

Probate Code Reform Bill ^{3/29/88} Nears Passage

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SACRAMENTO — The most extensive revision of the California Probate Code in nearly 60 years is moving toward passage as part of an omnibus measure sponsored by Assembly Judiciary Committee Chairman Elihu Harris, D-Oakland.

The bill, AB 2841, has cleared the Judiciary Committee and the Ways and Means Committee. It is due for full Assembly action within a few weeks, after which it will go to the Senate.

The 190-page bill, which has generated virtually no controversy, aims to simplify, modernize and streamline the code and expedite the probate process. The measure is supported by the Office of San Francisco Public Administration/Guardian/Conservator, the executive committee of the State Bar Estate Planning, Trust and Probate Law Section, and the probate and trust sections of the Los Angeles County and Beverly Hills bar associations.

"This bill generally reorganizes, revises and clarifies the existing statutory provisions, as well as codifies certain decisional law relative to probate law," said a detailed Judiciary Committee analysis of the bill. "Numerous substantive changes are made to the law relating to public guardians and administrators, inventory and appraisal, administration of estates, litigation involving decedents, procedures and distribution and discharge."

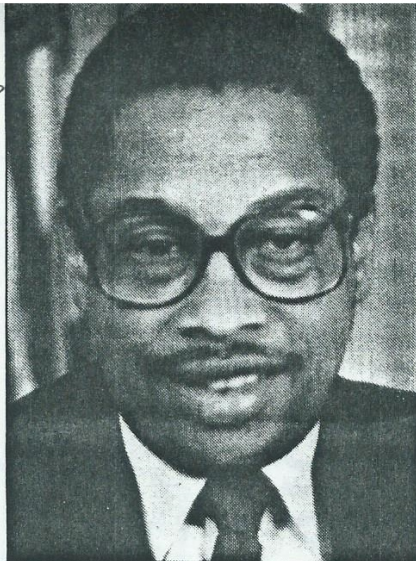
The result of at least six years of work by the California Law Revision Commission, the measure was aired extensively and completed in consultation with probate experts throughout the state.

It has generated no opposition. Deborah DeBow, consultant to the Assembly Judiciary Committee, said she has received only letters of support for the measure.

When the probate revision project, begun by the commission in 1982, is completed this year, California's Probate Code will have undergone its most comprehensive and thorough revision in nearly six decades.

"The code was written in 1931 and kept more or less current one way or another, with little amendments," said Nathaniel Sterling, an attorney who is the commission's assistant executive secretary in San Francisco. "It wasn't until the 1980s that we began to reexamine the code."

Sterling said it was all part of a national movement to streamline probate and make



ELIHU HARRIS: Oakland assemblyman's bill has encountered no opposition.

it less expensive.

"Overall, I wouldn't characterize it as a revolutionary upheaval in the field," Sterling added, "but there are a lot of changes and simplification that make it an easier body of law to work with."

Sterling said there is some debate over language for amendments involving the role of probate referees in probate proceedings — an effort to devise an "equitable system which will satisfy both referees and estate attorneys" who would like to see the appraisal process expedited.

Generally, however, he said the suggested revisions have received positive acceptance. The bill may not be the last probate code reform that the revision commission expects to recommend, however. One bill next year might establish fees of attorneys and personal representatives in probate proceedings, Sterling said.

He said the fiscal impact of the measure is "negligible," with any increased funding coming through estate fees, not from the public treasury.

According to the Judiciary Committee analysis, the measure would:

- Remove provisions governing the office of the public guardian from the Welfare and Institutions Code and place it in the Government Code.

- Permit letters of conservatorship, guardianship or administration to be issued by the court to the public guardian or the public administrator — and convey authority to the successor to the office of public guardian or administrator "without being reissued by the court."

- Provide reasonable fees and costs to a subsequently appointed public guardian or administrator who takes temporary protective control of property.

- Expand the public guardian's authority to seek guardianship or conservatorship of someone "domiciled in the county although residing elsewhere [for example,

SEE PROBATE PAGE 7

Probate Code Reform Bill Clears Assembly Judiciary Committee

CONTINUED FROM PAGE 2

in a facility] or of a ward or conservatee whose best interests would not otherwise be served if another person willing and qualified to act as guardian or conservatorship was appointed [for example, in a family dispute]."

- Authorize the public guardian to seek private counsel "where a satisfactory *pro bono* or contingency fee arrangement can be made."
- Permit the public guardian to appraise an estate that does not exceed \$10,000, rather than incur the cost of a probate referee's appraisal.
- Immunize the public guardian or administrator from liability for failing to take possession or control of property "that is beyond the ability of him/her to control or possess."
- Expand from 10 to 60 days the time in which a public administrator must convey to the county unclaimed funds after final distribution of the estate.
- Reorganize and simplify existing provisions governing opening estate administration.
- Leave questions of fact in will contests to the judge rather than the jury.
- Do away with mandatory awards of costs against unsuccessful will contestants.
- Permit the court to appoint a special administrator "to exercise such powers as may be appropriate under the circumstances for the preservation of the estate, if immediate appointment appears neces-

sary," and clarify that a special administrator may be appointed for specific purposes.

- Impose a four-year statute of limitations on recovery on the bond for both decedents' and guardianship estates, running from the close of administration.
- Give the court discretion to deny the petition for removal of a representative "based on higher priority for appointment," in instances where "to grant the petition would be contrary to the sound administration of the estate."
- Alter the rules for situations involving non-domiciliary decedents to "harmonize California law with constitutional full faith and credit standards," such as granting "automatic recognition to a sister state order admitting a non-domiciliary's will to probate except under the specified conditions."
- Give the court discretion to deny recognition of a foreign judgment "if the order admitting the will in the foreign nation was made under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law."
- Require adoption by the state controller of standards of training, performance and ethics for probate referees.
- Require probate referees to file an annual disclosure statement "indicating contributions to or participation in specified political activities" and expressly prohibiting "any assessment, subscrip-

tion, contribution or political service for the office of controller in any amount."

- Create a statutory duty on the referee to appraise the property and within 60 days from receipt of the inventory and report the status of appraisal, the reason not completed, and the estimated time of completion. The court may take action against a "dilatory referee," including fee reduction and removal.
- Prohibit the withholding of an appraisal for non-payment of fees and clarify that the referee's fees "are an expense of administration included in the highest statutory priority for payment."
- Clarify the concept that "if a liability of the decedent is covered by insurance," the creditor may proceed directly against the insurer for recovery.
- Make "numerous procedural and minor substantive improvements for the purpose of simplifying, reorganizing and expediting the distribution and discharge process."
- Provide for court determination of persons entitled to distribution in proceedings governed by the general rules of civil practice. Eliminate the special evidentiary rules found in existing law.
- Allow direct distribution to the deceased distributee's heirs "where the amount to be distributed to the heirs is small and the heirs present an appropriate affidavit" under the provisions governing distribution of small estates without administration.