

8/7/79

Memorandum 79-41

Subject: Approval of Contracts

Background

The Commission entered into a contract (dated June 12, 1978) with Professor Susan Westerberg Prager to prepare a background report covering the liability of various kinds of community and separate property to third-party creditors for debts and tort obligations of either or both of the spouses, the exemptions from execution that should be allowed married persons when one or both spouses is a judgment debtor, and related matters such as whether the statute pertaining to married women as sole traders (Code Civ. Proc. §§ 1811-1821) should be revised or repealed. The contract required the consultant's report to be delivered on March 1, 1979, but the Commission extended this time until July 1979 because the consultant was unable to meet the March 1 delivery date. Professor Prager has advised the Executive Secretary that she will be unable to prepare the study because she does not have sufficient uninterrupted time to engage in the extensive research the study requires and because she has found the study to be a much more complex one than she originally anticipated.

Staff Recommendation Concerning Prager Contract

The staff sees no alternative but to terminate the Prager contract as she has requested. Although she has devoted some resources (including research assistant research) to the study, we recommend that the contract be terminated and both parties be relieved of all obligations under the contract. Under the circumstances, the staff does not recommend any payment at all to Professor Prager. We will have to engage another consultant to prepare the necessary study.

Recommendation Concerning Contract With Professor Reppy

Professor William A. Reppy, Jr., of Duke Law School is the best qualified person to prepare the necessary study; he is recognized as the foremost community property scholar in the nation. When we originally considered who to recommend for the study, he was at the top of our list. However, there was some advantage in having a California consultant. Also, we wanted to retain a woman as a consultant if possible. Accordingly, we selected Professor Prager.

When Professor Prager indicated she was unable to do the study, I asked her who she would recommend to do it. She recommended Professor Reppy if he was available. We have contacted Professor Reppy. He is willing to do the study for the same compensation as Professor Prager—\$5,000. He believes that he can deliver the completed study in the form of a preliminary draft of a law review article by the end of January 1980. He reports that he is familiar with the problems involved in liability of community and separate property for debts and torts of one or both spouses and generally familiar with the law of the various community property states that relates to those problems. He has not studied the problem of exemptions of married persons from execution.

The staff believes we are indeed fortunate to obtain the services of Professor Reppy. At this moment in time, he is in a position to prepare the study. He is just completing work up-dating his community property book and will be on a half-time sabbatical leave during the first part of the next school year. Accordingly, he can devote a substantial amount of time to the study and the January 1980 delivery date is realistic. If Professor Reppy finds it convenient, we believe it would be helpful to the Commission if he could attend one meeting of the Commission when his study is first considered and perhaps a second meeting when the comments of interested persons on the tentative recommendation resulting from his study are considered. Accordingly, we recommend that the contract provide not to exceed \$1,000 for travel expenses (subject to limitations applicable to state employees) in attending Commission meetings.

Conclusions

The staff recommends the following Commission actions:

(1) The Commission authorize the Executive Secretary on behalf of the Commission to execute an appropriate document to terminate the contract with Professor Prager and to relieve the State and Professor Prager from all obligations under that contract.

(2) The Commission authorize the Executive Secretary on behalf of the Commission to enter into a contract with Professor William A. Reppy, Jr., to prepare a background study on the liability of community or separate property to third-party creditors, the exemptions allowed

married persons, and other related matters. The contract would be in the usual form of Law Revision Commission contracts with consultants. Compensation would be \$5,000, plus not to exceed \$1,000 for travel expenses in attending Commission meetings. The study would be due January 30, 1980, and the contract would terminate June 30, 1982.

Respectfully submitted,

John H. DeMouilly
Executive Secretary