

#23

7/15/74

First Supplement to Memorandum 74-37

Subject: Study 23 - Partition

The Commission's consultant on the partition study, Mr. Elmore, recommends that portions of the new partition law be made applicable to actions commenced prior to the effective date of the new law. Mr. Elmore's specific recommendations are embodied in the draft operative date provision attached as Exhibit I, which he has submitted for the Commission's consideration.

Respectfully submitted,

Nathaniel Sterling
Staff Counsel

EXHIBIT I

DRAFT OF OPERATIVE DATE AND APPLICABILITY SECTION FOR CONSIDERATION

Sec. . This act shall become operative July 1, 1976. It shall apply to actions filed prior to such date to the extent hereinafter provided, and to actions filed on or after such date.

In the case of actions filed prior to July 1, 1976, (i) Sections 872.210, 872.430, and 872.710 shall not apply; (ii) particular procedures in the action which are initiated on or after such date shall be taken pursuant to the provisions of this act, unless, in the opinion of the trial court, application of such provisions would be materially inconsistent with proceedings theretofore had or would substantially interfere with the effective conduct of the action or the rights or interests of the parties or third persons; (iii) whenever on such date summons was issued but not served, service and proof of service may be made pursuant to the law in effect immediately prior to this act; (iv) in other matters, when the provisions of this act do not govern, the law in effect immediately prior to this act shall apply; and (v) whenever securities have been taken, investments made, or funds deposited pursuant to former Section 777, 788, 789, 793, or 794, or a trust has been established pursuant to former Section 784 of the Code of Civil Procedure, the trial court shall continue to have jurisdiction, as provided by such prior law and, in addition, upon reasonable notice and opportunity to be heard, may order that securities, investments, or funds held by the county clerk be assigned, delivered or paid over to a trustee or agent, or otherwise transferred from the name or custody of the county clerk, if such course of action appears in the best interests of the interested persons.