

## **CONTROLLER'S STANDARDS OF TRAINING, PERFORMANCE AND ETHICS**

### **Probate Code Section 404**

#### **ETHICS**

The conduct and professional activities of the probate referees should reflect credit to the profession and adhere to the common rules of integrity applying to all officers of the Court. Their official activities must be conducted in such an impartial manner that all persons understand that no referee can be influenced by other than proper methods. Referees must avoid situations where prejudice, bias or opportunity for improper personal gain could influence their decisions. They must equally avoid circumstances suggesting that favoritism or improper personal gain may be a motivating force in the performance of their statutory responsibilities.

Consistent with such objectives a probate referee shall not:

- A. Advertise the position of probate referee in conjunction with any other profession, business or occupation; or use in any inappropriate way the title of probate referee in connection with any public or private matter which is unrelated to the referee's duties, functions or responsibilities.
- B. Directly or indirectly acquire or negotiate to acquire, either as principal or agent, an interest in property appraised by said referee in their official capacity as probate referee.
- C. Engage in any employment, activity or enterprise, or have any interest, financial or otherwise, direct or indirect, which is inconsistent, incompatible, in conflict with, or inimical to a probate referee's duties, functions or responsibilities.
- D. Receive or accept, directly or indirectly, any gift (including money, service, gratuity, favor, entertainment, hospitality, loan or any other thing of value) under circumstances from which it could be reasonably inferred that the gift was intended to influence the performance of official duties or was intended as a reward for any official action.
- E. Engage in any political activity that is contrary to the provisions of Probate Code Section 407, or any other pertinent law, code or regulation.
- F. Solicit or receive any political contribution from any person involved in the conduct of a probate referee's business. All probate referees shall execute a statement to this effect provided by the State Controller.
- G. Engage at any time in conduct or behavior that causes discredit to the Office of probate referee, including, but not limited to, dishonesty, intemperance or conviction of a felony or conviction of a misdemeanor involving moral turpitude.

## PERFORMANCE

A probate referee shall:

- A. Unless there is a compelling justification for which prior approval has been obtained from the Controller's office, be domiciled and have a regular place of business in the county of appointment.
- B. Notify the Controller's Office at least one week in advance if the referee plans to be out of the county to which they have been appointed for more than 30 consecutive days.
- C. Notify the Controller's Office immediately if, because of illness or disability, the referee is unable to personally attend to their probate referee duties for a period of time that will exceed thirty (30) days.
- D. Promptly perform all duties required by law in a competent and efficient manner and in full compliance with the State Controller's Standards of Training, Performance and Ethics.
- E. Use accepted appraisal practices and procedures in determining the fair market value of assets to be appraised, and maintain sufficient documentation to support valuations.
- F. Employ necessary staff personnel to guarantee that all work is performed without unreasonable delay, and be responsible for conformance to these standards by the referee's staff.
- G. Obtain an advisory appraisal by a probate referee of another county when:
  - (1) An interest in real property is located in another county;
  - (2) Appraising an interest in a business entity (partnership, corporation, trust, etc.) owning an interest in real property in such other county when the referee concludes that, such property should be appraised in order to value the decedent's interest in the business entity. (The request for an advisory opinion should indicate the property's inclusion in a separate entity.) If property is located in two or more such counties, the advisory appraisal of the entire parcel may be obtained from one referee in any such county.
  - (3) An advisory appraisal is not required if either:
    - (A) A parcel of property is situated partly in the county of decedent's domicile and partly in an adjoining county;
    - (B) Consent to appraise the real property without an advisory appraisal is first obtained from all probate referees of the county in which the real property is located;

- (C) It appears from all available evidence that the value of the interest in the real property does not exceed \$10,000.00; or
  - (D) The appraisal is a “reappraisal for purposes of sale” and the probate referee is satisfied from all available information that the sale price is consistent with the prior appraisal and the sale is a bona fide sale.
- H. Maintain an office which will be open to the public during normal business hours, and/or have a telephone that will be answered during normal business hours, in person or by a recording machine, so that the referee can render reasonable services as dictated by the population and size of the county in which the referee operates.
- I. Comply, to the extent possible, with the following guidelines for personal participation in the functions of the probate referee’s Office:
- (1) Participate in appraisals of closely held businesses and review all other appraisals made by staff.
  - (2) Personally review and sign all official documents.
  - (3) Promptly respond to telephone calls, inquiries, and correspondence appropriately and specifically directed to the referee’s personal attention.
  - (4) Give personal attention to the resolution of complaints and problems directed to the probate referee by judges, attorneys, other probate referees, or the general public.
  - (5) Be present at the probate referee’s Office on a regular basis consistent with workload requirements.
  - (6) Each probate referee shall have an email address accessible to the Controller’s Office and an email address accessible to the public. The same address may be used for both purposes. All referees shall provide the Controller’s Office with the appropriate email address no later than July 1 of each year.
  - (7) Identify and document for each appraisal the individual involvement of the probate referee in the actual appraisal and attest in a declaration signed under penalty of perjury that the property was personally appraised by the probate referee.
  - (8) All work of the probate referee shown on the Inventory & Appraisal form, with the exception of the referee’s signature, shall be typed, not hand written, on the forms, in absence of extraordinary circumstances. The typing of the information on an Inventory & Appraisal form provides the necessary accuracy and professional appearance for the work of a California Probate Referee.

J. File the following reports by the dates indicated below:

|   |                        |
|---|------------------------|
| Semi-annual income reports              | January 31 and July 31 |
| Prohibited political activity forms (2) | January 31             |
| Education report                        | July 31                |

- K. Upon receipt of the first case papers (inventory and appraisal, copy of petition, or other forms of asset listing), the referee should immediately set up a separate file for the case and index the file. A chronological list of cases received should be maintained, each case being dated upon receipt and dated upon completion. It is suggested that the alphabetic control cards be moved to a “closed cases” file or Rolodex when each case is closed and the case file folder be moved to a “closed files” section. There should be a permanent record, such as a ledger upon which a list of all matters handled by the office is recorded.
- L. After a case is opened, the process of appraisal should begin. Each asset should be appraised except for those items defined in Probate Code section 8901 (items appraised by personal representative) or Probate Code section 8904 (appraised by independent expert). The referee should endeavor to complete the appraisal expeditiously and accurately.
- M. The probate referee shall, not later than 60 days after delivery of the inventory, do one of the following:
1. Return the completed appraisal to the personal representative; or
  2. Make a report of the status of the appraisal; or
  3. Return the incomplete appraisal to the personal representative if the representative has not provided the requested information with a letter of explanation.

A status report shall show the reason why the property has not been appraised and an estimate of the time needed to complete the appraisal. The report shall be delivered to the personal representative and filed with the court.

- N. When the case is finished and all necessary forms completed and approved, then the referee’s case file should be closed, with the closing date being noted on the chronological list of cases and on the alphabetical file card.

The completed file should include a copy of each completed inventory with a copy of the actual signature and date. Similarly, copies of a signature and date on any amended inventory must be retained. All amended inventories must reflect a new completion date for the amendment. All referee’s work on the inventories should be typed except in extraordinary circumstances and excluding the signature.

Each file should contain a detailed activity status sheet. If the activity status is kept on a computer, a printout of all activity should be included in the closed file.

- O. After appraisal is completed, the referee should retain the correspondence, all pertinent valuation materials and work sheets relating to all assets appraised, especially real property, closely held corporations or businesses, and other assets where valuations may be difficult to determine, for a period not less than three years. Data should be summarized on face sheets approved by the Association, or equivalent forms. The probate referee shall, during the three-year period, offer the personal representative the reports, if any, and data used by the referee to appraise the property and deliver any reports and data to the personal representative on request. Any reports and data not requested by the personal representative may be destroyed at the end of the three-year period without further notice. Nothing in this section requires a referee to prepare a report.

Valuation data supporting amended appraisals should be maintained for the statutory period.

A photograph or other evidence of an on-site visit should accompany all ancillary appraisals, except if the property is remote, the expense of an on-site visit is not justified, the appraiser is familiar with similar properties and the total value of the property is less than \$25,000.

- P. Section 14251 of the Revenue and Taxation Code provides that all non-public information acquired by the Controller and employees of the Controller shall be confidential in nature. The Controller has extended this policy to referees as appointees of the Controller. An exception to this rule is made in the case of tax officials or other governmental representatives officially entitled to receive telephone information or inspect files. Revenue and Taxation Code section 14252 provides that federal officials charged with administration of any tax law may examine tax records.
- Q. In inheritance tax cases, the referee sends the official state file for death cases to the Controller's Office when ready for audit or upon completion. This portion of the file contains the inventory and appraisal, Form 22, Form 2, Form 3, the Will, Trust Agreements, and the "backup" information on the appraisal of closely-held businesses of the size currently specified as subject to review by the Controller's Office.

As a file is closed, it should be moved to the inactive or "closed" section. At the end of each year, the cases closed during that year should be placed in a storage file and kept together. Five years later, that particular group of tax files may be disposed of without further sorting.

- R. There is no statutory authority authorizing probate referees to issue consents to transfer. Only the Controller and those specifically authorized by the Controller, such as the County Treasurers, may do so. In some specialized situations for unique reasons, the Controller has and may continue to authorize probate referees to issue consents. However, no probate referee should issue consents to transfer unless and until they are authorized to do so in writing by the Controller's Office.

## TRAINING/CONTINUING EDUCATION

- A. A probate referee shall complete a minimum of fifteen (15) hours per fiscal year ending June 30 of continuing education, including mandatory twelve (12) hours in one or more of the following areas:

\*Ethics

\*Real Estate Appraisal and/or Real Estate Property Valuation Methodology

\*Personal Property Appraisal and/or Personal Property Valuation Methodology

\*Small Business Valuations

The remaining three (3) hours may be completed by classes in any of the following subject areas approved by the State Controller's Office which may include, but is not limited to, valuation of agricultural properties, valuation of orchards and vineyards, valuation of business assets, and valuation of income properties.

\*Continuing education credits will be given only for courses that comply with criteria specified by the State Controller.

\*Upon completion of a course, a referee will be required to submit a certificate of attendance or other evidence of participation to the State Controller's Office.

- B. All probate referees are encouraged to participate in the meetings and seminars conducted by the California Probate Referees' Association and may fulfill the educational requirements through the Association.
- C. A probate referee shall be responsible for providing adequate training to their staff to ensure that the official duties will be performed in a competent and efficient manner.
- D. Referees unable to comply with the educational requirements due to unforeseen circumstances or hardship should contact Shawn D. Silva, Chief Counsel, at (916) 445-6854, to discuss their particular situation.