

1/16/85

Memorandum 85-27

Subject: Probate Code Study Schedule

Exhibit 1 attached is a revised schedule on the Probate Code study. The staff was unable to complete work on one portion of the material previously scheduled for the January meeting. This is the material on sales. The schedule has been revised to reflect this and also to reflect the time anticipated to prepare material on other portions of the study. The schedule is consistent with the suggested meeting schedule proposed in Memorandum 85-22.

Exhibit 2 sets out the staff assignments for various portions of the Probate Code revision project and the State Bar Section Consultants on each portion.

Exhibit 3 is a tentative outline of the portion of the new Probate Code that will replace existing Division 3 (administration of estates of decedents). This outline should prove useful to those who are working with us on this project.

The staff has obtained funds to permit the renting this fiscal year of the modern word processing equipment we need and the purchase of the equipment after July 1, 1985 (if our proposed budget is approved by the Legislature). We have not been successful in obtaining an experienced probate lawyer to assist the staff on a full-time basis for six months. It is apparent that we need to obtain private funds to assist such a lawyer financially during the time he is working in our office. The Chairperson has been seeking to obtain the attorney and the funds. Perhaps at the January meeting, he can make a report on his success or lack of success.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EXHIBIT 1

TENTATIVE SCHEDULE
PREPARATION OF NEW PROBATE CODE

January 1985 Meeting

Trusts (consideration of remaining matters)
Jurisdiction; Probate of Wills; Contest of Wills
(Division 3, Chs. 1 and 2--Probate Code §§ 300-385)
Executors and Administrators; Appointment; Letters; Termination of Authority;
Oath and Bonds
(Division 3, Chs. 3, 4, 5, 6, 7--Probate Code §§ 400-553.5)
Powers and Duties of Executors and Administrators
(Division 3, Ch. 8, Art. 1--Probate Code §§ 570-590)
(Division 3, Ch. 14--Probate Code §§ 830-860)
Distribution Without Administration
(Division 3, Ch. 10, Art. 1--Probate Code §§ 630-632)

March 1985 Meeting

Approve final text of trust portion of new Probate Code (for introduction as
preprinted bill)
Inventory and Appraisalment and Probate Referees
(Division 3, Ch. 9--Probate Code §§ 600-615)
(Division 3, Ch. 23--Probate Code §§ 1300-1313)
Compensation, Commissions, and Fees
(Division 3, Ch. 15, Arts. 1 and 2--Probate Code §§ 900-911)
Creditors' Claims; Presentation and Payment of Claims; Accountings
(Division 3, Ch. 12--Probate Code §§ 700-738)
(Division 3, Ch. 15, Art. 3--Probate Code §§ 920-932)
(Division 3, Ch. 15, Art. 4--Probate Code §§ 950-956)
(Division 3, Ch. 15, Art. 4a--Probate Code §§ 970-977)
(Division 3, Ch. 15, Art. 5--Probate Code § 980)
Sales
(Division 3, Ch. 13--Probate Code §§ 750-814)
Further work on matters considered at January meeting

May 1985 Meeting

Approve tentative recommendation on trusts (including preliminary portion
of recommendation and Comments) for printing and distribution for comment
Distribution and Discharge
(Division 3, Ch. 16, Arts. 1, 2, 3, 4, 6--Probate Code §§ 1000-1043a,
1060-1068)
(Division 3, Ch. 18--Probate Code §§ 1100-1106)
Independent Administration
(Division 3, Ch. 8, Art. 2--Probate Code §§ 591-591.7)
Distribution Without Administration
(Division 3, Ch. 10, Arts. 2, 2.5, 3--Probate Code §§ 640-657)
Legacies and Interest
(Division 3, Ch. 11--Probate Code §§ 660-664)
Orders; Rules of Procedure; Appeals
(Division 3, Ch. 22, Arts. 2, 3, 4--Probate Code §§ 1220-1242)
Further work on matters considered at previous meetings

July 1985 Meeting

Miscellaneous Matters

- (Division 3, Ch. 17--Probate Code §§ 1080-1082)
- (Division 3, Ch. 21--Probate Code §§ 1190-1192)
- (Division 3, Ch. 20--Probate Code §§ 1140-1155)
- (Division 3, Ch. 24--Probate Code §§ 1350-1359)

Distribution Without Administration

- (Division 5--Probate Code §§ 5100-5407)

Notices

- (Division 3, Ch. 22, Art. 1--Probate Code §§ 1200-1210)

Conforming revisions in existing Probate Code provisions and in other codes
Further work on matters considered at previous meetings

September 1985 Meeting

A September meeting will be held only if necessary to consider items
scheduled for consideration at previous meetings that are not considered
and disposed of.

October 1985 meeting

Approve text of New Probate Code for introduction as preprinted bill
Review comments on trust portion of new Probate Code

December 1985 Meeting

Approve printing of recommendation for new Probate Code

March 1986

Printed recommendation available for distribution for comment and for
legislative hearings on new Probate Code

March 1986 Meeting

Review comments and suggestions concerning new Probate Code bill and
determine necessary amendments

EXHIBIT 2

STAFF ASSIGNMENTS AND STATE BAR SECTION CONSULTANTS

1. JURISDICTION: PROBATE OF WILLS; CONTEST OF WILLS (Sterling & DeMouilly)

Division 3, Chs. 1 and 2 (PC §§ 300-385)

State Bar Section Consultants:

H. Neal Wells, III (714) 850-1310
Suite 1650
695 Town Center Drive
Costa Mesa, CA 92626

Hermione K. Brown (213) 463-4863
6400 Sunset Blvd.
Los Angeles, CA 90028

2. EXECUTORS AND ADMINISTRATORS; APPOINTMENT; LETTERS; TERMINATION OF AUTHORITY; OATH AND BONDS (Sterling & DeMouilly)

Div. 3, Chs. 3, 4, 5, 6, 7 (PC §§ 400-553.5)

State Bar Section Consultants:

Chs. 3, 4, 5, 6 (Arts. 1 and 2)

Colleen M. Claire (714) 759-3838
Suite 600
800 Newport Center Drive
Newport Beach, CA 92660

William V. Schmidt (213) 625-7586
Suite 1400
611 Anton Blvd.
Costa Mesa, CA 92626

Chs. 6 (Arts. 3 and 4), 7

James C. Opel (213) 229-7000
Crocker Center
333 S. Grand Ave.
Los Angeles, CA 90071

Robert A. Schlesinger (619) 325-2076
P.O. Box 2268
383 S. Palm Canyon Drive
Palm Springs, CA 92263

3. POWERS AND DUTIES OF EXECUTORS AND ADMINISTRATORS (Murphy & DeMouilly)

Generally Div. 3, Ch. 8, Art. 1 (PC §§ 570-590)
Sales Div. 3, Ch. 13 (PC §§ 750-814)
Notes, Mortgages, Leases, Conveyances and Exchanges Div. 3,
Ch. 14 (PC §§ 830-860)

State Bar Section Consultants:

Ch. 8 (Art. 1)

James C. Opel; Robert A. Schlesinger

Chs. 13, 14

Kathryn A. Ballsun (213) 474-5257
Avco Center, 6th Floor
10850 Wilshire Blvd.
Los Angeles, CA 90024

James F. Rogers (213) 295-5435
3685 Crenshaw Blvd., Ste. 500
Los Angeles, CA 90016

4. INVENTORY AND APPRAISEMENT AND PROBATE REFEREES (Murphy & DeMouilly)

Inventory and Appraisal Div. 3, Ch. 9 (PC §§ 600-615)
Probate Referees Div. 3, Ch. 23 (PC §§ 1300-1313)

State Bar Section Consultants:

Matthew S. Rae, Jr. (213) 627-8104
Suite 1900
606 South Olive Street
Los Angeles, CA 90014

Irwin D. Goldring (213) 274-5913
Suite 888
433 North Camden Drive
Beverly Hills, CA 90210

5. CREDITORS' CLAIMS; PRESENTATION AND PAYMENT OF CLAIMS; ACCOUNTINGS
(Sterling & DeMouilly)

Presentation and Payment of Claims Div. 3, Ch. 12 (PC §§ 700-738)
Accountings Div. 3, Ch. 15, Art. 3 (PC §§ 920-932)
Payment of Debts and Expenses Div. 3, Ch. 15, Art. 4
(PC §§ 950-956)
Federal Estate Tax Proration Div. 3, Ch. 15, Art. 4a
(PC §§ 970-977)
Apportionment of Debts Div. 3, Ch. 15, Art. 5 (PC § 980)

State Bar Section Consultants:

Ch. 12

Harley J. Spitler (415) 981-5252
One Maritime Plaza, Ste. 2000
San Francisco, CA 94111

Clare H. Springs (415) 788-1100
Suite 2701
One Embarcadero, 27th Fl.
San Francisco, CA 94111

Ch. 15 (Arts. 3, 4, 4a, 5)

James D. Devine (408) 372-7535
P.O. Box 2229
400 Camino El Estero
Monterey, CA 93940

James V. Quillinan (415) 969-4000
444 Castro St., Ste. 900
Mountain View, CA 94041

6. COMPENSATION, COMMISSIONS, AND FEES (Murphy & DeMouilly)

Div. 3, Ch. 15, Arts. 1 and 2 (PC §§ 900-911)

State Bar Section Consultants:

James A. Willett, Vice Chair (916) 441-0131
555 Capitol Mall, Ste. 1050
Sacramento, CA 95814

H. Bruce Friedman (415) 434-1363
One Maritime Plaza, Ste. 1430
San Francisco, CA 94111

7. PARTITION BEFORE DISTRIBUTION (Sterling & DeMouilly)

Div. 3, Ch. 18 (PC §§ 1100-1106)

State Bar Section Consultants:

Leonard W. Pollard, II (714) 236-3651
355 County Administrative Center
1600 Pacific Highway
San Diego, CA 92101

James R. Goodwin (619) 239-6161
303 "A" Street, Ste. 402
San Diego, CA 92101

8. DISTRIBUTION AND DISCHARGE

Div. 3, Ch. 16, Arts. 1, 2, 3, 4, 6 (PC §§ 1000-1043a;
1060-1068) (Murphy & DeMouilly)

State Bar Section Consultants:

Lloyd W. Homer, Treasurer (408) 377-3901
1999 S. Bascom Ave., Ste. 1010
Campbell, CA 95008-2297

John S. Hartwell (415) 447-1222
Box 511
2109 Fourth St.
Livermore, CA 94550

D. Keith Bilter (415) 392-6320
Two Embarcadero, Ste. 2140
San Francisco, CA 94111

9. DISTRIBUTION WITHOUT ADMINISTRATION (Murphy & DeMouilly)

Affidavit Procedure for Small Estate Div. 3, Ch. 10, Art. 1
(PC §§ 630-632)
Small Estate Set Aside Div. 3, Ch. 10, Art. 2 (PC §§ 640-647)
Administration of Spousal Property Div. 3, Ch. 10, Art. 2.5
(PC §§ 649.1-649.5)
Determination or Confirmation of Spousal Property Div. 3,
Ch. 10, Art. 3 (PC §§ 650-657)
Multiple Party Accounts Div. 5 (PC §§ 5100-5407)

State Bar Section Consultants:

William H. Plageman, Jr. (415) 893-5195
1 Kaiser Plaza
Ordway Building, Ste. 1950
Oakland, CA 94612

John L. McDonnell, Jr. (415) 451-3300
1330 Broadway, Ste. 1730
Oakland, CA 94612

10. INDEPENDENT ADMINISTRATION (Murphy & DeMouilly)

Div. 3, Ch. 8, Art. 2 (PC §§ 591-591.7)

State Bar Section Consultants: William H. Plageman, Jr.; John L. McDonnell, Jr.

11. LEGACIES AND INTEREST (Sterling & DeMouilly)

Div. 3, Ch. 11 (PC §§ 660-664)

State Bar Section Consultants: not yet named

12. MISCELLANEOUS MATTERS (Sterling & DeMouilly)

Determination of Heirship Div. 3, Ch. 17 (PC §§ 1080-1082)
Establishing Identity of Heirs Div. 3, Ch. 21 (PC §§ 1190-1192)
Public Administrators Div. 3, Ch. 20 (PC §§ 1140-1155)
Administration of Estate of Missing Persons Presumed Dead
Div. 3, Ch. 24 (PC §§ 1350-1359)

State Bar Section Consultants: Leonard W. Pollard, II; James R. Goodwin

13. NOTICES (Sterling & Staff)

Div. 3, Ch. 22, Art. 1 (PC §§ 1200-1210)

State Bar Section Consultants:

Theodore J. Cranston (619) 454-9101
1200 Prospect St.
La Jolla, CA 92037

Charles A. Collier, Jr. (213) 277-1010
Suite 900
1800 Avenue of the Stars
Los Angeles, CA 90067

14. ORDERS; RULES OF PROCEDURE; APPEALS (Sterling & DeMouilly)

Div. 3, Ch. 22, Arts. 2, 3, 4 (PC §§ 1220-1224, 1230-1233;
1240-1242)

State Bar Section Consultants: Theodore J. Cranston; Charles A. Collier, Jr.

15. TRUSTS (Ulrich & Sterling)

Div. 3, Ch. 19 (PC §§ 1120-1139, 19), Ch. 22, Art. 1.5
(PC §§ 1215-1215.4) and other provisions in other codes

EXHIBIT 3

DIVISION 7. ADMINISTRATION OF ESTATES
OF DECEDENTS

PART 1. GENERAL PROVISIONS	
Chapter 1. Necessity of Administration (Existing § 300)	\$ 7000
Chapter 2. Jurisdiction and Courts	\$ 7050
Article 1. Jurisdiction and Venue	
Article 2. Courts and Judges	
Article 3. Transfer of Proceedings	
Chapter 3. Rules of Procedure	\$ 7100
Chapter 4. Notices	\$ 7150
Chapter 5. Orders	\$ 7200
Chapter 6. Appeals	\$ 7250
Chapter 7. Public Administrators (Existing §§ 1140-1155)	\$ 7300
Chapter 8. Probate Referees (Existing §§ 1300-1310)	\$ 7350
PART 2. OPENING ESTATE ADMINISTRATION	
Chapter 1. Commencement of Proceedings	\$ 7500
Chapter 2. Notice of Hearing	\$ 7530
Article 1. Contents	\$ 7530
Article 2. Service	\$ 7540
Article 3. Publication or Posting	\$ 7545
Chapter 3. Probate of Will	\$ 7550
Article 1. Production of Will	\$ 7550
Article 2. Proof of Will	\$ 7560
Article 3. Contest of Will	\$ 7570
Article 4. Revocation of Probate	\$ 7580
Chapter 4. Appointment of Personal Representative	\$ 7650
Article 1. General Provisions	\$ 7650
Article 2. Executors	\$ 7660
Article 3. Administrators With The Will Annexed	\$ 7670
Article 4. Administrators	\$ 7680
Article 5. Bond	\$ 7700
Article 6. Removal From Office	\$ 7720
Article 7. Changes in Administration	\$ 7730
Article 8. Nonresident Personal Representative	\$ 7750
Article 9. Special Administrators	\$ 7770
PART 3. INVENTORY AND APPRAISEMENT (Existing §§ 600-615)	\$ 7800
PART 4. CREDITORS' CLAIMS (Existing §§ 700-750)	\$ 7900
PART 5. ESTATE MANAGEMENT	\$ 8100
Chapter 1. Estate Management Generally	
§ 8100 Duty to manage estate using ordinary care and diligence	
(Portions of § 920?)	

§ 8101 Joint personal representatives	
§ 8102 Instructions from or confirmation by court	
§ 8103 Possession of decedent's estate	
§ 8104 Duty to recover property transferred in fraud of creditors	
§ 8105 Delivery of property to heirs or devisees	
§ 8106 Voting rights with respect to corporate shares, memberships or property	
§ 8107 Purchase of estate property by personal representative	
§ 8108 Summary determination of disputes; submission to commissioner, judge pro tempore or probate judge	
§ 8109 Submission of dispute to arbitration	
Chapter 2. Deposit of Money and Personal Property with Financial Institutions	\$ 8120
Chapter 3. Investments and Purchase of Property	\$ 8130
Chapter 4. Operation of Decedent's Business	\$ 8140
Chapter 5. Actions and Proceedings by or Against Personal Representative	\$ 8150
Chapter 6. Compromise of Claims and Actions; Extension, Renewal, or Modification of Obligations	\$ 8160
Chapter 7. Conveyance or Transfer of Property Claimed to Belong to Decedent or Other Person	\$ 8180
Chapter 8. Option to Purchase Given in Will	\$ 8200
Chapter 9. Notes, Mortgages, Conveyances, and Exchanges	\$ 8210
Chapter 10. Leases	\$ 8230
Chapter 11. Sales	\$ 8240
Article 1. Definitions and General Provisions	\$ 8240
Article 2. Contract With Agent, Broker, or Auctioneer	\$ 8260
Article 3. Sale of Personal Property	\$ 8270
Article 4. Sale of Real Property	\$ 8290
Article 5. Vacating Confirmation of Sale of Real or Personal Property	\$ 8310
Article 6. Application of Sale Proceeds of Encumbered Property	\$ 8320
Chapter 12. Independent Administration	\$ 8350
PART 6. COMPENSATION (Existing §§ 900-911)	\$ 8400
PART 7. ACCOUNTING (Existing §§ 920-933)	\$ 8500
PART 8. PAYMENT OF DEBTS, EXPENSES, CHARGES, AND TAXES (Existing §§ 950-956, 970-977, 980)	\$ 8600
PART 9. PARTITION BEFORE DISTRIBUTION (Existing §§ 1100-1106)	\$ 8700
PART 10. DISTRIBUTION AND DISCHARGE (Existing §§ 1000-1068, 660-664, 750-752)	\$ 8800
PART 11. DETERMINATION OF HEIRSHIP OR IDENTITY OR PERSONS WITHIN CLASS (Existing §§ 1080-1082, 1190-1192)	\$ 8900

PART 12. ADMINISTRATION OF ESTATES OF MISSING PERSONS
PRESUMED DEAD \$ 9000
(Existing §§ 1350-1359)

DIVISION 8. DISPOSITION OF ESTATES
WITHOUT ADMINISTRATION

PART 1. PASSAGE OF PROPERTY TO SURVIVING SPOUSE WITHOUT
ADMINISTRATION \$ 9500
Chapter 1. Passage of Property to Surviving Spouse
Without Administration
(Existing §§ 649.1-649.6)
Chapter 2. Determination or Confirmation of Property of
Surviving Spouse
(Existing §§ 650-658)

PART 2. COLLECTION OR TRANSFER OF SMALL ESTATES WITHOUT
ADMINISTRATION \$ 9600

PART 3. SMALL ESTATE SET ASIDE \$ 9700