

First Supplement to Memorandum 92-39

Subject: Study L-608 - Deposit of Estate Planning Documents With Attorney

The problems with the recommendation attached to the basic memorandum are primarily political. The question is whether it will be opposed by the County Clerks Association and the State Bar. Although the State Bar did not get the dues increase it wanted from the Legislature, the State Bar central staff is still working with us to try to reach an acceptable compromise. The State Bar hopes to have a response to the Commission before our next meeting on October 29 and 30.

The clerks have previously opposed this proposal. The staff asked the clerks to reconsider. They say they cannot respond before the October meeting. Their response will probably come in early November. If the clerks continue to oppose the recommendation, the staff would not try to find some other public depository, such as the California Secretary of State, Registrar of Vital Statistics, or the State Bar itself, to take the place of the clerks. If fiscal considerations are controlling, similar objections will apply to any other public depository. The California Secretary of State and the Registrar of Vital Statistics previously objected to acting as a depository, and the State Bar would surely object also. Instead, the staff would delete the provision for a public depository, and rely on the private sector to receive and store unwanted estate planning documents.

The staff recommends three revisions to the recommendation to try to anticipate and address these problems:

(1) To add authority to subdivision (c) of Section 632 for a private depository to charge a fee for receiving documents:

(c) The An attorney may not accept a fee or compensation from a transferee for transferring a document under this section. An attorney or trust company may charge a fee for receiving a document under this section.

(2) To revise Section 633 to require the notice to the State Bar to include the State Bar number of both the transferor and transferee attorney, as set out in the basic memorandum.

(3) To revise Government Code Section 26827.6 to increase the clerk's fee for receiving and storing a document from \$14 to \$25, as the clerks suggested.

The staff would prepare a revised draft of the recommendation with these revisions, and recalendar it for the October meeting. If we have a response from the State Bar by then, we can take up their comments at the October meeting. If not, the Commission can approve the recommendation at the October meeting with a view toward getting a bill ready for introduction in December. We can continue to work with the clerks and State Bar after the bill is introduced to try to satisfy their concerns.

Respectfully submitted,

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