

Memorandum 91-70

Subject: 1992 Legislative Program

The staff anticipates the following legislative program for 1992. This is based on the assumption that the Commission approves for submission to the Legislature the tentative recommendations for which review of comments is scheduled at the October/November meeting.

Because of concerns by legislators about the adequacy of their staffing to handle many bills, we will again seek (as we did in the 1991 session) to place our recommendations with a number of different authors.

(1) Litigation Involving Decedents

This recommendation would have been part of the 1991 omnibus probate bill, but Legislative Counsel determined that it had too many diverse subjects to fit with the rest of the bill. We may try again next session to include it in a miscellaneous probate bill, perhaps authored by Assembly Member Friedman.

(2) Compensation in Guardianship and Conservatorship Proceedings

This recommendation would make clear the authority to compensate attorneys and others for services rendered before creation of the guardianship or conservatorship. It would have gone into the omnibus probate bill, but Legislative Counsel determined that it went beyond the scope of the bill. Senator Mello has been active in the conservatorship field, and we will offer this bill to him.

(3) Form for Certificate of Acknowledgment of Power of Attorney

This proposal concerns the new "all purpose acknowledgment form", and its relationship to the statutory form power of attorney. Assembly Member Ross Johnson is actively involved with the certificate of acknowledgment form, and we will refer this matter to his office.

(4) Powers of Fiduciaries

Recognition of Trustee's Powers

Recognition of Agent's Authority Under Statutory Form Power
of Attorney

These proposals would require third persons to rely on ostensible authority of fiduciaries. We believe we have eliminated banking and title insurance industry opposition to this proposal. These might go into a general trust and fiduciary bill. We will talk to Assembly Member Friedman and Senator Lockyer about these.

(5) Repeal of In-Law Inheritance

This proposal to repeal the ancestral property doctrine is now supported by the Estate Planning, Trust and Probate Law Section of the State Bar, the Probate and Trust Law Section of the Los Angeles County Bar Association, the Probate, Trust & Estate Planning Section of the Beverly Hills Bar Association, the California Association of Public Administrators, Public Guardians, and Public Conservators, and a number of individual lawyers. The Commission has pushed this recommendation before, without success; Assembly Member Sher was unwilling to carry it again last session. We would not spend our resources on it unless the bar has an author interested in it.

(6) Relocation of Powers of Appointment from Civil Code to Probate Code

In addition to relocating the powers of appointment statute, this recommendation would codify the rule of substantial compliance with special exercise requirements. Assembly Member Horcher is interested in this matter and we anticipate he will include the Commission's proposal in AB 1722, a two-year bill.

(7) 1991-92 Creditors' Remedies Matters

This recommendation would clean up problems caused by elimination of the 90-day earnings withholding period under a wage garnishment, and make other technical changes. Senator Deddeh, author of the legislation that eliminated the 90-day period, would be an appropriate author for the cleanup legislation.

(8) Nonprobate Transfers of Community Property

This recommendation would resolve problems for estate planners caused by the MacDonald case, and is greatly needed. Assembly Member Horcher is interested in this matter, and his AB 1719 (which made an initial stab at it) could be made into a two-year bill vehicle for the recommendation. Alternatively, either Assembly Member Friedman or Senator Lockyer would be a good choice as author.

(9) Notice of Trustees' Fees

This proposal to clarify the persons to whom trustees must give notice of fee increases is mainly of interest to the banks. We would solicit their suggestions for a good author.

(10) Special Needs Trust for Disabled Minor or Incompetent Person

Reestablishment of the authority for special needs trusts is of special interest to the plaintiffs' bar. The California Trial Lawyers Association may be a good source of an author for this recommendation.

(11) Preliminary Distribution Without Court Supervision under
Independent Administration

This is an estate administration simplification proposal, and the title says it all. It would be appropriate for inclusion in a miscellaneous probate bill. Assembly Member Friedman would be an appropriate author for the bill.

(12) Transfer of Omitted Property to Trust by Conservator

This proposal makes clear the authority of a conservator to transfer property inadvertently omitted from a trust created out of the conservatorship estate. Consistent with our policy on conservatorship matters, we would send this proposal to Senator Mello for possible inclusion in an omnibus conservatorship bill. Alternatively, this could go in a trust bill.

(13) Nonprobate Transfer to Trustee Named in Will

This recommendation would make expand existing provisions authorizing direct payment of nonprobate transfer amounts to

testamentary trusts. This might logically be combined with the main bill on nonprobate transfers of community property.

(14) Voluntary Temporary Assignment of Hearing Personnel

This recommendation would authorize the director of the Office of Administrative Hearings to administer a system for temporary assignment of administrative law judges between agencies, in the interest of efficiency and prevention of ALJ burnout. The Association of California State Attorneys and Administrative Law Judges may be able to direct us to an appropriate and interested author for this proposal.

(15) Continuing Authority of California Law Revision Commission to Study Topics Previously Authorized for Study

Senator Lockyer has carried this resolution for us in recent years.

(16) Family Code

We anticipate having the draft of the tentative recommendation proposing the Family Code printed in the form of a preprint bill. Assembly Member Speier is actively interested in this project.

Respectfully submitted,

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Executive Secretary