

10/30/84

Memorandum 84-95

Subject: Schedule for Preparing Recommendation for New Probate Code

Tentative Schedule

Attached as Exhibit 1 is a schedule for the time of first consideration of different aspects of the new Probate Code. This schedule must be maintained if we are to have a new Probate Code for introduction in 1986.

In addition to the material listed on the schedule for each meeting, the Commission will need to give further consideration at each meeting to various aspects of matters previously considered. For example, a statute drafts will need to be revised to reflect decisions made at previous meetings and the Commission may wish to review the revised draft. Additional research may be needed concerning questions raised at a meeting and the Commission will need to consider the results of the research at a subsequent meeting. New provisions may be required to deal with problems raised at a meeting and these will need to be reviewed and perfected at subsequent meetings.

The schedule covers only Division 3 (administration of estates of decedents) of the Probate Code. But a new Probate Code will need to include everything in the existing code and perhaps more. We will need to review suggested changes in the wills and intestate succession provisions. (We have already received more suggestions.) We will receive other suggestions concerning probate law and procedure that will need to be studied by the staff and considered by the Commission.

This ambitious schedule looks toward production of a bill for introduction early in 1986. Unfortunately, we do not believe that it will be possible to have the printed recommendation available until sometime during the Spring of 1986, and it is unlikely that the legislative committees will be willing to consider the proposed legislation until the printed detailed explanation of the legislation is available.

The schedule is based on the assumption that sufficient staff and financial resources can be obtained during the 1984-85 fiscal year. See Memorandum 84-91.

Co-ordination with State Bar Section

An essential aspect of maintaining this schedule is the co-ordination of the work with the State Bar Section on Estate Planning, Trust and Probate Law. I have discussed this matter with Mr. Collier and we have worked out an arrangement. The State Bar Section will designate two or more members of the State Bar Section who will work closely as advisers to the staff in preparing material relating to each aspect of the new Probate Code. See Exhibit 2 attached. This will delay the time when the Commission will have the material available for consideration. But it will serve two important purposes:

First, it should permit detection and correction of technical defects in existing law or proposed drafts before the Commission considers the material. This should save meeting time. It will also give the staff the input of knowledgeable persons to identify defects or omissions in existing law and expert assistance at the time we seek to devise an appropriate solution to a particular problem.

Second, it will provide the State Bar Section with one or more persons who are familiar in detail with each part of the material and can brief the Executive Committee of the Section as to the policy issues presented by the material and the relevant considerations. This will permit the Executive Committee to react expeditiously to the material before the meeting when it is to be considered by the Commission. Perhaps the State Bar Section advisors to the staff will be able to check with other probate lawyers concerning difficult policy questions at the time the staff is preparing the meeting materials so that a generally acceptable solution can be devised before the material is prepared for the Commission. Nevertheless, we would expect that there will be basic policy questions upon which no consensus can be reached, and the Commission will need to struggle with these policy issues (such as, for example, whether an appraisal by a probate referee should be mandatory or optional).

The staff is persuaded that the benefits of having the State Bar advisors work with the staff while meeting materials are being developed outweighs the detriment of the delay that will necessarily result in producing the materials for consideration by the Commission. It must be recognized that the system will work only if the State Bar advisors will devote the substantial amount of time necessary to carry out their

responsibilities in an expeditious manner. Otherwise, the project will not remain on schedule and the possibility of producing a new Probate Code for 1986 will be lost.

We have received a letter (attached as Exhibit 3) from Kenneth M. Klug, new Chair of Estate Planning, Trust and Probate Law Section of the State Bar. He points out the problem faced by the Executive Committee in formulating its positions on various issues that are presented for Commission consideration at meetings. The time when the members of the Executive Committee receive meeting materials is in some cases not long enough before the Commission meeting to permit review of the materials by the Executive Committee before the meeting. He proposes that the Commission adopt a rule that it will not consider staff memoranda at a meeting unless the memoranda has been mailed two or three weeks before the meeting.

Assuming that sufficient resources are made available in 1984-85, the staff believes that we can reduce the existing delay in receipt of materials by the members of the Executive Committee if we mail the materials directly to the Executive Committee members at the time we mail them to the Commissioners. Under the existing system, we set aside 15 copies of the materials and call the State Bar Section representative. Sometimes the materials are not picked up for two or three days; often we deliver the materials ourselves to the office of the State Bar Section representative to reduce the delay. We do not know how long it takes after the materials are received before the State Bar Section representative can send them out to the members of the Section. We propose (if necessary resources are obtained) that the staff mail the materials directly to the members on a list to be provided by the State Bar Section. (The State Bar Section would continue to determine who would have the responsibility for review particular materials.)

We can understand the concern expressed by Mr. Klug. We believe that the procedure outlined above for using State Bar advisors with respect to particular matters will help the State Bar Section by providing one or more members of the Section who have considered the material in detail over a period of time and are familiar with the materials and the policy issues they raise. The staff agrees that it would be reasonable to have a general requirement that materials be mailed not later than two weeks before meeting unless there is a strong justification for considering later mailed material. However, we believe that there will

be instances where the Commission will be reviewing material previously considered and revised and it will not be possible to revise and reproduce the material within the time allowed between meetings. The Commission may wish to review this material (before memory of the previous consideration is lost) to determine that the material has been revised or supplemented as instructed by the Commission and to consider any problems created in carrying out the Commission's instructions. There may be other cases where work on a particular matter cannot efficiently proceed without a Commission decision. For these and other reasons, the staff suggests that a two-week rule be adopted but that the staff be given discretion to schedule material later produced in extraordinary cases.

We estimate that the coordination procedure outlined above will delay by approximately one month the time meeting materials will be ready for consideration at a Commission meeting:

- (1) Time allowed State Bar Advisor to review materials (includes time required to mail material to adviser)--one week;
- (2) Time allowed to consider comments of State Bar Advisor and to necessary additional research and drafting (includes mailing times)--one and one-half week;
- (3) Time allowed for clerical support staff to make necessary revisions in original copy sent to State Bar Advisor--one-half week;
- (4) Additional time allowed State Bar Section for review prior to meeting of meeting materials--one week.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

TENTATIVE SCHEDULE
PREPARATION OF NEW PROBATE CODE

November 15, 1984

Receipt of comments from State Bar suggesting technical and substantive revisions in provisions of Division 3 of California Probate Code

January 1985 Meeting

Jurisdiction; Probate of Wills; Contest of Wills
(Division 3, Chs. 1 and 2--Probate Code §§ 300-385)
Executors and Administrators; Appointment; Letters; Termination of Authority;
Oath and Bonds
(Division 3, Chs. 3, 4, 5, 6, 7--Probate Code §§ 400-553.5)
Powers and Duties of Executors and Administrators
(Division 3, Ch. 8, Art. 1--Probate Code §§ 570-590)
(Division 3, Ch. 13--Probate Code §§ 750-814)
(Division 3, Ch. 14--Probate Code §§ 830-860)
Distribution Without Administration
(Division 3, Ch. 10, Art. 1--Probate Code §§ 630-632)

March 1985 Meeting

Inventory and Appraisement and Probate Referees
(Division 3, Ch. 9--Probate Code §§ 600-615)
(Division 3, Ch. 23--Probate Code §§ 1300-1313)
Compensation, Commissions, and Fees
(Division 3, Ch. 15, Arts. 1 and 2--Probate Code §§ 900-911)
Creditors' Claims; Presentation and Payment of Claims; Accountings
(Division 3, Ch. 12--Probate Code §§ 700-738)
(Division 3, Ch. 15, Art. 3--Probate Code §§ 920-932)
(Division 3, Ch. 15, Art. 4--Probate Code §§ 950-956)
(Division 3, Ch. 15, Art. 4a--Probate Code §§ 970-977)
(Division 3, Ch. 15, Art. 5--Probate Code § 980)

May 1985 Meeting

Distribution and Discharge
(Division 3, Ch. 16, Arts. 1, 2, 3, 4, 6--Probate Code §§ 1000-1043a,
1060-1068)
(Division 3, Ch. 18--Probate Code §§ 1100-1106)
Independent Administration
(Division 3, Ch. 8, Art. 2--Probate Code §§ 591-591.7)
Distribution Without Administration
(Division 3, Ch. 10, Arts. 2, 2.5, 3--Probate Code §§ 640-657)
(Division 5--Probate Code §§ 5100-5407)
Legacies and Interest
(Division 3, Ch. 11--Probate Code §§ 660-664)
Orders; Rules of Procedure; Appeals
(Division 3, Ch. 22, Arts. 2, 3, 4--Probate Code §§ 1220-1242)

July 1985 Meeting

Approve text of trust portion of new Probate Code
Miscellaneous Matters
(Division 3, Ch. 17--Probate Code §§ 1080-1082)
(Division 3, Ch. 21--Probate Code §§ 1190-1192)

(Division 3, Ch. 20--Probate Code §§ 1140-1155)

(Division 3, Ch. 24--Probate Code §§ 1350-1359)

Notices

(Division 3, Ch. 22, Art. 1--Probate Code §§ 1200-1210)

Uniform Statutory Will Act

(new Uniform Act)

Conforming revisions in existing Probate provisions and in other codes

September 1985 Meeting

Approve text of New Probate Code for introduction as preprinted bill

Approve preliminary portion of recommendation and official comments for trust portion of new Probate Code

November 1985 Meeting

Approve printing of recommendation for new Probate Code

March 1986

Printed recommendation available for distribution for comment and for legislative hearings on new Probate Code

March 1986 Meeting

Review comments and suggestions concerning new Probate Code bill and determine necessary amendments

1. JURISDICTION: PROBATE OF WILLS; CONTEST OF WILLS (Sterling & DeMouilly)
 Division 3, Chs. 1 and 2 (PC §§ 300-385)
 State Bar Section Advisors: H. Neal Wells, III; Hermione K. Brown
2. EXECUTORS AND ADMINISTRATORS; APPOINTMENT; LETTERS; TERMINATION OF AUTHORITY; OATH AND BONDS (Sterling & DeMouilly)
 Div. 3, Chs. 3, 4, 5, 6, 7 (PC §§ 400-553.5)
 State Bar Section Advisors:
 Chs. 3, 4, 5, 6 (Arts. 1 and 2) - Colleen M. Claire; William V. Schmidt
 Chs. 6 (Arts. 3 and 4), 7 - James C. Opel; Robert A. Schlesinger
3. POWERS AND DUTIES OF EXECUTORS AND ADMINISTRATORS (Murphy & DeMouilly)
 Generally Div. 3, Ch. 8, Art. 1 (PC §§ 570-590)
 Sales Div. 3, Ch. 13 (PC §§ 750-814)
 Notes, Mortgages, Leases, Conveyances and Exchanges Div. 3, Ch. 14 (PC §§ 830-860)
 State Bar Section Advisors:
 Ch. 8 (Art. 1) - James C. Opel; Robert A. Schlesinger
 Chs. 13, 14 - Kathryn A. Ballsun; James F. Rogers
4. INVENTORY AND APPRAISEMENT AND PROBATE REFEREES (Murphy & DeMouilly)
 Inventory and Appraisal Div. 3, Ch. 9 (PC §§ 600-615)
 Probate Referees Div. 3, Ch. 23 (PC §§ 1300-1313)
 State Bar Section Advisors: Matthew S. Rae, Jr.; Irwin D. Goldring
5. CREDITORS' CLAIMS; PRESENTATION AND PAYMENT OF CLAIMS; ACCOUNTINGS (Sterling & DeMouilly)
 Presentation and Payment of Claims Div. 3, Ch. 12 (PC §§ 700-738)
 Accountings Div. 3, Ch. 15, Art. 3 (PC §§ 920-932)
 Payment of Debts and Expenses Div. 3, Ch. 15, Art. 4 (PC §§ 950-956)
 Federal Estate Tax Proration Div. 3, Ch. 15, Art. 4a (PC §§ 970-977)
 Apportionment of Debts Div. 3, Ch. 15, Art. 5 (PC § 980)
 State Bar Section Advisors:
 Ch. 12 - Harley J. Spitler; Clare H. Springs
 Ch. 15 (Arts. 3, 4, 4a, 5) - James D. Devine; James V. Quillinan
6. COMPENSATION, COMMISSIONS, AND FEES (Murphy & DeMouilly)
 Div. 3, Ch. 15, Arts. 1 and 2 (PC §§ 900-911)
 State Bar Section Advisors: James A. Willett; H. Bruce Friedman
7. PARTITION BEFORE DISTRIBUTION (Sterling & DeMouilly)
 Div. 3, Ch. 18 (PC §§ 1100-1106)
 State Bar Section Advisors: Leonard W. Pollard, II; James R. Goodwin

8. DISTRIBUTION AND DISCHARGE
 - Div. 3, Ch. 16, Arts. 1, 2, 3, 4, 6 (PC §§ 1000-1043a; 1060-1068) (Murphy & DeMouilly)
 - State Bar Section Advisors: Lloyd W. Homer; John S. Hartwell; D. Keith Bilter
9. DISTRIBUTION WITHOUT ADMINISTRATION (Murphy & DeMouilly)
 - Affidavit Procedure for Small Estate Div. 3, Ch. 10, Art. 1 (PC §§ 630-632)
 - Small Estate Set Aside Div. 3, Ch. 10, Art. 2 (PC §§ 640-647)
 - Administration of Spousal Property Div. 3, Ch. 10, Art. 2.5 (PC §§ 649.1-649.5)
 - Determination or Confirmation of Spousal Property Div. 3, Ch. 10, Art. 3 (PC §§ 650-657)
 - Multiple Party Accounts Div. 5 (PC §§ 5100-5407)
 - State Bar Section Advisors: William H. Plageman, Jr.; John L. McDonnell, Jr.
10. INDEPENDENT ADMINISTRATION (Murphy & DeMouilly)
 - Div. 3, Ch. 8, Art. 2 (PC §§ 591-591.7)
 - State Bar Section Advisors: William H. Plageman, Jr.; John L. McDonnell, Jr.
11. LEGACIES AND INTEREST (Sterling & DeMouilly)
 - Div. 3, Ch. 11 (PC §§ 660-664)
 - State Bar Section Advisors: not yet named
12. MISCELLANEOUS MATTERS (Sterling & DeMouilly)
 - Determination of Heirship Div. 3, Ch. 17 (PC §§ 1080-1082)
 - Establishing Identity of Heirs Div. 3, Ch. 21 (PC §§ 1190-1192)
 - Public Administrators Div. 3, Ch. 20 (PC §§ 1140-1155)
 - Administration of Estate of Missing Persons Presumed Dead Div. 3, Ch. 24 (PC §§ 1350-1359)
 - State Bar Section Advisors: Leonard W. Pollard, II; James R. Goodwin
13. NOTICES (Sterling & Staff)
 - Div. 3, Ch. 22, Art. 1 (PC §§ 1200-1210)
 - State Bar Section Advisors: Theodore J. Cranston; Charles A. Collier, Jr.
14. ORDERS; RULES OF PROCEDURE; APPEALS (Sterling & DeMouilly)
 - Div. 3, Ch. 22, Arts. 2, 3, 4 (PC §§ 1220-1224, 1230-1233; 1240-1242)
 - State Bar Section Advisors: Theodore J. Cranston; Charles A. Collier, Jr.
15. UNIFORM STATUTORY WILL ACT (new Uniform Act) (DeMouilly)
16. TRUSTS (Ulrich & Sterling)
 - Div. 3, Ch. 19 (PC §§ 1120-1139, 19), Ch. 22, Art. 1.5 (PC §§ 1215-1215.4) and other provisions in other codes

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

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October 17, 1984

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Dear John:

I have received the tentative agenda for the November 9-10 meeting of the California Law Revision Commission. A number of the items scheduled for discussion relate to memoranda which, as of the date the agenda was prepared, had not yet been sent out. Presumably, most of these memoranda will be sent out well before the November 9-10 meeting.

As you know, for the past several years, representatives of the Estate Planning, Trust and Probate Law Section have regularly attended the meetings of the California Law Revision Commission. We have provided oral and written comments to the Commission regarding proposals in the probate and trust area. We believe our comments have been helpful to you, and we appreciate that the Commission has been highly receptive to our input.

This year, in order that our Section can provide even more timely comments that truly reflect the complete deliberation of our study teams and executive committee, I have scheduled the meetings of our executive committee to precede the meetings of the Law Revision Commission by one or two weeks. By doing so, our executive committee will have the opportunity to fully review and discuss the Law Revision Commission memoranda so that our representatives to the Law Revision Commission will be better able to present our comments. Hopefully, the coordination of our meetings

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with your meetings will eliminate some of the problems we have had in providing timely responses.

Another obstacle to our providing timely responses has been the time lag between the date your memorandas are issued and the date they are received by our study groups. We have streamlined our procedure for disseminating the memoranda to our committee members by having Jim Quillinan physically pick up the memoranda from your office and mail them to our members immediately.

Unfortunately, our Executive Committee cannot resolve the time problem which results from memoranda which are distributed after our Executive Committee meetings. It is not possible for us to review memoranda and provide timely comments at the Law Revision Commission meeting with less than a two- or three-week lead time. We believe that our responses, and indeed the responses of all interested persons, could be improved if the Commission were to adopt a rule that it would not consider for discussion at any meeting a memorandum which had not been submitted for comment at least two or three weeks prior to the Commission meeting. Such a rule would provide a minimum time for all interested persons to review memoranda and to submit comments.

A time rule would also benefit the Commission and staff. Presently, if comments are received after the Commission has deliberated on a matter, the choice is to either ignore the comments or to re-open the deliberation. A two- or three-week rule would allow for all comments to be considered at the primary deliberations, and might eliminate the need for time-consuming repeated deliberations. Further, we believe that such a rule would improve the quality of the public comments before the Commission at the time of deliberations.

Accordingly, we request that the Commission adopt a two- or three-week rule for agenda items. (Our proposal suggests the adoption of a rule for initial memoranda. Supplemental memoranda which are limited to public comments should be available to the Commission for consideration while discussing the initial memorandum, if the initial memorandum would otherwise qualify under the two or three-week rule for being on the agenda.)

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We would appreciate your bringing before the Commission for consideration the matter of whether or not such a rule should be adopted. Thank you for your assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kenneth M. Klug". The signature is fluid and cursive, with a large, sweeping initial "K" and a long, trailing flourish at the end.

Kenneth M. Klug
Chair, Estate Planning,
Trust and Probate Law Section