

First Supplement to Memorandum 87-28

Subject: Study L-655 - Inventory and Appraisal (Limitation on Probate Referee Commission for Appraising Publicly Traded Stock)

At the April meeting the Commission tentatively decided to recommend a \$250 limitation on the probate referee's commission for appraising publicly traded stock. The Commission invited further input on this matter from the California Probate Referees' Association, and also decided to solicit the views of persons who had objected to probate referee appraisal of publicly traded stock at all.

We have received the letter attached as Exhibit 1 from the probate referees. They oppose the \$250 limitation for the reasons set out in the letter, which you should read. They also take the position that if the referee's commission for an easy appraisal such as publicly traded stock is lowered to \$250, the commission for a difficult appraisal such as nonresidential real estate or nonpublicly traded partnership interests and corporate stock should be increased to 2/10th of 1 percent (from the current 1/10th of 1 percent).

Of the six persons who had objected to any probate referee appraisal of publicly traded stock, we have received responses from two so far. Keith P. Bartel of Burlingame (Exhibit 2) does not believe the \$250 limitation is helpful. "I have not had many cases in which a decedent had that magnitude of stock so that the cap is hardly a meaningful cap. I still believe that the appraisal of publicly traded stock should be done by the personal representative." Paul H. Roskoph and Dawne W. Hollis of Palo Alto (Exhibit 3) likewise remain convinced that the probate referee appraisal of publicly traded stock is an unnecessary expense even with the cap. They offer an alternative suggestion of a fixed figure multiplied by the number of securities appraised, e.g., \$5 times each stock listed for appraisal.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

EXHIBIT 1

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GARY D. WEATHERFORD

April 24, 1987

California Law Revision Commission
4000 Middlefield Road, Suite D-2
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Re: Statistical Analysis Of Proposal To Have A Cap Of \$250 Per
Estate For Appraising Stocks On The New York Stock Exchange
Or The American Stock Exchange

Dear Members of the Commission:

I have reviewed my 1986 income and that of one other referee in San Diego. The statistics indicate that gross fees would be reduced by \$1,504.71 in one office and by \$1,012.09 in another office by the imposition of a \$250 cap on fees on stocks listed on the New York or American Exchange. It is probable that the reduction would be greater in other offices and areas.

Although the reduction may be relatively minor, I must make a comment about reducing the income of referees. The Law Revision Commission, with the help of the State Bar, the Referee's Association, the Banker's Association and other interested persons, has made a thorough study of the referee system and has concluded that it is a valuable system.

There has not been an attempt, until now, to restructure the fees paid to referees because the fees are generally extremely low.

It should be noted, however, that recent changes to the Probate Code have significantly reduced the gross fees of referees. For example, at one time referees were paid for appraisals in spousal set aside petitions. Now, however, referees are not required to make these appraisals. Secondly, in many probate cases, only 1/2 of the probate estate is probated and the referee is paid on only 1/2 of the assets. The same amount of work is done to appraise 1/2 of a house as is done to appraise a whole house. The same amount of work is done to appraise 1/10th of a limited partnership as to appraise 100 percent of a limited partnership. The same amount of work is done to appraise 1/10th of a piece of commercial real estate as is done to appraise 100 percent of such real estate. In addition, there is travel to the site which is often at great distance from the office of the referee.

California Law Revision Commission
April 24, 1987
Page 2

Moreover, in dealing with liquid assets, such as series E bonds, over the counter stocks and bonds, there are many cases in which volumes of small issues must be appraised for very low fees. Worthless stock must be investigated at no fee. There are frequently OTC and pink sheet stocks which have gone out of business. As a result, researching the value is done without compensation.

The referees' offices must be accessible and responsive to the attorneys and to personal representatives. This requires good people to answer questions on the phone, to maintain the documents necessary for appraisals and to do research and typing. Office space, postage, stationary, Wall Street Journal records, coin books, blue books, comparables on real estate matters and automobiles must be paid for.

The Law Revision Commission has been concerned with the quality of the referee service. I submit that the proposed changes in the law to date will be beneficial and will enhance the referee system. But what type of persons will be interested in being referees? What type of paralegals and office help will the referee be able to afford? How can the turnaround time be improved if the referee is spread so thin and his budget so tight that adequate help cannot be afforded?

At this point, I believe the Commission may be cutting the income of the referees to the point where it may not be attractive for persons of quality and experience to take on the responsibility.

Moreover, the increased risk of doing business as a referee may make it unlikely that persons with experience and expertise will assume the risk of running an operation on such a low budget that there is an increased risk of an imperfect work product.

On behalf of the Referees Association, we oppose the \$250 cap because it is just another way of whittling down the referees' incomes. Although it does not seem to be an extremely significant decrease in compensation, it is a decrease in compensation and may affect the quality of work that can be rendered.

If such a cap is imposed, I seriously suggest to the Commission that it consider one additional change to the system of compensation. The Commissioners have indicated that they do not think that estates with publicly listed stock should necessarily

California Law Revision Commission
April 24, 1987
Page 3

subsidize estates with other types of assets. Although California probate has operated on somewhat of a leveling policy with reference to fees, I believe that it would be appropriate for the commission to increase fees in areas which have already been documented as requiring extra time and effort. I, therefore, submit that if the Commission puts a cap of \$250 on fees for appraising stocks traded on the New York Stock Exchange and the American Stock Exchange, the Commission consider raising the fee on nonresidential real estate and nonpublicly traded partnership interests and corporate stocks to $\frac{2}{10}$ th of 1 percent.

Based upon the public record before you which indicates that no outside appraiser can afford to appraise nonresidential real estate or nonpublicly traded stocks and partnership interests at less than fees substantially in excess of $\frac{2}{10}$ th of 1 percent, such an increase is warranted.

In any event, I submit that after four years of study of the referee system, the Commission is in a position to recommend that the proposed inventory and appraisal provisions be adopted.

Thank you very much for your consideration.

Very truly yours,

Edward V. Brennan

EDWARD V. BRENNAN
Probate Referee

EVB:hms

EXHIBIT 2

CARR, MCCLELLAN, INGERSOLL, THOMPSON & HORN

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April 28, 1987

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Mr. Nathaniel Sterling
Assistant Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Suite D-2
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Dear Mr. Sterling:

Re: Probate Referees

Thank you very much for your letter of April 24, 1987.

I am not enthusiastic about the notion of keeping probate referee appraisals of publicly traded stock but imposing a cap of 250.00 on a referee's fee. \$250.00 would encompass \$250,000 worth of publicly traded stock. I have not had many cases in which a decedent had that magnitude of stock so that the cap is hardly a meaningful cap.

I still believe that the appraisal of publicly traded stock should be done by the personal representative.

Very truly yours,

Keith P. Bartel

KPB:sh

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April 30, 1987

Mr. Nathaniel Sterling
Assistant Executive Secretary
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4000 Middlefield Road, Suite D-2
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Re: Probate Referees

Dear Mr. Sterling:

We offer the following comments with respect to the proposed language of Probate Code Section 8962 with respect to publicly traded stock as contained in your letter of April 24, 1987:

The cap of \$250 placed on the total fee the probate referee could charge for appraising securities listed in the Wall Street Journal still seems an unnecessary expense to an estate. Our suggestion would be some fixed figure multiplied by the number of securities appraised, i.e., \$5.00 times each stock listed for appraisal.

Thank you for allowing us to comment and make suggestions regarding revisions to the code.

Very truly yours,



Dawne W. Hollis
Legal Assistant