

Memorandum 88-8

Subject: Study L-2009 - AB 2841 (1988 Probate Legislation--proposed changes)

Assembly Bill 2841 (Harris) is the Commission's main probate bill for 1988. The staff plans to amend the bill to correct numerous typographical errors in the bill as introduced, as well as to make substantive changes approved by the Commission at the January meeting. The Commission needs to review the matters set out in this memorandum to determine whether further revisions should be made. The staff will write supplementary memoranda as other issues arise.

Priority for Appointment as Administrator With the Will Annexed

At the January 1988 meeting the Commission considered whether a person named in the will should have priority for appointment as administrator with the will annexed in cases where a person not named in the will is entitled to a greater share of the estate either as an omitted heir or as an intestate heir. The Commission asked the staff to draft a narrowly drawn standard that would allow the court in an appropriate case to vary from the rule that a person who takes under the will has priority over one who does not. The staff recommends the following:

8441. (a) Except as provided in subdivision (b), persons and their nominees are entitled to appointment as administrator with the will annexed in the same order of priority as for appointment of an administrator.

(b) A person who takes under the will has priority over a person who does not, but the court in its discretion may give priority to the person who does not take under the will if the person is entitled to a substantial portion of the estate compared with the devise to the person who takes under the will and the priority appears appropriate under the circumstances. A person who takes more than 50 percent of the value of the estate under the will or the person's nominee, or the nominee of several persons who together take more than 50 percent of the value of the estate under the will, has priority over other persons who take under the will.

Political Activities of Probate Referees

The Commission at the January meeting discussed at some length the ambiguities found in the existing statute (continued in the Commission's recommendation) governing political activities by probate referees. The Commission requested the staff to work over the draft for clarity without altering policy. The staff suggests the following revisions.

406. (a) ~~A probate referee, or any person who is an applicant for or seeking appointment or reappointment to act as a probate referee, shall not, directly or indirectly, solicit, receive, or contribute, or be in any manner involved~~
As used in this section, "prohibited political activity" means directly or indirectly soliciting, receiving, or contributing, or being in any manner involved in soliciting, receiving, or contributing, any of the following:

(1) Any assessment, subscription, or contribution to any party, incumbent, committee, or candidate exceeding two hundred dollars (\$200) in any one calendar year for any partisan public office of this state.

(2) An assessment, subscription, contribution, or political service in any amount for the office of State Controller ~~in any amount, notwithstanding paragraph (1).~~

~~(b) A violation of subdivision (a) is a misdemeanor, and the State Controller shall revoke the appointment of a probate referee who violates subdivision (a).~~

~~(c) Upon a person's application for appointment as a probate referee, and thereafter annually in January of each year during the person's eligibility for appointment, during the person's tenure as a probate referee, and during the person's eligibility for reappointment, the person shall file with the State Controller a verified statement indicating whether the person has done any act described in subdivision (a)(1) or (a)(2) engaged in prohibited political activity during the preceding two-year period two calendar years.~~

~~(d) (c) The State Controller may not appoint or reappoint as a probate referee any person who, within the two-year period preceding the date of the appointment or reappointment, violates any provision of this section preceding two calendar years has engaged in prohibited political activity, and any such appointment or reappointment is void and shall be revoked. The State Controller shall revoke the appointment of a person who, during the person's tenure as probate referee, engages in prohibited political activity. However, all acts not otherwise invalid performed by the person before revocation of the person's appointment are valid.~~

(d) A person shall not engage in prohibited political activity during the time the person is an applicant for appointment or reappointment, or during the person's tenure, as a probate referee. A violation of this subdivision is a misdemeanor.

(e) Subdivisions (a), (c), and (d) do not apply to any prohibited political activity that occurred before July 1, 1989, and the applicable law in effect before July 1, 1989, continues to apply. Subdivision (b) applies on July 1, 1989, to persons who apply for appointment on or after July 1, 1989; a person who applied for appointment or who was appointed before July 1, 1989, shall file the first statement required by subdivision (b) on or before July 1, 1989, and thereafter as prescribed in subdivision (b).

Comment. Subdivisions (a) and (b) (d) of Section 406 restate former Section 1311, with the addition of references to incumbency, reappointment, and committees, and the deletion of references to campaigns and seeking appointment. The two hundred dollar limitation of paragraph (a)(1) is extended to apply during a person's tenure as probate referee as well as during the time a person is an applicant for appointment. The two hundred dollar limitation does not apply to the State Controller; solicitation, receipt, or contribution of any amount to a State Controller campaign is absolutely prohibited by paragraph (a)(2).

Subdivision (e) (b) is new. It is intended to facilitate compliance with the other requirements of this section.

Subdivision (d) (c) restates former Section 1312, with the added requirement of removal from office. The former transitional provision is omitted because it is no longer necessary replaced by a new transitional provision in subdivision (e).

Respectfully submitted,

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