

9/7/83

Memorandum 83-48

Subject: Priority for Study of Topics

Background

The Commission has followed the practice of establishing each year at its September meeting the priorities for the coming calendar year. This memorandum contains the staff recommendations as to priorities during 1984.

By statute, the Commission may study only those topics that have been authorized for Commission study by concurrent resolution adopted by the Legislature. The Commission is now authorized to study 22 topics. At the Commission's request, the 1983 session of the Legislature approved the expansion of the "community property" topic to "family law" and the consolidation of a number of real and personal property topics into the topic "real and personal property."

Most of the topics the Commission is authorized to study are topics that have been continued on the Commission's calendar of approved topics so that the Commission will continue to have authority to study and make recommendations for any needed corrective legislation in statutes enacted upon Commission recommendation. Some of the remaining topics would--for one reason or another--not be suitable for study at this time.

Last September, the Commission decided to give top priority to the study of statutes of limitations for felonies. Next priority was to be given to probate law and procedure, followed by community property law. The Assistant Executive Secretary was to devote approximately half time to the probate study and half time to the community property study. In fact, however, the Assistant Executive Secretary devoted his time almost exclusively to the handling of community property bills in the Legislature and to the preparation of new recommendations on community property, the recommendation relating to the statute of limitations on felonies, and other nonprobate law recommendations.

1984 Legislative Program

The Commission will have a substantial legislative program in the 1984 session of the Legislature. Exhibit 1 attached lists 26 possible recommendations to the 1984 session. It is likely that the Commission will determine not to submit a recommendation on some of the listed

matters and that work on others will not be completed in time for submission in 1984. Nevertheless, presentation of the 1984 legislative program will require the major portion of the time of the Executive Secretary during January-July 1984 and a substantial amount of the time of the Assistant Executive Secretary during that period.

Priorities for Work During 1984

In addition to the presentation of the 1984 legislative program, completion of work on any uncompleted matters listed in Exhibit 1 should be a top priority.

The staff recommends that remaining Commission staff resources and Commission meeting time be devoted primarily to the probate law study. We believe that it may be possible to prepare a new Probate Code for consideration at the 1985 legislative session. To accomplish this objective, the Commission would need to complete work on the administrative aspects of decedent's estates and to complete work on the comprehensive trust statute. This will require substantially all of the Commission's time and staff resources.

The staff also recommends that three aspects of family law be considered during 1984:

(1) Marital property agreements (a draft statute has been prepared for the September meeting).

(2) Division of Pensions Upon Marriage Dissolution (if the Commission decides at the September meeting that this matter is in need of immediate study).

(3) The remainder of Reppy's "Dirty Dozen" of Bad Family Law Decisions. (Professor Reppy provided the Commission's staff with a list of 12 "bad" judicial decisions relating to family law. He considered these decisions to be in urgent need of correction. Most of the bad decisions would be corrected by recommendations already prepared; a few remain to be dealt with.)

Finally, because of the substantial volume of legislation enacted upon Commission recommendation during recent years, the Commission will need to consider technical and substantive revisions of legislation enacted upon Commission recommendation. For example, we anticipate that some time will need to be devoted to the perfection of provisions in Assembly Bill 25 (wills and intestate succession).

In summary, the staff recommends that substantially all of the available staff resources during 1984 be devoted to an effort to prepare a new Probate Code. See Exhibit 2 attached for a list of Recommendations we propose be prepared for the 1985 Legislative Session.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EXHIBIT 1

RECOMMENDATIONS TO 1984 LEGISLATIVE SESSION

- (1) Liability of Marital Property (Assembly Bill 1460 of 1983-84 Session)
- (2) Dismissal for Lack of Prosecution (Approved for Printing)
- (3) Joint Tenancy and Community Property (Approved for Printing)
- (4) Effect of Quiet Title and Partition Judgments (Approve for Printing at September Meeting)
- (5) Liability of Stepparent for Child Support (Approve for Printing at September Meeting)
- (6) Garnishment of Amounts Payable to Trust Beneficiary (Approve for Printing at September Meeting)
- (7) Independent Administration of Decedent's Estate (Approve for Printing at September Meeting)
- (8) Disposition of Estates Without Administration (Approve for Printing at September Meeting)
- (9) Execution of Witnessed Wills (Approve for Printing at September Meeting)
- (10) Survival and Simultaneous Deaths (Approve for Printing at September Meeting)
- (11) Marital Property Presumptions and Transmutations (Approve for Printing at September Meeting)
- (12) Disposition of Community Property (Approve for Printing at September Meeting)
- (13) Statute of Limitations for Felonies (Approve for Printing at September Meeting)
- (14) Effect of Death of Support Obligor (Approve for Printing at September Meeting)
- (15) Dormant Mineral Rights (Approve for Printing at September Meeting)
- (16) Rights Among Cotenants in Possession and Out of Possession of Real Property (Approve for Printing at September Meeting)
- (17) Notice of Will (Approve for Printing at September Meeting)
- (18) Bond for Special Administrator (Approve for Printing at September Meeting)
- (19) Awarding Temporary Use of Family Home (Approve for Printing at September Meeting)
- (20) Special Appearance in Family Law Proceedings (Approve for Printing at September Meeting)
- (21) Reimbursement of Educational Expenses (Approve for Printing at September Meeting)
- (22) Statutory Short Form Durable Powers of Attorney (Approve for Printing at November Meeting)

- (23) Creditors' Remedies--Technical and Substantive Changes (Approve for Printing at November Meeting)
- (24) Wills and Intestate Succession--Technical and Substantive Changes (Approve for Printing at November Meeting)
- (25) Bonds and Undertakings (Approve for Printing at November Meeting)
- (26) Recording Affidavit of Death (Approve for Printing at November Meeting)

EXHIBIT 2

RECOMMENDATIONS FOR 1985 LEGISLATIVE SESSION

- (1) New Probate Code (This will require that the Commission complete during 1984 work on the administration portion of the Probate Code and on the trust recommendation.)
- (2) Marital Property Agreements (Approve Tentative Recommendation for distribution for comment at November Meeting)
- (3) Division of Pensions
- (4) Remainder of Reppy's "Dirty Dozen" of Bad Family Law Decisions
- (5) Technical and Substantive Revisions of Legislation Enacted Upon Commission Recommendation