

5/1/79

Memorandum 79-20

Subject: Administrative Matters (Approval of Contracts)

The Commission presently has available some funds for research consultants, and additional money may become available by transfer from savings on temporary help. We should approve any necessary contracts with research consultants at the May meeting or the money will revert at the end of this fiscal year.

Creditors' Remedies. We will be reviewing the enforcement of judgments tentative recommendation and the comments received on it at the July and September meetings, and we should have the assistance of our main consultant, Professor Riesenfeld. Professor Riesenfeld's current contract with us expires in June and needs to be extended. The staff recommends that Professor Riesenfeld be retained on the same terms as the existing contract to provide expert advice to the Commission. The new contract would be for two years and would be in an amount not to exceed \$300 to cover his travel expenses.

Community Property. The Commission has decided to give high priority to the study of community property equal management and control problems. After consulting with Chairperson Williams and Commissioner Love, the staff approached Professor Carol S. Bruch of the University of California at Davis Law School about the possibility of serving as a consultant on this study. Professor Bruch is currently at the Institut fur Internationales Recht in Munich, Germany, but will be at Davis for the next two years. She teaches community property courses and has written about several community property problems. She writes to us:

As you may know, I have gathered quite a bit of relevant material in connection with my writing (California Law Review, September 1977), legislative drafting (bills last year authored by Waters, Fazio, Gage, Sieroty and Wilson), and speaking activities (especially a panel on current developments nationwide in the marital property field, presented in Atlanta in April 1978), as well as in connection with my teaching and my current research here in comparative family law.

Professor Bruch is highly recommended by Commissioner Love.

The staff informed Professor Bruch that the Commission places a high priority on this study, and would like to have it as soon as possible (the staff suggested an October 1, 1979, delivery date); the staff

also indicated that \$5,500 would be available for this study. Professor Bruch has indicated that she would be interested in the project, but notes two problems. (1) An October delivery date is too short a time; she could promise the study for Summer 1980. (2) She believes some of the most serious community property problems are in the area of equal division, and would hope that any study of equal management and control would be sufficiently broad to include equal division.

The Commission should decide whether Professor Bruch's proposed delivery date is satisfactory. The staff has not approached any other potential consultants and does not know whether any other qualified person could promise a satisfactory study sooner. If the Commission approves a contract with Professor Bruch as a consultant on this topic, the contract should give her latitude to investigate equal division problems and other community property problems. In view of the broader scope of the study, we recommend the compensation be \$7,000 with an additional \$500 to cover travel expenses in attending Commission meetings when the topic is discussed.

Dismissal for Lack of Prosecution. One topic on our agenda that is fairly technical but on which expert assistance would be useful is dismissal of an action for lack of prosecution. There are conflicting provisions in the Code of Civil Procedure and hundreds of cases creating exceptions not appearing in the statutes. A consultant to digest the cases and come up with a statement of what the law actually is and what it should be would be invaluable. Garrett Elmore has indicated an interest in this problem. The staff would like to make a contract with him to prepare a study on this matter. We believe \$2,000 should be adequate for this purpose with an additional \$300 for travel expenses. We could make this contract only if our request to transfer funds from temporary help to research contracts is approved by the Department of Finance.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary