

Memorandum 89-21

Subject: Study L-2010 - 1989 Probate Cleanup Legislation (Urgency
Bill--inventory and appraisal)

One matter left over from the 1988 legislative session is the issue of the time within which an inventory and appraisal must be filed. Existing law requires the inventory and appraisal to be filed within three months after appointment of the personal representative. Prob. Code § 600. The Commission's recommendation to the Legislature had been that the inventory should be filed within three months, but an additional three months should be allowed for completing and filing the appraisal.

During the legislative process the probate referees objected to the "three and three" provision, and the bill ended up with a compromise four months for filing a combined inventory and appraisal. The Commission was dissatisfied with the compromise since it reduces pressure for a prompt filing of the inventory and it fails to recognize the fact that in many estates four months is not adequate to complete the appraisal or it may be inadvisable to file an appraisal within four months because of unresolved tax issues. However, the Commission decided to let the bill go with the four month compromise provision, subject to revisiting the matter this session.

The probate referees evidently feel that the four month combined inventory and appraisal is satisfactory. We have received a letter from Melvin G. Kerwin, a probate referee, stating:

The attorneys that I have discussed this matter with do not understand why this recommendation is made. Whether it's three months or four months required for filing the Inventory and Appraisement at the present time is largely irrelevant because it is observed more in the breach than the observance. Sometimes it takes three or four months just to get together the information to file the inventory let alone to complete the appraisal and why it would make any sense to

have two documents, that is an Inventory and an Appraisal is not clear. The attorneys I spoke to regarding this matter were more interested in less paperwork, rather than additional paperwork and the concept of having an Inventory and Appraisal form that attorneys are familiar with, rather than two new forms and two new time limits, is not enthusiastically embraced.

State Bar Study Team No. 1 is also happy with the four month combined inventory and appraisal as enacted, although they would have no strong objection to a "three and three" filing scheme as originally conceived by the Commission. See Exhibit 1.

And we have received a copy of a letter from Chuck Collier addressed to Commissioner Stodden. See Exhibit 2. Mr. Collier likewise believes that "a single inventory and appraisement document, the traditional way of handling this, remains desirable", for the reasons stated in his letter.

Given the fact that people who work in the field generally seem to be satisfied with the compromise scheme, perhaps we should give this matter a rest for awhile. This may well fall within the "unfettered tinkering" clause of the constitution.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

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PROBATE LAW SECTION
THE STATE BAR OF CALIFORNIA**

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November 28, 1988

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

Re: LRC Memos 88-83 and 88-68

Dear John:

I have enclosed copies of Team 1's reports on the memos noted. The reports have not been reviewed by the Executive Committee and represent the opinion of the Team only. The reports are to assist in the technical and substantive review of those sections involved.

Very truly yours,

James V. Quillinan
 James V. Quillinan
 Attorney at Law

JVQ/h1

Encls.

cc: Chuck Collier Valerie Merritt
 Terry Ross Irv Goldring

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REPORT

TO: JAMES V. QUILLINAN
IRWIN D. GOLDRING
STERLING L. ROSS, JR.
VALERIE J. MERRITT
CHARLES A. COLLIER, JR.
THE EXECUTIVE COMMITTEE IN GENERAL

FROM: WILLIAM V. SCHMIDT

DATE: November 28, 1988

RE: LRC MEMORANDUM 88-68
(1989 Probate Clean-Up Bill)

In view of the Thanksgiving holidays, Study Team #1 had difficulty in arranging for a conference call. Finally, on the afternoon of November 23, Michael V. Vollmer and William V. Schmidt conferred. All other members of the team did not participate.

Study Team No. 1 has reviewed the Memorandum and we see no objections to any part of the the proposed statutes. We are happy with Section 8800 pertaining to the filing of an Inventory and Appraisal as enacted by A.B. 2841. However, we have no strong objection to the language proposed by the staff,

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which we understand was the final language adopted by the
commission before it was originally put into bill form.

Respectfully submitted,

STUDY TEAM NO. 1

By: 

William V. Schmidt
Captain

IRELL & MANELLA

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January 9, 1989

HAND DELIVERED BY MESSENGER

Commissioner Ann Stodden
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CALIF. LAW REV. COMM'N

JAN 13 1989

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Re: Inventory and Appraisement

Dear Ann:

As you will recall, the Law Revision Commission last year had proposed legislation which provided for the filing of an inventory (without values) within three months from the appointment of the personal representative and filing of the appraisal of those assets within six months after the appointment of the personal representative, subject to extensions of time for good cause. As a matter of compromise with the California Probate Referees Association, the bill was amended to provide for the filing of an inventory and appraisal as a single document within four months from the date letters are issued to the personal representative.

The Law Revision Commission is again giving consideration to possible legislation providing for two separate documents, an inventory simply listing assets and a separate appraisal at a later date.

It had been my understanding from conversations with you that persons often appear in the probate attorney's office asking for information about an estate and there is no inventory and appraisal listing assets and their values in the file. It is further my understanding that the concept of having a separate inventory filed without values at an early stage in the proceedings would simply be a means of providing notice to interested parties of what would eventually be valued in the estate.

For the reasons set forth hereinafter, I believe that a single inventory and appraisal document, the traditional way of handling this, remains desirable. These reasons are as follows:

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1. If a person interested in the estate examines the file once a probate is commenced, if there is no waiver of bond, the petition itself will indicate the general size of the estate.

2. The notice of petition to administer the estate, which is sent to each party interested, sets forth the name of the executor and the name and address of the attorney. Certainly, anyone making inquiry of the court can be directed to write a letter to the personal representative at the address shown on the published notice, that is, the attorney's address for information. This would cost no more than the cost of postage and, if the person making the inquiry in fact has an interest in the estate, would provide a basis for information since the personal representative has a fiduciary duty to all interested in the estate.

3. Any court documents would show the name, address and telephone number of the attorney handling the estate. The person could simply be directed to make a telephone call to that attorney for information.

4. If an inventory was filed (without values) within three months from issuance of letters, that would not meet the needs of a person who examined the court file immediately after the probate or at any time within three months after letters were issued, as there would still be no specific information in the file as to assets or values.

5. A person interested may file a simple request for special notice of the filing of inventories and appraisements, including any supplemental inventories and appraisals, pursuant to Probate Code Section 1250. This can be accomplished with little or no cost to the interested party.

6. The interested party can, of course, continue to review the court file periodically to determine if an inventory has been filed.

7. Current law, Probate Code Section 600, and the new law effective July 1, Sections 8800 and subsequent, provide for the prompt filing of an inventory, prompt filing of partial inventories, prompt filing of supplemental inventories, etc., with appraisals.

IRELL & MANELLA

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8. Probate Code Section 9613 allows an interested party, upon a showing of grave or irreparable injury, to petition the court for an order directing the personal representative to take certain actions.

9. One of the grounds for seeking removal of a personal representative is neglecting the estate or neglecting to perform any act required. An interested party, of course, has this remedy available also.

10. If a probate is started, presumably there are probate assets in excess of \$60,000 or there would not be a probate in most instances (compare Probate Code Sections 13100 and subsequent).

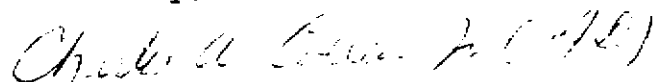
11. While an inventory without values would be of some interest to a person, it is of little help in determining the size of an estate.

12. Requiring two separate filings and two separate documents to establish the value of each asset included in an inventory is cumbersome, expensive and would appear to unnecessarily multiply the amount of paperwork involved in a probate proceeding with little or no actual benefit to the persons interested.

In short, I do not believe that the filing of a single document with a listing of assets only without values and a second separate document at some later date with the values of those assets is desirable.

Since the Law Revision Commission is giving consideration to this matter again, I am sending a copy of this letter to Nat Sterling for his information. I am also sending a copy to the others who met with us over lunch to discuss the issue some months ago.

Sincerely,



Charles A. Collier, Jr.

CAC:vjd

cc: Nathaniel Sterling
E. Kay Trout
Irving Reifman
Matthew S. Rae, Jr.

Dictated But Not Read