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Third Supplement to Memorandum 86-18

Subject: Study L-655 - Estate and Trust Code (Probate Referees--letter
from State Bar Executive Committee)

Attached to this supplementary memorandum is a letter from the Executive Committee of the State Bar Probate Section responding to the Commission's request for the Committee's position on issues relating to the probate referees.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

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Reply to: P. O. Box 2229
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February 25, 1986

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, California 94307-4739

Re: Memorandum 86-18 (Probate Referees)

Dear John:

The Executive Committee of the Estate Planning, Trust and Probate Law Section reviewed its position on several issues involving the Probate Referee system. The Executive Committee was asked to vote on several issues. The results are summarized on the enclosed form. The following are some observations on the Committee's votes.

The Executive Committee unanimously favors retention of the Probate Referee system with some changes.

The Executive Committee strongly (21-1) favors permitting a single challenge of a referee, without cause, at the time of initial appointment. Members from Los Angeles would like the right to challenge an office of referees, as opposed to an individual referee. While the Committee voted 11-2 in favor of this, several members did not vote. Apparently, there is a particular problem which exists in Los Angeles.

The Committee favors self-appraisal by the Executor or Administrator of liquidated receivables, such as unused premium refunds; tax refunds; and money market accounts with brokers.

The Committee favors retaining referee appraisal of accrued interest on bonds and notes as well as dividends of record at death. The Committee was in favor 18-3 of retaining referee appraisal of publicly traded securities. The vote was the same when the question was limited to securities traded on an established exchange.

As to collectibles or other unique assets which require an expert appraisal, a majority of those voting favored referee oversight of the expert appraisal at a reduced fee.

Mr. John H. DeMouilly
Re: Memorandum 86-18 (Probate Referees)

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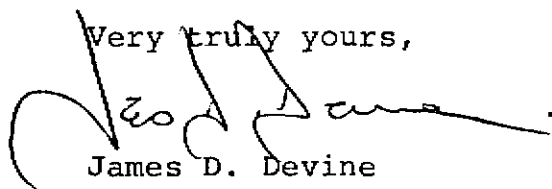
The Executive Committee favors continuing the waiver of a referee appraisal in a given estate for cause. The Committee was fairly evenly divided on whether the waiver could only be a total waiver or there could be a waiver of a referee appraisal as to certain assets.

Although a narrow majority of the Committee favors the waiver of the referee if all beneficiaries waive the requirement, a substantial majority favored a noticed petition for waiver of the referee appraisal for good cause. The Committee voted 8-12 against a requirement that the petition could be heard after a referee is appointed and given notice of the petition.

As to what constitutes good cause, the Committee refers you to Sandy Rae's statement attached to the First Supplement to Memorandum 86-18 regarding the legislative history of Probate Code §605(2). Generally, good cause would be determined on a case-by-case basis, but there will be cases where considering the nature of the assets involved, the expense of a referee appraisal may not be justified. In other cases where there is no estate tax, no sales of property contemplated, a waiver of Executor's fee, etc., a referee appraisal might be unnecessary.

The Committee suggested by a 16-5 vote that the probate referees be renamed "estate appraisers".

Very truly yours,

A handwritten signature in dark ink, appearing to read "James D. Devine", with a large, sweeping initial "J" and "D".

James D. Devine

JDD:dv
Enclosure

cc: James A. Willett, Esq. (w/encl.)
James V. Quillinan, Esq. (w/encl.)
James Opel, Esq. (w/encl.)
Irwin Goldring, Esq.
Lloyd Homer, Esq. (w/encl.)
Edward V. Brennan, Esq. (w/encl.)

PROBATE REFEREE SYSTEM

A. Do you favor keeping the probate referee system, with some changes, or do you favor scrapping the whole system?

Keep All Scrap 0

B. Assuming you keep the system, do you favor or oppose the following:

1. As to incompetent or unduly slow referees:

a. Allow one pre-emptory challenge of a referee at the time of initial appointment

Favor 21 Oppose 1

b. Provide for court removal from estate for cause - namely incompetence or delay

Favor All Oppose 0

c. Allow request of specific referee

i. Unrestricted

Favor 7 Oppose 14

ii. For cause such as just appraised same assets or will be making related appraisals in another proceeding

Favor 22 Oppose 1

d. Require completion of appraisal within 90 days - failure to do so, cause for removal

Favor 0 Oppose All

2. Appraisal of certain non-cash assets by referee:

Referee Appraisal

a. Liquidated receivables such as unearned insurance premium refunds, subscription refunds.

Yes 4 No 14 At reduced fee 0

b. Tax refunds

Yes 4 No 15 At reduced fee 3

c. Accrued interest on bonds and notes and dividends

Yes 16 No 4 At reduced fee 1

c. Cash Management, Liquid Asset and other Money Market accounts

Yes 1 No 27 At reduced fee 0

e. Securities with readily ascertainable value (i.e., in Wall Street Journal)

Yes 18 No 3 At reduced fee 0

f. Collectibles or other unique assets requiring expert appraisal paid for by estate

Yes 5 No 4 At reduced fee 10

3. Waiver of Referee appraisal

a. Do not permit at all	Favor <u>2</u>	Oppose <u>15</u>
b. Permit for cause	Favor <u>15</u>	Oppose <u>0</u>
c. Total waiver only	Favor <u>8</u>	Oppose <u>not counted</u>
d. Waiver as to certain assets	Favor <u>9</u>	Oppose <u>7</u>

4. Method of Waiving Referee Appraisal

a. Similar to granting independent powers of administration - include in petition for probate or later. Granted without cause unless objection.	Favor <u>6</u>	Oppose <u>12</u>
b. On waiver of all beneficiaries (like bond) without cause	Favor <u>10</u>	Oppose <u>9</u>
c. On separate petition for cause		
i. Noticed	Favor <u>13</u>	Oppose <u>2</u>
ii. Ex Parte	Favor <u>7</u>	Oppose <u>11</u>
iii. Only after referee appointed and noticed	Favor <u>8</u>	Oppose <u>12</u>

5. Require Referee to Provide Back-Up Material for Appraisal Routinely When Requested and Retain it Until Estate Tax Audit Period Runs

Favor All Oppose 0

6. Should There be Statutory Judicial Immunity for Referees?

Favor 4 Oppose 10 Leave Law As Is 7