

9/17/80

Memorandum 80-89

Subject: Schedule for Work; Priorities for Topics

Each fall, the Commission sets priorities for work on its current calendar of topics and schedules its work for the next few years. It should be recognized that any schedule must be tentative since new topics may intervene and since it is difficult to predict the amount of time that will be required to prepare a recommendation on any particular topic. In addition, priorities may require revision in light of requests or suggestions from legislative committees or from the legislative members of the Commission. Also, the schedule should be flexible enough so that the staff can work on nonpriority topics when staff time permits.

The current calendar of topics authorized for Commission study is listed on pages 1415-1419 of the draft of the Annual Report attached to Memorandum 80-80.

The following is a staff recommended tentative schedule for submission of recommendations to future sessions of the Legislature:

1981 Legislative Session

Comprehensive Enforcement of Judgments Law with Conforming Changes
Nonprobate Transfers (Article VI of Uniform Probate Code)
Uniform Durable Power of Attorney Act
Liability of Marital Property for Debts
Revision of the Guardianship-Conservatorship Law (Support of Conservatee
Spouse from Community Property; Appointment of Successor Guardian
or Conservators; Appeals)
Statutory Bonds and Undertakings
Revision of the Power of Appointment Statute

1982 Legislative Session

Community Property (management and control, division on divorce, etc.)
Marketable Title Act
Comprehensive Revision of Attachment Law
Uniform Conservation and Historic Preservation Easements Act

Model Periodic Payment of Judgments Act
Uniform Consent to Health Care Act
Miscellaneous Property Law Revisions
Dismissal for Lack of Prosecution
Summary Release of Liens

1983 Legislative Session

Revision of Unclaimed Property Act
Adoption
Wills and Intestate Succession

1984 Legislative Session

Comprehensive Revision of Property Law

The staff recommendations concerning priorities for the remainder of this year and next year are set out below.

(1) Enforcement of Judgment Law. The major portion of the staff time during the remainder of this year will be devoted to finishing up work on the tentative recommendation. The Commission will need to perfect the remaining uncompleted portion of this tentative recommendation--the homestead exemption. Top priority should be given next year to reviewing the comments and suggestions we receive on the package of bills to effectuate the tentative recommendation (to be submitted to the 1981 session). We expect to receive a substantial number of comments after the bills have been introduced and the printed tentative recommendation has been distributed for review and comment. It is not unlikely that we can perfect the proposed legislation so that it can be passed by the Assembly in 1981 and by the Senate in 1982. We also need to revise the Attachment Law during 1981 to conform to the new Enforcement of Judgments Law and to deal with other problems that have been brought to our attention.

(2) Probate Code. Two items have been distributed for review and comment--nonprobate transfers (Article VI of the Uniform Probate Code) and the Uniform Durable Power of Attorney Act. We hope to perfect recommendations on these subjects for submission to the 1981 session. In addition, we recommend that the Commission start work during 1981 on wills and intestate succession. The staff will review this area of the

law and submit our recommendation to the Commission as to whether we need one or more consultants on this phase of the study and what function the consultants should serve (background study or merely expert advice). There is considerable pressure to work actively on the Probate Code study.

(3) Liability of Community Property for Debts. We need to perfect this recommendation for submission to the 1981 session. We will know after the October meeting whether this is possible and the extent to which staff and Commission time will need to be devoted to this subject.

(4) Revisions of the Guardianship-Conservatorship Law. Several technical problems have been brought to the Commission's attention in connection with the new Guardianship-Conservatorship Law. We have prepared staff drafts of recommendations to deal with these problems. These recommendations will be considered at the October meeting. If approved by the Commission, these two recommendations can be combined and submitted to the 1981 session.

(5) Statutory Bonds and Undertakings. The staff plans to produce a draft of a recommendation to consolidate various provisions relating to statutory bonds and undertakings into one statute and to repeal overlapping and conflicting provisions in various statutes that require a bond or undertaking. We believe that this recommendation can be submitted to the 1981 session.

(6) Revision of the Power of Appointment Statute. We have received suggestions from various persons concerning clarifying or substantive revisions of the power of appointment statute enacted upon Commission recommendation. Professor Blawie has made a suggestion. Assemblyman McAlister has requested we consider this suggestion with a view to submitting any needed legislation to the 1981 session. We also should consider suggestions made by Professor French for substantive changes in the statute. We do not believe that this study will require a great deal of time and we believe that a recommendation, if one is to be made, can be submitted to the 1981 session.

(7) Real Property Law. We distributed Professor Blawie's outline of problems in this field and requested suggestions as to the scope of the study. We will review the suggestions we received later this year.

The staff recommends that we draft a marketable title act for submission to the 1982 legislative session. The aspects of the study that will be considered after the marketable title act has been drafted could be determined when work on the marketable title act has been substantially completed or when the comments on the study are considered.

(8) Community Property. This study will concern the management and control of community property, the disposition of property upon dissolution of marriage, and related problems. We should receive the background study in January 1981. We recommend that the study be given priority with a view to submitting one or more recommendations to the 1982 session.

(9) Uniform Conservation and Historic Preservation Easements Act. This act simplifies the real property concepts by removing the disabilities that might render an easement invalid or unenforceable at common law if used for conservation or preservation purposes. The concept of the restrictive covenant and the equitable servitude--as distinguished from the easement concept--appeared only because of then-current but now out-dated limitation of the easement doctrine. The staff believes that this act merits study because one of the suggestions that motivated the real property law study was that the law should be simplified by adopting one property interest that would serve the purpose of the three existing interests--easements, restrictive covenants, and equitable servitudes. Study of the Uniform Act will test whether this is possible or desirable. The study of the Uniform Act could commence only after the Uniform Commissioners have approved the Uniform Act at their 1981 annual meeting.

(10) Model Periodic Payment of Judgment Act. If this Model Act is distributed for review and comment, the Commission can determine whether it desires to submit a recommendation to the 1982 session.

(11) Uniform Consent to Health Care Act. We received several suggestions when we distributed the Durable Power of Attorney Act that there should be authority for a person to designate a person to make health care decisions if the person making the designation becomes incapable of making such decisions. The Uniform Act deals with this problem and other problems. If the Uniform Act is approved at the

Uniform Commissioner's 1981 Annual Meeting, the staff believes that it should be studied possibly with a view to recommending enactment of the Uniform Act in California in 1982.

(12) Dismissal for Lack of Prosecution. Mr. Elmore, our consultant on this topic, has been working on the background study. Progress on the study is suspended because of Mr. Elmore's health. If the background study is completed, we would work this topic into the meeting agenda when time permits.

(13) Revision of the Unclaimed Property Act. A comprehensive unclaimed property act was enacted a number of years ago upon recommendation of the Law Revision Commission. The Uniform Unclaimed Property Act, which is the basis for the California act, is now being studied by the Uniform Commissioners and a revised act is expected to be approved at the Uniform Commissioner's 1981 Annual Meeting. The revised Uniform Act should be reviewed to determine if any revision of the California act is desirable.

(14) Adoption. The Uniform Commissioners are now engaged in a study of the Uniform Adoption Act. There are also a number of other efforts being made to draft comprehensive legislation in this field. The Executive Secretary is a member of the drafting committee on the Revised Adoption Act. We also are hopeful that our consultant will be appointed as the reporter on the Revised Adoption Act. In view of the active study of the subject of adoption by other groups, the staff recommends that we defer consideration of this topic until the Revised Uniform Adoption Act is approved by the Uniform Commissioners.

The work outlined above should occupy all of the time of the staff and the Commission for the next few years. Accordingly, the staff does not recommend that work on any other topics be commenced during 1981 unless some future development requires that attention be given to the topic.

Respectfully submitted,

John H. DeMouilly
Executive Secretary