

Memorandum 91-1

Subject: Administrative - Personnel and Financial Matters

Purpose of this Memorandum

This memorandum presents background information for the Commission concerning personnel and fiscal matters. Although Commission action is not necessarily required, the memorandum is included on the Agenda for the Commission's January meeting in case the memorandum presents matters the Commission wishes to discuss.

Planned Retirement of Executive Secretary

The Executive Secretary plans to retire within the next year. I want the Commission to be aware of this decision. I have not yet fixed a definite date for retirement, but my anticipated date for retirement is sometime after July 1, 1991, and before the end of 1991.

Legislation enacted in 1990 gives an approximate five percent increase in retirement benefits for a person who retires after July 1, 1991. Also, special retirement incentives may be enacted to encourage retirements in order to help meet the anticipated revenue shortfall for the 1991-92 fiscal year. When the financial implications of retirement are clarified, I can fix the actual date of my retirement.

Effect of Revenue Shortfall on Law Revision Commission

At the last meeting, Commissioner Marzec requested that the staff provide information concerning the fiscal situation of the Law Revision Commission.

We cannot tell at this time the funds that will be available to the Commission for the 1991-92 fiscal year. It is possible that the funds for 1991-92 will be reduced to such an extent that the Commission will have only funds to finance two and three-fourths legal staff positions instead of the existing three and three-fourths positions the

Commission now has. In other words, when the Executive Secretary retires, there could be a loss of one position on the legal staff. Nevertheless, we plan to operate on the assumption that there will be sufficient funds to continue our presently authorized positions after the Executive Secretary retires.

1990-91 fiscal year. There was a \$21,000 reduction in the Commission's appropriation for the 1990-91 fiscal year. This reduction was the result of a three percent across-the-board reduction for all agencies. This reduction was necessary in order to keep state expenditures within anticipated revenues.

For the 1990-91 fiscal year, the total authorized expenditures of the Commission are \$657,000. The Legislature approved the Commission's budget as proposed by the Governor (with the addition of a staff legal position) in the amount of \$660,000. To this amount was added \$18,000 to cover a general salary increase for all state employees, making the total \$678,000. However, the general across-the-board decrease made as a part of the budget package for the current fiscal year resulted in a \$21,000 reduction in the actual amount available for the 1990-91 fiscal year. Despite this reduction, we still had a net increase over the prior fiscal year (because we had obtained \$35,000 funding for an additional position on the legal staff).

Governor Deukmejian has just imposed additional across-the-board reduction in amounts authorized to be expended by state agencies during 1990-91. This is a one-percent reduction and will reduce our budget for 1990-91 by an additional \$7,000, making the total reductions in the approved budget \$28,000. It is apparent that we do not have funds to add an additional member to the legal staff during 1990-91. Nevertheless, we have sufficient funds to cover our other expenses for this fiscal year, especially since we cannot make any new consultant contracts or purchase any new equipment.

1991-92 fiscal year. For the 1991-92 fiscal year, the budget prepared by Governor Deukmejian will provide only \$634,000, a reduction of \$23,000 from our net budget for 1990-91 (before the latest \$7,000 reduction). This is because the additional legal staff position was approved for one year only, and the new budget eliminates the funds to finance this position for 1991-92.

As you are well aware, there is a shortfall in the revenues of the state for 1991-92 that has been estimated to be about \$6 billion. We do not know what action the new Governor will take with respect to the budget for 1991-92, but it is apparent that some combination of reduction in expenditures and new revenue measures will be required. We have no information on just how a reduction in expenditures will be achieved. Whether we will receive all of the reduced amount proposed in Governor Deukmejian's budget is uncertain. In any case, it is apparent that significant measures will have to be taken to keep the Commission's expenditures for 1991-92 within the amount we will receive. These cost cutting measures will no doubt have a significant effect on Commission activities. We will give you additional information as soon as it comes to our attention. When we know the amount that will be available for 1991-92, the staff will provide you with suggestions for revisions in our procedures so that the Commission will be able to continue to function within the available funds.

To fill the staff vacancy created by my retirement, we can hire a law student graduating next June as a graduate legal assistant and promote the person hired to a legal position upon his or her admission to the bar in November 1991. This will help us to live within the funds that we expect will be provided for the 1991-92 fiscal year.

We do not expect that the new staff member will make a great contribution in producing statute drafts and recommendations during the first year or so. Time of experienced staff members will be required in training and checking the work of the new staff member. This necessarily will reduce the output of the experienced staff members.

Work on new Family Code

The staff is concerned that work on the new Family Code not be adversely effected by the retirement of the Executive Secretary. This project requires one who can produce a high quality product that does not require extensive checking and redrafting by an experienced staff member. As soon as the recommendations to the 1991 legislative session have been sent to the printer, the Executive Secretary plans to devote substantially all of his time to the preparation of a significant portion of the new Family Code.

The Assistant Executive Secretary and other members of the legal staff will assume much of the responsibility for the other required legal and administrative work. The major portion of work in securing enactment of recommendations to the 1991 legislative session will be handled by the other members of the legal staff. The work on recommendations to future legislative sessions also will be handled primarily by the other members of the legal staff. This will assure that a knowledgeable member of the legal staff will be available to present the 1992 recommendations to the legislative committees. The Assistant Executive Secretary will handle the administrative matters, the Executive Secretary being available for assistance if necessary.

If the Executive Secretary finds it possible to work primarily on the Family Code during the next six months, we believe that it will possible to recommend a significant portion (perhaps 300 pages) of the new Family Code for enactment by the Legislature in 1992.

If funds are available during the 1991-92 fiscal year, the Executive Secretary would like to work on this project after his retirement under a consultant contract. No decision on this matter is required at this time. When the amount of funds that will be available for expenditure in 1991-92 are known, the Commission can consider whether it wishes to use this means of carrying this project forward.

Promotion to Fill Vacant Positions

In January 1987, the Commission approved a special salary adjustment for the position of Executive Secretary, partly in anticipation of the future retirement of the Executive Secretary. At that time, the difference in the salary of the Executive Secretary and the Assistant Executive Secretary was insignificant. One reason that I proposed that there be an increase in the salary of the position of Executive Secretary was that the salary should be such that an appointment to this position would be a promotion for the Assistant Executive Secretary.

At the time the Commission approved the special salary adjustment, the Commission expressed its intention to promote Mr. Sterling to the position of Executive Secretary and Mr. Ulrich to the position of Assistant Executive Secretary when the Executive Secretary retired. I believe this is a sound decision.

Mr. Sterling has been an outstanding member of the Commission's legal staff for over 20 years, the last 16 years of which he has served as the Commission's Assistant Executive Secretary. He has run the Commission in the Executive Secretary's absence and has been the key legal producer on the staff. In addition to his work for the Commission, he has published in legal journals, written for the Continuing Education of the Bar, and served as reporter for several uniform acts. His outstanding credentials would make him the leading candidate for this or any other comparable position in the nation. He is of course already familiar with our operations, and has goodwill in Sacramento as well as the respect of his co-workers. I believe this would be an excellent appointment, and recommend that the Commission formalize it, effective on the retirement of the Executive Secretary.

Mr. Ulrich has been on the Commission's legal staff for over 18 years, and has become an increasingly central player on it. He has a good working relationship with Mr. Sterling, and is ready to assume the position of administrator in Mr. Sterling's absence and to act as key legal producer. I recommend that Mr. Ulrich be promoted to the position of Assistant Executive Secretary when that position becomes vacant.

Recruitment of New Staff Counsel

The tight budget situation that will be faced by the Commission during the coming fiscal year, discussed above, mandates that the Commission hire replacement legal staff at the entry level. Although we do not know whether we will have sufficient funds in 1991-92 to retain our legal staff at the three and three-fourths level, we have taken initial steps to recruit a new attorney to fill what will be a vacant staff counsel position.

This is a civil service position, and we are limited in the type of recruitment we can conduct and procedures we must follow. We have sent notices to the placement offices of the major California law schools that there will be a staff opening, and have sent out examination announcements. Our plan is to examine applicants in January to establish a civil service eligibility list. We will interview top-ranking applicants on the civil service eligibility list

in February and make a job offer at that time (contingent on there being funds available in 1991-92). (In addition, a hiring freeze is currently in effect, and we do not know when it will be lifted.) The new law school graduate would begin work in the summer of 1991.

We hope to attract fresh young talent from one of the law schools, but our ability to do this is limited by the relatively low state pay scales. With a starting annual salary of \$36,000, we can hardly compete for top law graduates. This is particularly true since state policy dictates that we hire a qualified minority or woman candidate if possible, and there is a great demand for these candidates. This problem is aggravated by the fact that there are no high level positions in the agency and very little turnover at the top. The current maximum salary of a staff counsel (the positions held by Mr. Ulrich and Mr. Murphy) in this agency is less than \$64,000 annually.

There is one major attraction of the position, however, that others cannot necessarily match: the work is intellectually challenging and provides an opportunity to have an impact on the law. We hope this will be the inducement we can offer to attract a top candidate.

If our recruitment efforts do not yield a person of the caliber we need, we may look to the Legislative Counsel's hiring list, although he has told us in the past that he picks all the best candidates off the list and we would not be satisfied with one of those who are left. Other options are also available, including recruitment by transfer within state service, although this is also a problem, given the lack of high level positions within the agency and the anticipated tight budget during 1991-92.

Respectfully submitted,

John H. DeMouilly
Executive Secretary