

Memorandum 87-56

Subject: Study L - Schedule for Work on New Probate Code

Background

For the 1988 legislative session, the Commission has set as its goal the submission of legislation to cover the remainder of the material in Division 3 of the Probate Code (administration of estates of decedents). For the 1989 legislative session, the Commission has set as its goal the submission of a new Probate Code to replace the existing Probate Code.

The staff believes that the staff can produce meeting materials on a timely basis that will permit the Commission to meet these goals. The major problem in meeting the Commission's goals is the time that the Commission itself must devote to Commission work in order to meet the goals.

The Commission needs to consider its recommendations with great care. Over the last 20 years or so, the Commission has established a reputation for careful work. As a result, with rare exceptions, its recommendations are enacted without any significant discussion at legislative committee hearings. The legislative committees are willing to rely upon the Commission's reputation and approve the proposed legislation without making an independent investigation to assure that the recommendations are sound from a substantive viewpoint and that the proposed legislation is free from technical defects. We must retain this reputation, and we cannot reduce the quality of our work product in order to meet our goals.

The Commission needs to have its recommendations available in printed pamphlet form at the time its recommended legislation is being considered by the Legislature. The recommendations relating to the 1987 legislative program were not approved for printing until late in 1986 and early in 1987. As a result, the printed reports have not yet (on July 4, 1987) been delivered by the printer. At considerable cost, more than one hundred copies of the recommendations were produced in Xerox form (each copy consisting of about 500 pages). The printed

pamphlets were not available to persons and organizations who are interested in the probate law study.

In past years, we have sought to approve recommendations for printing in October or November so the pamphlet containing the recommendations would be available early in March of the next year. This makes the pamphlet available at the time when the legislative committees are considering the proposed legislation. Accordingly, if we want our printed recommendations available when our probate bill is considered by the legislative committees next session, we should approve the last of our recommendations for 1988 at our November meeting. We need to approve most of the recommendations for printing at our July and September meetings so that our support staff can spread the work of preparing them for printing over a period of several months.

If we are to approve the last of our 1988 recommendations for printing at our November meeting, the Commission needs to maintain a schedule that produces tentative recommendations that can be distributed to interested persons for review and comment on a timely basis. We need to schedule our work so that we can send out for review and comment during July and September all the tentative recommendations covering the recommendations to the 1988 legislative session.

The following is a listing of the staff suggested times for various actions on recommendations if we want to cover all of existing Division 3 in legislation we propose for enactment in 1988:

Inventory and Appraisal This Recommendation is scheduled for approval for printing at the July 1987 meeting.

Public Guardian and Public Administrator. This Recommendation is scheduled for approval for printing at the July 1987 meeting.

Abatement; Interest and Income Accruing During Administration. At the July 1987 meeting, a Tentative Recommendation is scheduled for approval for distribution to interested persons for review and comment. At its September 1987 meeting, the Commission should review the comments received, and the recommendation (with any necessary revisions) should be approved for printing at the September or October meeting.

Accounts. At the July 1987 meeting, a Tentative Recommendation is scheduled for approval for distribution to interested persons for review and comment. At its September

meeting, the Commission should review the comments received, and the recommendation (with any necessary revisions) should be approved for printing at the September or October meeting.

Rules of Procedure. At the July 1987 meeting, a Tentative Recommendation is scheduled for approval for distribution to interested persons for review and comment. At its September meeting, the Commission should review the comments received, and the recommendation (with any necessary revisions) should be approved for printing at the September or October meeting.

Litigation Involving Decedent. At the July 1987 meeting, the Commission will review a staff draft of a Tentative Recommendation. The staff believes that this draft can be approved at the July meeting for distribution to interested persons for review and comment. At its September meeting, the Commission would review the comments received, and the recommendation (with any necessary revisions) should be approved for printing at the September or October meeting.

Miscellaneous Provisions of Division 3. At the July 1987 meeting, the Commission will review a draft statute disposing of various miscellaneous provisions of Division 3. The provisions of this statute should be approved at the July meeting for inclusion in the legislation to be submitted to the 1988 session.

Probate Attorney's fees. The staff hopes to have a staff background study of this matter ready for Commission consideration at the July 1987 meeting. The basic policy issues can be resolved when this staff study is considered. At a subsequent meeting, a Tentative Recommendation will be considered and approved for distribution to interested persons for review and comment. At the November 1987 meeting, the Commission should approve a recommendation on probate attorney fees for printing.

Compensation of Personal Representative. The staff hopes to have a staff background study of this matter ready for Commission consideration at the July 1987 meeting. The basic policy issues can be resolved when this staff study is considered. At a subsequent meeting, a Tentative Recommendation will be considered and approved for distribution to interested persons for review and comment. At the November 1987 meeting, the Commission should approve a recommendation on compensation of the personal representative for printing.

Opening Estate Administration. In 1986, a Tentative Recommendation was sent out for review and comment. Memorandum 86-201 and various supplements have been included on the meeting agenda since February 1987, but the Commission has not reached this item on its agenda. The Commission will have to review the comments and make the necessary revisions

in the Tentative Recommendation. The Commission can then review a revised Recommendation and approve it for printing. We hope that this Recommendation can be approved for printing at the September 1987 meeting.

Distribution and Discharge. In 1986, a Tentative Recommendation was sent out for review and comment. Memorandum 86-203 has been included on the meeting agenda for recent meetings, but the Commission has not reached this item on its agenda. The Commission will have to review the comments and make the necessary revisions in the Tentative Recommendation. The Commission can then review a revised Recommendation and approve it for printing. We hope that this Recommendation can be approved for printing at the September 1987 meeting.

Nonresident Decedent. In 1986, a Tentative Recommendation was sent out for review and comment. Memorandum 86-204 has been included on the meeting agenda for recent meetings, but the Commission has not reached this item on its agenda. The Commission will have to review the comments and make the necessary revisions in the Tentative Recommendation. The Commission can then review a revised Recommendation and approve it for printing. We hope that this Recommendation can be approved for printing at the September 1987 meeting.

Determining Class Membership. In 1986, a Tentative Recommendation was sent out for review and comment. Memorandum 86-205 has been included on the meeting agenda for recent meetings, but the Commission has not reached this item on its agenda. The Commission will have to review the comments and make the necessary revisions in the Tentative Recommendation. The Commission can then review a revised Recommendation and approve it for printing. We hope that this Recommendation can be approved for printing at the September 1987 meeting.

The schedule for the work outlined above is summarized in Exhibit 1 (attached).

There are additional probate law matters that should be considered during 1987 if the Commission is to meet its goal to submit a new Probate Code for enactment in 1989. For example, the provisions relating to multiple party accounts should be given careful study during 1987, and a recommendation should be submitted to the 1988 legislative session if possible. Also, problems arising under recently enacted probate legislation will be brought to the Commission's attention for correction, and consideration of these matters will require Commission time.

Scheduling Additional Hours for Meetings

The Commission should recognize that covering the matters outlined above would require substantially more meeting time than the Commission has allowed in the past. We scheduled the June and subsequent meetings to start at 10:00 a.m. on Thursday rather than at 3:00 p.m. The staff felt that the Commission did an excellent job in covering the materials it covered at the June meeting. But more hours of actual meeting time will be necessary if the Commission is to meet its goal for the 1988 legislative session. In this connection, it should be noted that it would be significantly less expensive to meet for additional hours at each meeting already scheduled than it would be to schedule additional meetings.

Does the Commission wish to schedule more hours of meeting time during the remainder of 1987 or does it wish to adopt a less ambitious goal for the 1988 legislative session?

Carryover of Excess Staff Vacation Hours

During the last several years, the Executive Secretary and other members of the legal staff have carried over excess vacation hours into the next calendar year. The Commission approved this so that significant progress could be made on the probate law study.

The Executive Secretary, having more than 26 years of state service, now accrues about one month of vacation each year. In addition to the one month of vacation he will earn this year, he has approximately three months of excess vacation hours carried over from prior years. During the first three weeks of July, the Executive Secretary will have to work full time (or more) to prepare background studies on probate attorney's fees and compensation of personal representatives and to deal with other matters. For the remainder of 1987, he would have to work at less than one-half time to liquidate the excess vacation hours. If this were done, the Commission's goals for the 1988 session could not be met. At the same time, it is important that this huge accumulation of excess vacation hours be significantly reduced during 1987. The Executive Secretary plans to take as many

hours of vacation time during the remainder of 1987 that it is possible to take without seriously jeopardizing the Commission's goal for the 1988 legislative session.

It is requested that the Commission authorize the legal staff to carry over into 1988 any excess hours of vacation that can not be taken during 1987 without seriously jeopardizing the Commission's goal for the 1988 legislative session. The Executive Secretary should make a serious effort to reduce the excess hours of vacation that will need to be carried over into 1988.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

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Exhibit 1

SCHEDULE FOR COMMISSION ACTION ON MATTERS TO BE INCLUDED IN
1988 LEGISLATIVE PROGRAM

Note. It may not be possible to take some of the actions scheduled below at the meeting indicated in the schedule. This is because the particular tentative recommendation may require much time to prepare and approve, or may require much revision in light of the comments received from interested persons.

July 1987 Meeting

Approve for Printing

Inventory and Appraisal
Public Guardian and Public Administrator
Miscellaneous Provisions of Division 3

Approve Tentative Recommendation for Distribution for Comments

Accounts
Rules of Procedure
Litigation Involving Decedent
Abatement; Interest and Income Accruing During Administration

Review Comments Received on Tentative Recommendation

Opening Estate Administration
Distribution and Discharge
Nonresident Decedent
Determining Class Membership

Determine Basic Policy Issues

Probate Attorney's Fees
Compensation of Personal Representative

September 1987 Meeting

Approve for Printing

Opening Estate Administration
Distribution and Discharge
Nonresident Decedent
Determining Class Membership

Approve Tentative Recommendation for Distribution for Comments

Probate Attorney's Fees
Compensation of Personal Representative

Review Comments Received on Tentative Recommendation

Accounts

Rules of Procedure

Litigation Involving Decedent

Abatement; Interest and Income Accruing During Administration

October 1987 Meeting

Approve for Printing

Accounts

Rules of Procedure

Litigation Involving Decedent

Abatement; Interest and Income Accruing During Administration

Review Comments Received on Tentative Recommendation

Probate Attorney's Fees

Compensation of Personal Representative

November 1987 Meeting

Approve for Printing

Probate Attorney's Fees

Compensation of Personal Representative