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3/10/86

First Supplement to Memorandum 86-26

Subject: Study L - Assembly Bill 2625 (Comprehensive Probate Bill)

Attached are letters from the Estate Planning, Trust and Probate Law Section Executive Committee concerning Assembly Bill 2625. We will discuss the letters at the March meeting.

We do not yet have copies of amended Assembly Bill 2625. We will have copies of the amended bill available at the March meeting.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

**ESTATE PLANNING, TRUST AND
PROBATE LAW SECTION
THE STATE BAR OF CALIFORNIA**

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March 5, 1986

Mr. John H. DeMouilly
California Law Revision Commission
4000 Middlefield Road, D-2
Palo Alto, CA 94307-4739

RE: Memo 86-17 and AB 2625

Dear John:

The Executive Committee of the Estate Planning, Trust and Probate Law Section reviewed Memo 86-17 and Chuck Collier's suggested changes to AB 2625. The following is the position of the Executive Committee.

1. Memo 86-17. The Executive Committee feels very strongly that the UPC standard of probable cause not be adopted in California. The New York rule suggested by Professor Niles may be an improvement, but needs study. In that regard, the Executive Committee appointed a special team, consisting of Neal Wells, Janet Wright and Andy Garb, to report back at our next meeting. They will also review Professor Niles' further report when available. The Executive Committee feels very strongly that a strong no-contest law is important.

2. AB 2625. The Executive Committee discussed Chuck Collier's letter of February 10, 1986. The Executive Committee concurs in all of Chuck's suggestions, save #20. After extensive discussion, item #20 was felt to be too severe a departure from past practices and the committee voted unanimously to keep the date of death value for all circumstances under the new sections. If you require current value for applying the new section and that value is greater than allowed under the new section, probate will ensue at date of death values. This would defeat one of the purposes of the new section in cleaning up old titles. No one could see any direct harm by using date of death values. Also, the petition procedures would be

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available if the values were less than \$60,000.00. Chuck himself does not endorse his item 20, he just wanted to bring it to the Commission's attention.

See you in Sacramento.

Very truly yours,



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444 Castro Street, Suite 900
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(415) 969-4000

JVQ/bg
cc: James Willet
Charles A. Collier
James Devine
James Opel
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March 5, 1986

John H. DeMouilly
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, California 94303

Re: AB 2625

Dear John:

Reference is made to AB 2625 and the letter which I forwarded to you dated February 10.

The Executive Committee of the Estate Planning, Trust and Probate Law Section considered several issues relating to AB 2625 at its meeting on February 22. The purpose of this letter is to summarize the views of that Executive Committee on those issues.

Reference is made to the question raised in paragraph 20 of the letter of February 10, 1986, relating to the retroactivity of the provisions relating to transfer of real property by affidavit. The Executive Committee felt that the valuation of such property by the probate referee should in all cases be a date of death value regardless of when the date of death occurred. It was felt that date of death values are used for all other probate inventory purposes, are used for tax purposes for the federal estate tax, the California estate tax, and in connection with adjustment on basis of property for income tax purposes. Because of these tax considerations in particular, it was felt that the appraisal should always relate to the date of death value, not some more current value. Thus, the transfer by affidavit would be usable even if the property since date of death has appreciated to a value in excess of \$10,000.

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Reference is also made to the proposed changes in Probate Code Section 854. The bill proposes changing paragraph (d) from a six-month time limit to a nine-month time limit. Perhaps you have seen a memo from Donald P. Asperger, a partner of Ken Klug, which raised this question of the time limit. The Executive Committee discussed this at some length and felt that any arbitrary time limit was unnecessary, such as the six-month time limit now provided in the law or the nine-month time limit proposed in AB 2625.

It was the view of the Executive Committee that the following changes be made in Section 854:

1. Paragraph (d) be deleted in its entirety.
2. If the option given in the will can still be exercised after the time that the estate would otherwise be closed, the property subject to the option should be distributed subject to the option.
3. The optionee should have the right to exercise the option at any time within the time limits provided by the will.
4. The provisions of paragraph (a), stating that the "optionee may petition," should remain in effect for all optionees other than the personal representative.
5. In the case of a personal representative, who is the optionee, the personal representative would be required to file a petition with the court for a court order authorizing the personal representative as optionee to exercise the option. That petition would have to be filed within the time limits provided in the will but in any event before final distribution.

The above matters were the only ones discussed by the Executive Committee at its February 22 meeting relating to AB 2625. We hope these comments will be of assistance to the Commission and its staff relating to AB 2625.

Sincerely,



Charles A. Collier, Jr.
Irell & Manella
1800 Avenue of the Stars, Suite 900
Los Angeles, CA 90067

CAC:vjd

cc: James A. Willett, Esq., James V. Quillinan, Esq., James D. Devine, Esq., James C. Opel, Esq., Irwin Goldring, Esq., William V. Schmidt, Esq., H. Neal Wells, III, Esq., Kenneth M. Klug, Esq.