

#L-655

ns14  
10/10/86

Second Supplement to Memorandum 86-84

Subject: Study L-655 - Estate and Trust Code (Inventory and Appraisal--  
comments on draft of tentative recommendation)

Attached to this memorandum as Exhibits are letters from Jeff Strathmeyer and State Bar Study Team No. 1 relating to the draft tentative recommendation on inventory and appraisal. We will take up the comments at the meeting rather than analyzing them in this supplementary memorandum.

Respectfully submitted,

Nathaniel Sterling  
Assistant Executive Secretary



## CALIFORNIA CONTINUING EDUCATION OF THE BAR

2300 Shattuck Avenue, Berkeley, CA 94704  
(415) 642-3973; Direct Phone: (415) 642-8317

August 1, 1986

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

Re: Study L-1040; Proposed Probate Code Section 8903:  
Waiver of appraisal by probate referee.

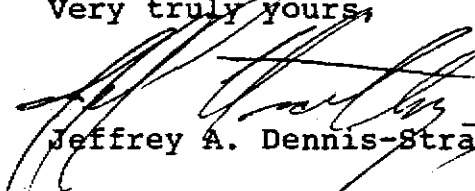
Dear John:

Under the proposal, a petition to waive appraisal by a referee must be "made" (filed?) within four months from the issuance of letters. Frequently the executor (and the court) will not be able to determine whether waiver is appropriate until the four months have elapsed, because the will contest and creditor claim periods are open for the same period. The four month provision should be deleted.

Furhter, there is no purpose for having a 15 day notice period rather than 10. Far more momentous issues are heard on 10 days notice. (When disputes actually arise the hearings are postponed by stipulation or the court).

Thank you for your consideration.

Very truly yours,

  
Jeffrey A. Dennis-Strathmeyer

JAD-S/  
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LAW OFFICES OF  
DIEMER, SCHNEIDER, JEFFERS, LUCE & QUILLINAN

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

HARVEY DIEMER  
MICHAEL E. SCHNEIDER  
WILLIAM A. JEFFERS  
JAMES G. LUCE  
JAMES V. QUILLINAN  
MICHAEL R. MORGAN  
T. MICHAEL TURNER  
DAVID L. MARTIN

444 CASTRO STREET, SUITE 900  
MOUNTAIN VIEW, CALIFORNIA 94041  
TELEPHONE (415) 969-4000  
TELEX 171854 IBC LTOS

October 8, 1986

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

Re: Memo 86-84, Inventory and Appraisalment

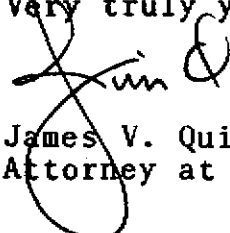
Dear John:

Please find enclosed a copy of Study Team No. 1's report on Memo 86-84, Inventory and Appraisalment.

This report represents the opinion of the team only. The report has not been reviewed by the executive committee. I am sending it to for your information and comment.

See you October 16-17.

Very truly yours,

  
James V. Quillinan  
Attorney at Law

JVQ/hl  
Encls.

cc: Chuck Collier      Jim Opel  
     Keith Bilter        Jim Devine  
     Irv Goldring        Lloyd Homer

R E P O R T

TO: JAMES V. QUILLINAN  
LLOYD W. HOMER  
D. KEITH BILTER  
CHARLES A. COLLIER, JR.  
JAMES D. DEVINE  
IRWIN D. GOLDRING  
JAMES C. OPEL  
THE EXECUTIVE COMMITTEE IN GENERAL

FROM: WILLIAM V. SCHMIDT, TEAM CAPTAIN  
STUDY TEAM NO.1

DATE: OCTOBER 7, 1986

SUBJECT: REPORT OF STUDY TEAM NO. 1 on LRC Memorandum 86-84  
Study #L-655 - Estates and Trust Code (Inventory and  
Appraisal -- Draft of Tentative Recommendation)  
New Estates and Trust Code §§ 400 through 453 and 8800  
through 8963

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Conference Call: A conference call was held on Tuesday, October 7, 1986. In view of the shortness of time and the fact that these proposed Sections have been reviewed twice already in earlier Memorandums as set forth below, the team captain exercised his prerogative (which he hopes he has), to limit the conference call to one in which only he and Charles Collier participated.

LRC Memorandum 86-84 covers the same new Estates and Trust Code's proposed Sections (§§ 400 through 453 and 8800 through 8963) previously covered in LRC Memorandums 86-58 and 86-75. We note that many of our recommendations in earlier reports responding to these earlier Memorandums have been incorporated into the appropriate Sections.

The Sections which we feel deserve comment at this time are set forth below in numerical order, and we have the following

comments in regard to them:

Section 403: The second sentence of subsection (a) states that once appointed, a probate referee is eligible for reappointment for a period of five years from the date of the expiration of the term of office. Does this mean that the referee is eligible for reappointment for five years without taking an additional examination? If so, we are concerned that five years may be too long a period of time. We note that the State Controller, who makes the appointment, serves for only four years so that such a five year period would automatically extend into two terms of that office.

Section 8802: This Section refers to the form of the Inventory and Appraisement. Its second sentence states that if the value of an item is other than a whole dollar amount, the fractional part of the dollar may be disregarded. We are concerned that probate accountings will not balance precisely if the fractional part of a dollar for each item may be disregarded. We are aware of the fact that the preparer of a Federal Estate Tax Return may round fractional parts of a dollar up or down for federal estate tax purposes, but the computation of a tax is not the same as the preparation of an accounting which should balance precisely. We recommend, therefore, that the last sentence to this Section be deleted and that we continue our present practice of setting forth the exact amount of the value of each asset and having accountings balance precisely.

Section 8805: We note that subsection (a) is new, permitting the court to compel the personal representative to file an Inventory and Appraisement pursuant to its power to compel a personal representative to file an account. We have no objection to this as a policy matter. We note that the comment states only that the subdivision is new. Since the procedure to compel a personal representative to file an account is already in the law,

we wonder if new subsection (a) serves a worthwhile purpose, and if it does, perhaps a statement of that purpose should be set forth in the comment.

Section 8851: We note that Section 8851 as it appeared in LRC Memorandum 86-75 has now been deleted. We are unsure of the reason for its deletion. Since it basically restates existing Probate Code § 602 and extended its provisions from executors to all personal representatives, we see no harm in its retention.

Section 8903: We are very pleased that the Commission has responded to our objection in our Report to LRC Memorandum 86-75 and has deleted the requirement that a petition for waiver of referee be filed no later than four months after the issuance of Letters.

Section 8923: It is our understanding that, at least in Los Angeles County, a probate commissioner may act in the place of a judge in appointing probate referees. We, therefore, again suggest the consideration of language which would make such a probate commissioner subject to the same rules as a judge in regard to this Section.

Section 8924: Subsection (a)(2) provides for the removal of a probate referee. It provides for the one time removal of a probate referee regardless of cause. We agree with this concept, but we do not feel that such a removal should be required to be instituted by the filing of a petition as the Section requires. We feel that what was intended was a simpler procedure in the form of some type of written statement or declaration signed by the attorney or the personal representative and filed with the clerk of the court. In any event, we feel that a personal representative and his or her attorney should not be required to go to the trouble of filing a petition (and perhaps having it set

for hearing) to exercise a one time, automatic challenge or removal, regardless of cause. See CCP § 170.

Respectfully submitted,

STUDY TEAM NO. 1

By:

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WILLIAM V. SCHMIDT,  
Team Captain