in circulation and worth no more than face value.

#### To be appraised by Referee:

1. Coins and currency with a value other than face, including gold coin, foreign coin and currency, commemorative coins or medals, coin collections, and unusual or collector's items, such as old currency, bank notes, etc.

### B. CASH ITEMS:

A "cash item" is a check, draft, money order or similar instrument issued prior to decedent's death which can be immediately converted to cash and whose fair market value can be determined solely from its face without calculation or reference to other sources.

#### To be appraised by Representative:

1. Checks dated *before* decedent's death, including, but not limited to certified, cashier's, travelers checks, etc.
2. Cash dividends declared and payable to shareholder as of a date *before* decedent's death.
3. Bond coupons matured and redeemable in cash at face value *before* decedent's death.
4. Money orders dated *before* decedent's death.
5. Government warrants (checks) or similar instruments date *before* decedent's death.
6. Drafts dated *before* decedent's death.
7. Social Security and Veterans lump sum death benefits.

**The following are not cash items and are to be appraised by Referee:**

1. Checks and drafts dated *after* decedent's death.
2. Cash dividends declared but payable to shareholder *after* decedent's death.
3. Bond coupons which mature *after* decedent's death.
4. Promissory notes and loans, secured and unsecured.
5. Accounts receivable of all types.
6. Contractual rights to receive money.
7. Refunds of all types, including but not limited to, taxes, insurance premiums, utilities, magazines subscriptions, auto clubs, medicare, hospital and medical reimbursement, etc.
8. Bonds, stocks and securities of all types, listed or unlisted, including Treasury notes, bills and bonds, whether or not they qualify for payment of federal estate taxes.
9. Bankers acceptance notes and bank capital notes.
10. Any item not in U.S. dollars.
11. Tax anticipation or registered warrants and notes.
12. Payments from escrow not closed before decedent's death.
13. Revolving funds on deposit with a cooperative or marketing organization.
14. Stamps and stamp collections.
15. Cash, cash items and any other assets which would be appraised by the Representative except for the fact that the item is an asset of a partnership, joint venture, trust or other entity, or is an asset of another decedent's estate.
16. A cash distribution from another decedent's estate *after* decedent's death.
17. Any item with a fair market value different from the ostensible value or specified amount.

**C. BANK ACCOUNTS AND AMOUNT ON DEPOSIT WITH ANY FINANCIAL INSTITUTION:**

As defined by the code, "financial institutions" include banks, trust companies, savings and loan associations and similar institutions and credit unions.

Excluded from t  
companies and t

**To be appraise**

1. Bank accoun  
fictitious nan  
cial, regular,  
passbook, sh  
mas Club, et
2. Amounts on  
ings certificat  
ificates, cum  
thrift certifica
3. Totten trusts.

**To be appraised**

1. Any amount
2. Investment ce  
Commercial C
3. Amounts on  
such as U.S. 1  
state and mun  
of beneficial ir
4. Any item with  
specified amou

**D. PROCEEDS  
AND RETIRE  
LUMP SUM /**

**To be appraised**

1. Proceeds of life  
death in lump

**To be appraised**

1. Proceeds not p
2. Annuities.

The foregoing is issu  
others concerned w

**appraised by Referee:**

er decedent's death.

, taxes, insurance  
medicare, hospital

unlisted, including  
qualify for payment of

ath.

eting organization.

e appraised by the  
et of a partnership,  
another decedent's

decedent's death.

ostensible value or

**WITH ANY**

banks, trust com-  
and credit unions.

Excluded from the definition are foreign financial institutions, industrial loan companies and thrift companies, such as Morris Plan.

**To be appraised by Representative:**

1. Bank accounts, and amount on deposit in the name of the decedent, or in a fictitious name of the decedent, including (a) checking accounts, commercial, regular, personal, special, ten-plan, etc., and (b) savings accounts, passbook, share accounts or balances, time, demand, special plans, Christmas Club, etc.
2. Amounts on deposit with a "financial institution" as defined including savings certificates, time certificates, certified time deposits, investment certificates, cumulative and accumulative investment certificates, investment thrift certificates, installment thrift certificates, etc.
3. Totten trusts.

**To be appraised by Referee:**

1. Any amount not in U.S. dollars.
2. Investment certificates issued by thrift companies, such as Morris Plan or Commercial Credit and any company having "Thrift" in its title.
3. Amounts on deposit other than with a "financial institution," as defined, such as U.S. Treasury certificates of indebtedness, certificates of deposit for state and municipal land, certificates of deposit issued for stock, certificates of beneficial interest, etc.
4. Any item with a fair market value different from the ostensible value or specified amount.

**D. PROCEEDS OF LIFE AND ACCIDENT INSURANCE POLICIES  
AND RETIREMENT PLANS PAYABLE UPON DEATH IN  
LUMP SUM AMOUNTS:**

**To be appraised by Representative:**

1. Proceeds of life and accident insurance and retirement plans payable upon death in lump sum amounts, even if not paid in a lump sum.

**To be appraised by Referee:**

1. Proceeds not payable in lump sum.
2. Annuities.

The foregoing is issued for the information and guidance of Probate Referees and others concerned with the administration of decedent's estates.