

Memorandum 85-83

Subject: Legislative Program

1985 Legislative Program

The Governor signed the two bills that were unsigned at the time of the last meeting. The bills are the mediation privilege bill (Assembly Bill 1030) and the general probate bill (Assembly Bill 196).

A listing of the bills recommended to the 1985 Legislature and the chapter numbers of the enacted bills can be found on the attached sheet. The bills enacted in 1985 effectuated 13 separate Law Revision Commission recommendations, a respectable number even though less than the 22 separate recommendations effectuated by bills enacted in 1984.

One additional bill--not recommended by the Commission in 1985--was enacted in 1985 to effectuate a recommendation made by the Commission. This bill, enacted as 1985 Cal. Stats. ch. 100, effectuates the Commission's 1976 recommendation relating to the admissibility of duplicates in evidence.

1986 Legislative Program

The Commission is now in a position to determine its 1986 Legislative Program. The following are possible items for inclusion in the 1986 Legislative Program.

Comprehensive trust statute. The Commission already has determined to submit this statute to the 1986 legislative session. We need to approve this recommendation for printing at the October meeting, so that we will have a printed recommendation to distribute to interested persons and organizations for review and comment. The staff expects that during 1986 the Commission will need to devote a significant amount time to consideration of issues raised at or before the time the bill is considered by legislative committees.

Directive to physicians. The Commission recommended to each of the last two sessions of the Legislature that a bill be enacted to increase the duration of a directive to physicians from 5 to 7 years .

This increase in the duration of the directive to physicians would make its duration consistent with the 7-year duration of a durable power of attorney for health care.

In 1984, Senator Keene did not want to introduce the bill because he was was introducing the bill to provide a statutory form for a durable power of attorney for health care, and he did not want to create the additional controversy that the extension of the duration of the directive to physicians might have created.

In 1985, Senator Keene did not want to carry any bills. Senator Lockyer, our Senate member, was willing to carry the clean up bill on durable powers of attorney, but did not want to carry the directive to physicians bill which he feared would be a controversial bill. Assemblyman McAlister did not want to introduce the bill.

A bill was introduced in 1985 to eliminate the restriction on the duration of the directive to physicians. That bill passed the Legislature, but the Governor vetoed it. His veto message reads:

I am returning Senate Bill No. 820 without my signature.

The Natural Death Act permits any adult person to execute a directive which provides for the withholding or withdrawal of life-sustaining procedures in a terminal condition. This bill would amend the effective period of such a directive from five years to the lifetime of the executor.

I am concerned that this bill eliminates a prudent margin of safety for an individual who may have changed his or her outlook on life-sustaining devices and neglected to conform a previously executed directive. I believe it is appropriate to require an affirmative act to review a directive which carries such consequences. I have not been presented with any compelling evidence to support a change to this law.

The Commission recommended change from 5 to 7 years would appear to be consistent with the Governor's belief that an affirmative act to renew the directive should be required after a period of time. It should be noted, however, that the National Conference of Commissioners on Uniform States Laws is likely to approve a Uniform Act that will provide for a directive to physicians of unlimited duration.

The staff recommends that we seek an author for a bill to effectuate the earlier Commission recommendation to extend the

duration of the directive to physicians from 5 to 7 years, thereby conforming the duration of the directive to the duration of the durable power of attorney for health care. If the two documents are consistent in duration, the attorney can review both documents at the same time (near the end of the 7-year period), and the client can again execute both documents if the client so desires.

Proration of estate taxes. The Commission decided to submit this recommendation to the 1986 Legislature. We distributed a tentative recommendation to interested persons for review and comment. At our December meeting, we expect to review the comments we receive, make any needed revisions in the recommendation, and approve the recommendation for printing and the proposed legislation for introduction in 1986. The provisions of the recommended legislation will retain the same section numbers when the new Estates and Trusts Code is enacted.

Small estate set-aside. The Commission decided at a prior meeting to make a basic change in the small estate set-aside. This statute permits the surviving spouse or minor children to have a small estate (not in excess of \$20,000) set aside. The existing statute is mandatory--if the statutory requirements are satisfied, the small estate must be set aside to the surviving spouse or, if none, to the minor children. The Commission approved scheme would make the setting aside of the small estate discretionary with the court and would make other changes that would make the statute more consistent with the other family protection provisions. We will be considering a staff draft of a recommendation at the October meeting.

If the staff draft of the recommendation is approved by the Commission, the staff recommends that this recommendation be submitted to the 1986 Legislature. The recommended legislation will be compiled as a part of the family protection provisions of the existing Probate Code. Hence, the numbers given to the new small estate set-aside statute would remain unchanged in the new Estates and Trusts Code.

Consideration of the recommended legislation in 1986 would permit a careful review by interested persons and organizations and would permit the recommended legislation to become law on January 1, 1987. Enactment of the recommended legislation, together with the item

recommended below, would provide a package of needed reforms that do not involve the administration portion of the new code and could be enacted without delay.

The Commission can determine whether it wishes to submit this recommendation to the 1986 Legislature when it considers the staff draft of the recommendation at the October meeting.

Distribution of estates without administration. The Commission will consider at the October meeting staff drafts of recommendations that would add a new division to the Probate Code. This division contains the provisions relating to passage of property to the surviving spouse and the provisions relating to the collection or transfer of small estates without administration. The new division is not part of the administration of estates portion of the code. The section numbers of the new division will remain unchanged when the new code is enacted.

The recommended provisions relating to passage of property to the surviving spouse make no great change in existing law.

The recommended provisions relating to collection or transfer of small estates without administration make significant improvements in existing law. The recommended provisions fill in gaps in the existing affidavit procedure. This is important, since the increase in the size of a "small estate" from \$30,000 to \$60,000 makes the affidavit procedure applicable to many more estates than before. The recommended legislation also provides a procedure for obtaining without probate a marketable title to real property in a small estate (court order where estate does not exceed \$60,000 in value) or where the real property is of small value (affidavit procedure where real property does not exceed \$10,000 in value). A procedure along these lines has been urged by local bar associations and practitioners.

If the staff draft of the recommendation is approved by the Commission at the October meeting, the staff recommends that the recommended legislation be submitted to the 1985 Legislature. It would be undesirable to delay the needed improvements.

At the time the Commission considers the staff draft of the two recommendations that will constitute the new division, the Commission can determine whether it wishes to submit this new division of the Probate Code for enactment by the 1986 Legislature.

Respectfully submitted,

John H. DeMouly
Executive Secretary

1985 LEGISLATIVE PROGRAM
CALIFORNIA LAW REVISION COMMISSION

ENACTED

1985 Stats. ch. 41 (Assembly Bill 98) - Creditors' Remedies
1985 Stats. ch. 90 (Assembly Bill 690) - Uniform Transfers to Minors
1985 Stats. ch. 157 (Assembly Bill 96) - Property Law
1985 Stats. ch. 359 (Assembly Bill 97) - Urgency Probate Bill
1985 Stats. ch. 362 (Assembly Bill 150) - Family Law
1985 Stats. ch. 403 (Senate Bill 1270) - Powers of Attorney
1985 Stats. res. ch. 25 (ACR 4 - Continues Authority to Study
 Previously Authorized Topics
1985 Stats. ch. 731 (Assembly Bill 1030) - Mediation Privilege
1985 Stats. ch. 982 (Assembly Bill 196) - Probate Law

PLACED ON INACTIVE FILE

Assembly Bill 195 - Revision of Law Revision Commission Statute

NOT INTRODUCED

Duration of Directive to Physicians (Increase From 5 to 7 Years)