

Third Supplement to Memorandum 88-42

Subject: Study L-2009 - AB 2841 (Probate Referees and other problems)

The following is the status of the three points at issue with the probate referees as of the date of this memorandum:

(1) \$250 Cap on Fee for Appraising Publicly-Listed Stock. Assembly Member Harris has contacted us on this issue. He feels strongly that this is an issue that should not be dealt with in the context of this bill. This is the reason that he removed the cap by an author's amendment. He suggests that if the Commission believes the point is that important, the Commission should consider posing the issue in a separate bill where it can be addressed squarely on the merits. He believes it is very important that the Commission accept his judgment on this matter and not jeopardize enactment of AB 2841, which represents the Commission's total work product for the year.

(2) Waiver Procedure. Both Assembly Member Harris and Al Nicora of the probate referees have informed us that the probate referees have agreed to removal of the provision requiring appointment of a referee to receive notice of a waiver petition, in order to facilitate passage of AB 2841.

(3) Separate Inventory and Appraisal. Al Nicora tells us that the referees believe a more satisfactory solution can be worked out on the matter of the combined inventory and appraisal. They look forward to working with the Commission and the State Bar on an alternate approach that would better deal with the problem. For now, they would retain the bill as is on this point. Next session the Commission should be in a position to again recommend its original proposal or to make a new recommendation on this matter.

The Commissioners have expressed concern that amendments have been made to Assembly Bill 2841 which the Commission does not believe are desirable and which the Commission does not recommend. This has occurred frequently with respect to past recommendations of the Commission. But, as Assembly Member Harris recently pointed out to the staff, the Commission should recognize that it is an advisory body that

was created to assist the Legislature in dealing with difficult and sometimes controversial areas of the law.

There is no objection to amending AB 2841 so that it will not change the waiver provisions of existing law. On the two other issues, AB 2841 in its present form will basically retain existing law. The Commission can submit its proposal to place a cap on the amount the probate referee can receive for valuing listed stock in a proposal next session if the Commission so desires. The Commission can submit its proposal to allow more time for a valuation of the property included in the inventory in a proposal next session, either in the form originally proposed to the 1988 session or in a revised form. The probate referees can submit their proposal to modify the waiver provisions of existing law in their own bill to a future session. The staff believes that this would be a reasonable solution to the problem created by the amendments made to AB 2841 by the Assembly Judiciary Committee.

Each Annual Report of the Law Revision Commission contains the following footnote:

Many amendments are made on recommendation of the Commission to deal with matters brought to the Commission's attention after its recommendation was printed. In some cases, however, an amendment may be made that the Commission believes is not desirable and does not recommend. [See, e.g., Annual Report, 19 Cal. L. Revision Comm'n Reports, 501, 514 n. 23 (1988).]

The Commission may wish to note in the Annual Report for 1988 that the Commission did not recommend either the removal of the cap or the recombination of the inventory and appraisal, and that the Commission plans to give these matters further study.

Attached to this memorandum is a draft of all amendments the staff proposes the Commission make in AB 2841 before setting it for hearing. The amendments implement the approach outlined in this memorandum, and are consolidated with other amendments suggested by the staff in Memorandum 88-42 and prior supplements.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

AMENDMENTS TO AB 2841
AS AMENDED IN SENATE APRIL 19, 1988

AMENDMENT 1

In line 13 of the title, after "1203," insert:
1215, 1220,

AMENDMENT 2

In line 16 of the title, after "9050," insert:
9053

AMENDMENT 3

On page 25, strike out lines 3 and 4, and insert:
(h) If a party shows, and the court determines, that

AMENDMENT 4

On page 25, line 6, after "required" insert:
by this section or by the new law

AMENDMENT 5

On page 25, line 8, before the comma insert:
in connection with an event that occurred or circumstance that existed
before the operative date

AMENDMENT 6

On page 25, strike out lines 9 and 10, and insert:
court may, notwithstanding this section or the new law, apply either
the new law or the old law to the extent reasonably necessary to
mitigate the substantial interference.

AMENDMENT 7

On page 35, line 30, after "405." insert:
Notwithstanding Section 404, the Controller may revoke the appointment
of a person to act as a probate referee at the pleasure of the
Controller. Under this section, the Controller may revoke the

appointment of not more than 10 percent of the probate referees in each county in any one calendar year, but may revoke the appointment of at least one probate referee in each county in any one calendar year.

406.

AMENDMENT 8

On page 36, strike out lines 2 to 5, inclusive, and insert:

407. (a) As used in this section, "prohibited political activity" means directly or indirectly soliciting, receiving, or contributing, or being in any manner

AMENDMENT 9

On page 36, line 10, after "one" insert:
calendar

AMENDMENT 10

On page 36, strike out lines 13 to 34, inclusive, and insert:
political service in any amount for the office of Controller.

(b) Upon a person's appointment and thereafter in January of each year during the person's tenure as a probate referee, the person shall file with the Controller a verified statement indicating whether the person has engaged in prohibited political activity during the preceding two calendar years.

(c) The Controller may not appoint or reappoint as a probate referee a person who within the preceding two calendar years has engaged in prohibited political activity, and any such appointment or reappointment is void and shall be revoked. The 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).

AMENDMENT 11

On page 36, line 35, strike out "407", and insert:

408

AMENDMENT 12

On page 46, between lines 32 and 33, insert:

SEC. 60.7. Section 1215 of the Probate Code is amended to read:

1215. Unless otherwise expressly provided:

(a) If a notice or other paper is required or permitted to be mailed to a person, notice shall be mailed as provided in this section or personally delivered as provided in Section 1216.

(b) The notice or other paper shall be sent by:

(1) First-class mail if the person's address is within the United States. First-class mail includes certified, registered, and express mail.

(2) Airmail if the person's address is not within the United States.

(c) The notice or other paper shall be deposited in a post office, mailbox, subpost office, substation, mail chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the person to whom it is mailed.

(d) The notice or other paper shall be addressed to the person at the person's place of business or place of residence, if known, or, if neither address is known, to the person at the county seat where the proceedings are pending.

~~(d)~~ (e) When the notice or other paper is deposited in the mail, mailing is complete and the period of notice is not extended.

AMENDMENT 13

On page 46, between lines 38 and 39, insert:

SEC. 61.3. Section 1220 of the Probate Code is amended to read:

1220. (a) Notice of a hearing shall be given as provided in this section in the following cases:

(1) Where another section so requires.

(2) Where notice of a hearing is required but no other period or manner is prescribed by statute, unless the period or manner of notice is ordered by the court or judge.

(b) At least 15 days before the time set for the hearing, the petitioner or the person filing the report, account, or other paper shall cause notice of the time and place of the hearing to be mailed to the persons required to be given notice.

(c) Unless the section requiring notice specifies the persons to be given notice, notice shall be mailed to all of the following:

(1) The personal representative.

(2) All persons who have given notice of appearance in the estate proceeding in person or by attorney. If the person appeared by attorney, the notice shall be mailed to the attorney.

(d) The notice shall be addressed to the person required to be given notice at ~~his or her office~~ the person's place of business or place of residence, if known, or, if neither address is known, to the person at the county seat where the proceedings are pending.

(e) Nothing in this section excuses compliance with the requirements for notice to a person who has requested special notice pursuant to Article 6 (commencing with Section 1250).

(f) The court for good cause may dispense with the notice otherwise required to be given to a person as provided in this section.

AMENDMENT 14

On page 69, between lines 34 and 35, insert:

(c) The amendments made to former Section 303 by Section 27 of Chapter 923 of the Statutes of 1987 do not apply in any proceeding commenced before July 1, 1988.

AMENDMENT 15

On page 80, lines 10 and 11, strike out "whether or not there is a will of the decedent in existence," and insert:
notwithstanding the existence of the decedent's will

AMENDMENT 16

On page 80, line 12, strike out the comma

AMENDMENT 17

On page 83, line 10, before the comma insert:
or other will of which material provisions are in the handwriting of the testator

AMENDMENT 18

On page 87, line 25, after "States" insert:
, if any

AMENDMENT 19

On page 87, lines 34 and 35, strike out "Notice shall be published for at least 15 days." and insert:
The first publication date of the notice shall be at least 15 days before the hearing.

AMENDMENT 20

On page 92, line 34, after "later" insert:
will

AMENDMENT 21

On page 102, line 34, after "a" insert:
person whose only priority is that of a

AMENDMENT 22

On page 104, strike out lines 4 and 5, and insert:
property, the estimated net proceeds of the real property authorized to be sold under Part 6 (commencing with Section 10400).

AMENDMENT 23

On page 121, strike out lines 23 to 27, inclusive, and insert:
designated.

AMENDMENT 24

On page 121, lines 29 and 30, strike out "petition is denied," and insert:
opposition fails and the court determines the opposition was made without substantial justification, the court shall award litigation expenses, including reasonable attorney's fees, against the probate referee. If the opposition succeeds,

AMENDMENT 25

On page 122, line 13, strike out "On the determination" and insert:
If the petition fails and the court determines that the petition was made without substantial justification

AMENDMENT 26

On page 122, line 15, strike out "to the prevailing party" and insert:
against the probate referee

AMENDMENT 27

On page 129, between lines 12 and 13, insert:

SEC. 84.3. Section 9053 of the Probate Code is amended to read:

9053. (a) If the personal representative or attorney for the personal representative in good faith believes that notice to a particular creditor is or may be required by this chapter and gives notice based on that belief, the personal representative or attorney is not liable to any person for giving the notice, whether or not required by this chapter.

(b) If the personal representative or attorney for the personal representative in good faith fails to give notice required by this chapter, the personal representative or attorney is not liable to any person for the failure. Liability, if any, for the failure in such a case is on the estate.

(c) Nothing in this chapter imposes a duty on the personal representative or attorney for the personal representative to make a search for creditors of the decedent that are not reasonably ascertainable.

AMENDMENT 28

On page 139, line 15, after the period insert:
Extraordinary services for which a fee shall be allowed to the attorney under this subdivision include those services rendered by any paralegal performing the services under the direction and supervision of an attorney. The petition or application for compensation shall set forth the hours spent and services performed by the paralegal.

AMENDMENT 29

On page 158, line 34, strike out the period and insert:
, and shall include a highlighted statement in substantially the following words: "YOU HAVE THE RIGHT TO PETITION FOR AN ACCOUNT UNDER SECTION 10950 OF THE CALIFORNIA PROBATE CODE."

AMENDMENT 30

On page 158, line 39, after the comma insert:
including an account under Section 10950,

AMENDMENT 31

On page 159, line 5, after "petition" insert:
for final distribution

AMENDMENT 32

On page 160, line 7, after "attorney" insert:
whose commissions or fees are being reduced

AMENDMENT 33

On page 160, line 16, strike out "limited" and insert:
limitation in the will

AMENDMENT 34

On page 191, line 26, strike out "This" and insert:

(a) Except as provided in subdivision (b), this

AMENDMENT 35

On page 191, after line 27, insert:

(b) Section 84.3 of this act shall become operative on January 1, 1989.