

1/10/74

Memorandum 74-5

Subject: Schedule of Work on Topics

The Commission has sent to the printer a series of tentative recommendations on condemnation law and procedure. Also, we have sent to the printer recommendations on prejudgment attachment and various other matters. Accordingly, this is an appropriate time for the Commission to develop a tentative schedule for consideration of topics at future meetings during the next year or so.

The staff has prepared a draft of a tentative schedule, attached as Exhibit I, based on the following goals:

Recommendations to Be Submitted to 1975 Session

Comprehensive Eminent Domain Statute

State Condemnation Authority

~~Conforming Special District Acts to Eminent Domain Statute~~

Jury View

Innkeeper's and Landlord's Liens

Oral Modification of Written Contract

Partition Procedure

Revised Recommendations on Measures That Fail to Pass in 1974

Recommendations to Be Submitted to 1976 Session

Nonprofit Corporations (Top Priority)

Execution

All Other Aspects of Creditors' Remedies Study (Confession of Judgment Procedure, Default Judgment Procedure, and the like)

Arbitration

Recommendations to Be Submitted to 1977 Session

Child Custody and Related Matters

Topics Not to Be Given Active Consideration Prior to 1977

Parol Evidence Rule

Prejudgment Interest

Inverse Condemnation

Unincorporated Associations

The goals listed above take into account the anticipated date when background research on the particular topics will be available for consideration by the Commission. (See Exhibit II, attached.)

Any schedule must, of course, be very tentative because it is not possible to predict changes in priorities that may occur as a result of judicial decisions and priorities set by legislative direction. Also, it is not possible to make reliable predictions concerning the amount of Commission time that will be required to deal with some of the major topics that will be considered within the next year or so.

The staff believes that the attached schedule is ambitious but that the goals that serve as the basis for the schedule are possible to achieve. The schedule contemplates that nine meetings would be held in 1974: One meeting would be three full days; five meetings would be Thursday evening, Friday, and Saturday morning; and three meetings would be Thursday evening and Friday. If this is too demanding, the schedule could be revised to eliminate a couple of the Saturday morning meetings.

Respectfully submitted,

John H. DeMouly
Executive Secretary

EXHIBIT I

SCHEDULE FOR CONSIDERATION OF TOPICS DURING 1974

February 14-15, 1974

Innkeeper's and Landlord's Liens

Approval of tentative recommendation for distribution for comment.

Partition Procedure

Careful review of entire statute prepared by consultant.

Oral Modification of Written Contract

Discussion of background study and determination of policy.

1974 Legislative Program

Consideration of problems in connection with enactment of measures submitted to the 1974 session.

March 14-15, 1974

Oral Modification of Written Contract

Approval of tentative recommendation for distribution for comment.

Execution

Work on various aspects of execution with view to developing comprehensive, modern statute.

1974 Legislative Program

Consideration of problems in connection with enactment of measures submitted to 1974 session.

April 18-20 (Thursday Evening, Friday, Saturday Morning), 1974

Nonprofit Corporations

Discussion of various aspects of topic if study completed in time.

Partition Procedure

Approval of tentative recommendation for distribution for comment.

Execution

Work on various aspects of execution.

1974 Legislative Program

Consideration of problems in connection with enactment of measures submitted to 1974 session.

May 16-18 (Thursday Evening, Friday, Saturday Morning), 1974

Nonprofit Corporations
Work on new statute.

Execution
Work on new statute.

June 20-22 (Thursday Evening, Friday, Saturday Morning), 1974

Eminent Domain
Review of Uniform Eminent Domain draft with view to determining whether revisions, additions, or deletions should be made in our proposed Eminent Domain Law.

Nonprofit Corporations.
Work on new statute.

Execution
Approve tentative recommendation for distribution for comment.

July 18-20 (Thursday Evening, Friday, Saturday Morning), 1974

Nonprofit Corporations
Work on new statute.

Eminent Domain
Review comments on state condemnation authority,
Review revisions made a result of decisions at June meeting.

1974 Legislative Program
Determine whether recommended measures not enacted in 1974 should be resubmitted in 1975 as proposed in 1974 or as to be revised.

Review Comments on Tentative Recommendations:
Oral Modification of Written Contract
Partition Procedure
Jury View.
Innkeeper's and Landlord's Liens

August - no meeting

September 5-7 (three full days)

Eminent Domain Law and Related Tentative Recommendations
Review comments on tentative recommendations.

Approve for Printing Recommendations Relating to:
Oral Modification of Written Contract
Partition Procedure
Jury View
Innkeeper's and Landlord's Liens

Annual Report
Approval for printing.

October 10-12 (Thursday Evening, Friday, Saturday Morning), 1974

Eminent Domain Law and Related Recommendations
Review and approve recommendations for printing and submission to
1975 session.

Revised Recommendations on Measures That Fail to Pass in 1974 and Are to
Be Resubmitted in 1975
Review revised recommendations and approve for printing and submission
to 1975 session.

November - no meeting

December 5-6, 1974

Nonprofit Corporations
Approval of tentative recommendation for distribution for comment.

Execution
Review of comments on tentative recommendation.

Creditors' Remedies
Consideration of staff recommendations concerning any aspects of
creditors' remedies that have not been previously considered.

Consideration Early in 1975

Child Custody and Related Matters

Arbitration

EXHIBIT II

BACKGROUND RESEARCH DURING 1974

The following is the staff proposed allocation of resources during 1974 to the various topics on our agenda and a report on the status of research on the various topics.

Creditors' Remedies

We propose that Mr. Horton and Mr. Ulrich devote substantially all their time during 1974 to completion of the work on the creditors' remedies study. Most of their time will be devoted to preparation of the revised execution provisions, but we anticipate that the remaining aspects of the creditors' remedies topic (default judgments, confession of judgment, and the like) will be acted upon one way or another during 1974.

Condemnation Law and Procedure

We propose that Mr. Sterling and Mr. DeMouilly devote whatever time is needed to prepare the condemnation recommendations for submission to the 1975 legislative session. This will involve review of the Uniform Eminent Domain Act and of comments received on our tentative recommendations and making any revisions in our tentative recommendations that the Commission determines are desirable.

1974 Legislative Proposals

We have a substantial legislative program that has been submitted to the current session of the Legislature. See Memorandum 74-2. This will require a substantial portion of Mr. DeMouilly's time and some time of other staff members.

Partition Procedure

During the first half of 1974, Mr. Sterling primarily will devote his time to preparation of a tentative recommendation relating to partition procedure.

Oral Modification of Written Contract

During the first few months of 1974, Mr. Sterling will prepare a tentative recommendation relating to oral modification of a written contract. We have a staff study on hand that was published in a law review.

Nonprofit Corporations

Mr. McQuinn is preparing a comprehensive nonprofit corporation statute. We hope to have a preliminary draft of the statute completed for consideration at the April 1974 meeting. During April-July 1974, we propose that this topic be given a top priority at Commission meetings; we want to do as much as we can on this topic while Mr. McQuinn is on our staff. He will be leaving after our July meeting. We have retained Mr. Davis as a consultant on this topic, but our contract with him does not require that he prepare any written reports.

Child Custody and Related Matters

We have a background study on child custody. When the Commission considered this study, the Commission decided to defer consideration of the topic until we had on hand (at a minimum) a background study on adoption. Professor Bodenheimer is preparing the study on adoption. We also need a background study on guardianship and conservatorship. We plan to prepare a staff study on these aspects of the topic. Also, we have had inquiries concerning our progress on another aspect of the topic--freedom from parental custody and

control. There apparently is a belief on the part of some persons that there is a need for revision of the law in this area. We may need to obtain a consultant on this aspect of the topic. After Mr. Horton and Mr. Ulrich have completed work on the creditors' remedies topic, we propose that they devote primarily all their time to the child custody and related matters topic. We hope to be able to commence work on this topic early in 1975.

Arbitration

The Commission recently indicated that it believed that a consultant should be obtained to prepare a background study on arbitration within the next few years. We do not have any money in the 1973-74 budget for consultants, and (if our printing costs are what we anticipate they will be during 1973-74 and 1974-75) we do not believe that we will have any significant amount for consultants during 1974-75. Nevertheless, if we cannot start a staff study on this topic during 1975, we propose that we give this topic priority (after nonprofit corporations) on available funds during 1974-75 for consultant services.

Parol Evidence Rule

There are numerous law review articles on this topic. However, we recommend that work on this topic be deferred until the work outlined above has been accomplished.

Prejudgment Interest

This is a major and controversial topic. We do not believe that we should start work on this topic within the near future, nor do we believe that we should retain a consultant at this time. Instead, we believe that work on the topic should be deferred until the work outlined above has been accomplished.

Inverse Condemnation

We have labored hard on this topic and produced nothing. Professor Van Alstyne will not be able to produce the background study on inverse condemnation procedure within the time provided in the contract. It is doubtful he will ever produce the study. He was recently appointed Executive Assistant to the President of the University of Utah. This is an important and demanding job. Nevertheless, he plans to complete his work on the Uniform Eminent Domain Act. It is doubtful that he will have time to do anything more within the near future.

Absent real pressure from the Legislature to deal with some aspect of this topic, the staff proposes that we defer work on the topic until the work outlined above has been completed.

Unincorporated Associations

We do not propose to do any work on this topic within the near future. If judicial decisions or law review articles demonstrate a need to deal with particular aspects of the topic, we can work these aspects into our agenda.

Evidence; Governmental Liability

Judicial decisions, letters from judges or attorneys, and law review articles that indicate a need for revision in the Evidence Code or governmental liability statute or related statutes will be brought to the Commission's attention when time permits. We do not propose, however, to undertake any new work on these topics within the near future.

February 1974

STUDIES ON CURRENT AGENDA OF LAW REVISION COMMISSION

Study	Research Consultant	Study Status
23 - Partition Procedure	Elmore	February 1974 meeting
26 - Escheat; Unclaimed Property	Staff	1974 leg. program
30 - Child Custody and Related Matters	Bodenheimer	One study completed; another in progress
36 - Condemnation	Staff and others	Recommendations at printer
39 - Creditors' Remedies	Staff and others	Recommendations at printer; Staff study on execution in progress
47 - Oral Modification of Written Contract	Staff	February 1974 meeting
52 - Sovereign Immunity	---	Recommendations enacted
63 - Evidence Code	---	Recommendations enacted; 2 bills in 1974 leg. program
65 - Inverse Condemnation	Van Alstyne	Recommendations enacted; study contracted for but consultant will not pro- duce study; general study published
67 - Unincorporated Associations	---	Recommendations enacted
70 - Arbitration	---	Recommendations enacted
72 - Liquidated Damages	Sweet	1974 leg. program
75 - Nonresident Aliens Inheriting	---	1974 leg. program
77 - Nonprofit Corporations	Staff	Staff study being prepared
78 - Landlord-Tenant Relations	Friedenthal	1974 leg. program
79 - Parol Evidence Rule	---	---
80 - Prejudgment Interest in Civil Actions	---	---

Topics to be dropped from agenda under 1974 resolution (work on these topics has been completed): 69 - Powers of Appointment; 71 - Cross-Complaints and Counterclaims; 72 - Joinder of Causes of Action.