

9/7/84

Memorandum 84-78

Subject: 1984 Legislative Program

Attached is a report on the 1984 Legislative Program. We do not plan to discuss this report in detail at the meeting. Please raise any questions or make any comments concerning the report at the meeting. Fifteen bills have been signed by the Governor; six bills are under consideration by the Governor, having passed late in the session; and four bills did not pass the Legislature. Accordingly, it appears likely that 21 of the 25 bills recommended by the Commission in 1984 will become law.

Bills that Failed to Pass

Disposition of community property. Senate Bill 1392 was introduced to effectuate the Commission's recommendation relating to disposition of community property. The bill was never set for hearing because it was planned to hold interim hearings on the bill. We assume that the bill will be included in the Commission's 1985 legislative program. We will report to the Commission the result of the interim hearings by the Senate Judiciary Committee after the hearings have been held.

Execution of witnessed will. Assembly Bill 2294 was introduced to effectuate the Commission's recommendation relating to execution of witnessed wills. The bill would have eliminated the requirement that the witnesses be "present at the same time" to see the testator sign or acknowledge the will. The bill passed the Assembly, but thereafter the Commission decided to recommend to Assembly Member McAlister that he amend the bill in a manner that would have significantly changed the effect of the bill. Assembly Member McAlister declined to make the suggested amendment, because he believed the bill as originally recommended by the Commission was a sound bill. At the Senate hearing, the State Bar opposed the bill on policy grounds and on the ground that the Commission itself no longer recommended the bill in the form in which it was before the Committee. This was sufficient to kill the bill. The staff recommends that the Commission not give any further consideration to this proposal and that we not propose a bill in 1985 to effectuate our recommendation.

Simultaneous deaths. Assembly Bill 2288 was introduced to effectuate the Commission's recommendation relating to simultaneous deaths. Although

the proposal was opposed by the State Bar Section on Estate Planning, Trust and Probate Law, there was considerable support for the proposal. However, the Chairman of the Assembly Judiciary Committee did not like the proposal, and when it was heard in the Assembly there was a short committee and there were not sufficient votes to obtain a "do pass" recommendation from the Committee. Reconsideration was granted, and we sought to determine what was needed to make the bill acceptable to the Chairman of the Committee. Because of the pressure of legislative business, we never were able to deal with the concern of the Chairman so we did not reset the bill for hearing and it died in the Assembly Committee. Memorandum 84-74 has been prepared for the September meeting to propose a more modest recommendation dealing with this matter.

Notice of will. Assembly Bill 2272 was introduced to effectuate the Commission's recommendation relating to notice of will. The bill was approved by the Assembly Judiciary Committee (Ayes 10; Noes 0) and passed the Assembly (Ayes 70; Noes 0). However, when the bill was heard by the Senate Judiciary Committee, there was a short committee and we were unable to obtain enough votes for approval. Reconsideration was granted and the bill was reset for hearing but not reached by the Committee on the day of the hearing. Ultimately, time ran out and we were unable to present the bill again to the Committee. Although the bill was opposed by the State Bar Section on Estate Planning, Trust and Probate Law, there was considerable support for the proposal. Memorandum 84-75 has been prepared for the September meeting so that the Commission can review its recommendation and determine whether to submit the same or a different or no recommendation to the 1985 Legislature.

Recommendations Enacted in Part

Provision for support if support obligor dies. Assembly Bill 781 was amended to effectuate this recommendation in part. Memorandum 84-73 has been prepared for the September meeting so that the Commission can review its recommendation and determine whether to submit a recommendation to the 1985 Legislature to effectuate the remainder of the original recommendation.

Recording severance of joint tenancy. Assembly Bill 2276 was introduced to effectuate this recommendation. As enacted, the bill does not include the provision requiring that a severance of a joint tenancy be recorded before the death of the severing joint tenant. The staff plans to prepare a memorandum, hopefully in time for the September meeting, to present this matter for review by the Commission so that the

Commission can determine whether to submit a recommendation to the Legislature in 1985.

Durable powers of attorney. Senate Bills 1365 and 1367 were introduced to effectuate the Commission's recommendation concerning statutory forms for durable powers of attorney. The enactment of these bills justifies a review of the provisions of those bills and two earlier enacted bills with a view to providing a consistent body of law and to correcting any defects or ambiguities in the bills. Memorandum 84-71 has been prepared for the September meeting to present the staff recommended revisions.

Marital property presumptions and transmutations. Assembly Bill 2274 was introduced to effectuate the Commission's recommendation relating to marital property presumptions and transmutations. Questions were raised about the presumptions provisions of the bill, and we amended the bill so that it relates only to transmutations and it passed the Legislature in that form. The Commission will be giving further consideration to marital property presumptions during 1985 and the Commission will have an opportunity to review the presumptions aspect of its recommendation in the course of that consideration.

Liability of marital property. Assembly Bill 1460 was introduced to effectuate the Commission's recommendation relating to liability of marital property. Some of the proposed changes in existing law were unacceptable to the legislative committees. Some changes or additions were deleted to eliminate objections. The staff will review the bill as it passed the Legislature to determine whether it should be given further consideration by the Commission.

Other bills. Various technical and substantive changes were made in other bills. In some cases, the change was made by a legislative committee and in others by the author of the bill. The staff does not believe that there is a need to give further study to these recommendations merely because of these changes.

Respectfully submitted,

John H. DeMouly
Executive Secretary

9/7/84

1984 LEGISLATIVE PROGRAM
CALIFORNIA LAW REVISION COMMISSION

ENACTED

- 1984 Cal. Stats. Ch. 19 (Assembly Bill 781) - Spousal support including insurance (McAlister)
- 1984 Cal. Stats. Ch. 20 (Assembly Bill 810) - Quiet title and partition judgments (McAlister)
- 1984 Cal. Stats. Ch. 156 (Assembly Bill 2286) - Special appearance in family law proceedings (McAlister)
- 1984 Cal. Stats. Ch. 240 (Assembly Bill 2278) - Dormant mineral rights (McAlister)
- 1984 Cal. Stats. Ch. 241 (Assembly Bill 2343) - Rights between cotenants (Moore)
- 1984 Cal. Stats. Ch. 243 (Assembly Bill 2492) - Uniform Transfers to Minors Act (Sher)
- 1984 Cal. Stats. Ch. 249 (Assembly Bill 3472) - Liability of earnings of stepparent for child support (Harris)
- 1984 Cal. Stats. Ch. 312 (Senate Bill 1365) - Statutory form for power of attorney for health care (Keene)
- 1984 Cal. Stats. Ch. 451 (Assembly Bill 2270) - Independent administration; disposition without administration; bonds of personal representatives; objection to appraisal; waiver of accounting (McAlister)
- 1984 Cal. Stats. Ch. 463 (Assembly Bill 2739) - Award of family home to spouse having child custody (Isenberg)
- 1984 Cal. Stats. Ch. 493 (Assembly Bill 2282) - Garnishment of payments from trust (McAlister)
- 1984 Cal. Stats. Ch. 519 (Assembly Bill 2276) - Severance of joint tenancy (McAlister)
- 1984 Cal. Stats. Ch. 527 (Assembly Bill 2255) - Affidavits of death (McAlister)
- 1984 Cal. Stats. Ch. 538 (Assembly Bill 2295) - Creditors' remedies (McAlister)
- 1984 Cal. Stats. Ch. 602 (Senate Bill 1367) - Statutory form for general power of attorney (Keene)
- Assembly Concurrent Resolution 102 - Authority to study topics (McAlister)

SENT TO GOVERNOR

- Senate Bill 1366 - Dismissal for lack of prosecution (Keene)
- Assembly Bill 1460 - Liability of marital property (McAlister)
- Assembly Bill 2274 - Marital property transmutations (McAlister)
- Assembly Bill 2290 - Wills and intestate succession (McAlister)
- Assembly Bill 2764 - Statute of limitations for felonies (Sher)
- Assembly Bill 3000 - Reimbursement for educational expenses (Harris)

D E A D

- Senate Bill 1392 - Disposition of community property (Will seek to obtain interim study) (Lockyer)
- Assembly Bill 2272 - Notice of will (McAlister)
- Assembly Bill 2288 - Simultaneous deaths (McAlister)
- Assembly Bill 2294 - Witnessed wills (McAlister)