

9/25/79

Memorandum 79-50

Subject: Schedule for Work--Priorities for Topics

Each fall, the Commission sets priorities for work on its current calendar of topics and schedules its work for the next few years. It should be recognized that any schedule must be tentative since new topics may intervene and since it is difficult to predict the amount of time that will be required to prepare a recommendation on any particular topic. In addition, priorities may require revision in light of requests or suggestions from legislative committees. Also, the schedule should be flexible enough so the staff can work on nonpriority topics when staff time permits.

The current calendar of topics authorized for Commission study is attached as Exhibit 1 (yellow). This memorandum discusses the future prospects for topics on the current calendar and presents the staff recommendations for priorities.

The staff recommends:

(1) Top priority during the next year should be given to finishing up work on the major study presently underway--the comprehensive enforcement of judgments statute.

(2) Work on another major project--revision of the law relating to real and personal property--should be commenced. We have received the consultant's background report which outlines the possible scope of this study and the problem areas that might be covered by the study. We may be able to develop some recommendations to the 1981 Legislature dealing with severable aspects of this study.

(3) Other smaller topics--such as dismissal for lack of prosecution and selected evidence problems--should be worked into the agenda as time is available.

A rough schedule for submission of recommendations to future legislative sessions is set out as Exhibit 2 (pink).

Child custody, adoption, and related matters. The guardianship-conservatorship revision, our major legislation for the 1979 session, was the first step in the child custody revision. We have in hand studies prepared by Brigitte Bodenheimer on both child custody and

adoption. However, the Legislature is very active in both of these fields and the studies are somewhat obsolete.

Our consultant, Brigitte Bodenheimer, advises that she has been heavily involved in working on an international treaty during 1979 and will not be available to the Commission until sometime in 1980. She believes that recent legislation has taken care of most of the problems identified in the child custody study she prepared for the Commission. She believes that the major need in the adoption area is a complete redrafting of the existing provisions to provide a well-drafted and organized statute. Recent legislation has dealt with some of the problems she identified in her study and other problems are very controversial. If the Commission believes that adoption should be given a priority, the staff will attempt to prepare a draft of a new adoption law early in 1980, will submit the draft to Professor Bodenheimer for review and revision during the first six months of 1980, and submit a revised draft to the Commission for consideration toward the end of 1980. This procedure will permit the staff and Professor Bodenheimer to work out the bugs in the draft and identify the policy issues for Commission determination. This procedure would probably permit submission of an adoption recommendation to the 1982 session.

Creditors' remedies. Our major unfinished creditors' remedies project at present is the comprehensive enforcement of judgments statute. The Commission is now reviewing the comments on the March 1979 tentative recommendation and perfecting the draft statute. We plan to complete work on our recommendation during the first half of 1980 and to introduce the recommended legislation in 1981.

The two major unresolved areas are the homestead exemption and liability of community property for debts and exemptions of married persons. The staff is giving the highest priority to the homestead exemption. And we have retained Professor Reppy as a consultant to prepare a study of community property and creditors' remedies problems, which is due January 31, 1980.

During the coming months, we will need to devote our major staff resources and a major portion of the meeting time to preparing the comprehensive enforcement of judgments statute for introduction in 1981.

The Commission has determined to defer work on some aspects of the creditors' remedies study: default judgment procedures, procedures under private power of sale, and possessory and nonpossessory liens. The staff recommends that these aspects of the topic continued to be deferred during 1980 unless some need for study during 1980 arises.

Law Relating to Real and Personal Property

This study embraces three topics on the Commission's agenda:

(1) Whether a Marketable Title Act should be enacted in California and whether the law relating to covenants and servitudes relating to land, and the law relating to nominal, remote, and obsolete covenants, conditions, and restrictions on land use should be revised.

(2) Whether the law relating to possibilities of reverter and powers of termination should be revised.

(3) Whether Section 1464 of the Civil Code should be revised or repealed.

The Commission will consider at the October meeting the report of the consultant. The consultant's report outlines the possible scope of this study and the various problems that might be covered in the study. The Commission can then consider the extent to which this study should be given priority, the scope of the study, and the schedule for the study. The staff recommends that we give this study a high priority with the view to submitting a comprehensive statute for enactment in 1983. Various severable aspects of the topic might be made the subject of recommendations to earlier sessions.

Community Property

This study has been divided into two phases. The first phase is the creditors' remedies phase and is included within the enforcement of judgments recommendation which is the top priority study. Professor Reppy, our consultant, plans to deliver the background study on this phase and we expect to receive the study in January 1980.

The second phase of the study will cover problems arising out of the equal management and control provisions of existing law, the division of property on dissolution of marriage, and other problems. This is a study that should be given the highest priority and we plan to

place it on the meeting agenda as soon as the study is received. The study is due in January 1981.

Evidence Code. We have in hand Professor Friedenthal's survey of the differences between the Federal Rules of Evidence and the California Evidence Code. The staff suggests that we do not do the whole thing at once as a major study, but that we work on separate independent provisions on a piecemeal basis from time to time for variety. The staff would give this study a fairly low priority. We could devote an evening or a day to this study from time to time and introduce individual recommendations on specific problems over the next couple of legislative sessions.

We had a bill introduced at the 1978 session to effectuate our recommendation relating to the psychotherapist-patient privilege. That bill passed the Legislature but was vetoed by the Governor. We could request that a member of the Legislature introduce the same bill in 1980. Or we could review the earlier recommendation during 1980 to determine whether the same or a revised recommendation should be submitted in 1981.

Inverse Condemnation. The Commission has available studies prepared by Arvo Van Alstyne on substantive aspects of inverse condemnation, but the Commission's experience in the past has been that it is difficult to prepare rational legislation in this area because of the tremendous financial impact and because of constitutional limitations.

The Commission has requested the State Bar Committee on Condemnation to suggest areas where it would be fruitful for the Commission to work. The Bar Committee has discussed the matter and apparently feels that procedural aspects of inverse condemnation is the only profitable area. However, the Bar Committee, despite renewed requests by telephone and letter, has never given us any specific suggestions, and has proceeded to draft their own legislation on various matters. In light of this experience, the staff suggests that we do nothing on this topic for the time being and leave this area to the Bar Committee.

Arbitration. There is a committee of the State Bar actively working on the arbitration statute. The staff believes there is no present need for the Commission to work in this area.

Prejudgment interest in civil actions. The Commission has been deferring consideration of prejudgment interest to avoid possible duplication of the work of the Joint Legislative Committee on Tort Liability. The staff recommends we continue to defer this study.

Class actions. There is now a uniform act on class actions, and the State Bar is actively working on the subject. The Commission some time ago decided that Jack Friedenthal should be our consultant on this topic, but deferred making a contract with him until the need for a Commission study of this topic became clear. The staff suggests we continue to defer work on this topic. We plan to investigate the progress being made in this area and to recommend that we make a contract with Professor Friedenthal if it appears that a Commission study of the topic is needed.

Offers of compromise. The Commission has deferred consideration of this topic in order to avoid possible duplication of the work of the Joint Legislative Committee on Tort Liability. This is not a large project, and the Tort Committee has not considered the problem. The staff suggests we commence work in this area on a nonpriority basis, with the goal of legislation for the 1981 session.

Powers of appointment. There are two recent law review articles suggesting possible revisions in the California powers of appointment statute which was enacted upon Commission recommendation. The staff plans to bring these to the Commission's attention as a nonpriority matter when staff resources are available to review the articles.

Rights and disabilities of minors and incompetent persons. This study was authorized in 1979 upon request of the Commission. The study is a followup to the guardianship-conservatorship revision and involves a comprehensive consideration of the various rights and disabilities of minors and incompetent persons. The development of a comprehensive statute would be a substantial undertaking. In view of the other major studies now under active study or soon to be matters of active study, the staff suggests that study of this topic be deferred. If time permits, the staff will make a further analysis of the topic with a view to recommending some procedure for dealing with the topic. We are presently of the belief that the staff can handle this topic without the need for

a consultant's background study. In addition, a staff analysis of the topic may disclose that it would be possible to deal with the topic on a piecemeal, rather than comprehensive, basis.

Eminent domain. The State of Wisconsin has enacted some significant reforms in eminent domain law. Some of these reforms might be desirable for enactment in California. We have sent a summary of the Wisconsin reforms to the State Bar Committee on Condemnation, and we plan to place the State Bar Committee suggestions as to matters that should be studied on the Commission's meeting agenda for consideration when we receive a response from the Committee. The matters would not require a substantial amount of Commission time if the Commission determines to study some of these matters after reviewing the suggestions of the State Bar Committee.

Discovery in civil cases. Discovery has been on our inactive agenda because the State Bar has been very active in this field.

Dismissal for lack of prosecution. The dismissal for lack of prosecution statutes are inconsistent and do not reflect the case law accretion. We have a consultant preparing a background study. The project should not consume a lot of Commission time. We would hope to have legislation ready for the 1981 session.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EXHIBIT 1

TOPICS CURRENTLY AUTHORIZED FOR STUDY

	<u>Status of Study</u>
<u>A - ARBITRATION</u> (Auth. 1968)	Enacted. State Bar active in this field
<u>B - BUSINESS LAW</u>	
100 - Modification of Contracts (Auth. 1957)	Enacted
200 - Liquidated Damages (Auth. 1969)	Enacted
300 - Parol Evidence Rule (Auth. 1956)	Enacted
<u>C - CORPORATIONS AND UNINCORPORATED ASSOCIATIONS</u>	
100 - Unincorporated Associations (Auth. 1966)	Enacted
<u>D - DEBTOR-CREDITOR RELATIONS</u> (Auth. 1957)	
100 - Repossession of Property (includes Claim and Delivery)	Enacted
200 - Attachment	Enacted
300 - Enforcement of Judgments	Under Active Study
310 - Homesteads	Under Active Study
312 - Community Property	Consultant Retained. Study Due Jan. 1, 1980
315 - Enforcement of Obligations After Death	Possible Recommendation--1980
320 - Enforcement of Claims and Judgments Against Public Entities	Recommendation--1980
400 - Assignment for Benefit of Creditors	Recommendation--1980
500 - Confession of Judgment Procedures	Enacted
501 - Confession of Judgment in Support and Paternity Cases	Recommendation--1980
600 - Default Judgment Procedures	Deferred
700 - Procedures Under Private Power of Sale	Deferred
800 - Possessory and Nonpossessory Liens	Deferred
900 - Wage Garnishment Procedure	Enacted

E - EMINENT DOMAIN (Auth. 1956)

100 - Ad Valorem Taxes	Enacted
200 - Assessment Liens	Recommendation--1980

F - FAMILY AND JUVENILE LAW (Auth. 1956)

100 - Guardianship-Conservatorship	Enacted
101 - Uniform Veterans' Guardianship Act	Possible Recommendation--1980
200 - Appeal of Custody Order	Dropped
300 - Custody of Children	Have Obsolete Study
400 - Adoption	Have Obsolete Study
500 - Freedom From Parental Custody and Control	Legislation (not recommended by Commission) enacted in 1978
600 - Community Property (Auth. 1978)	Consultants Retained. Reppy-Creditors' Remedies Aspects Study Due Jan. 1980 Bruch-Other Aspects-Study Due Jan. 15, 1981

G - GOVERNMENTAL LIABILITY (Auth. 1957)

Enacted

H - REAL ESTATE AND LAND USE

100 - Lease Law (Auth. 1957)	Enacted
200 - Partition Procedure (Auth. 1956)	Enacted
250 - Revision of Real Property Law (Auth. 1975)	Have Study on Hand
300 - Possibilities of Reverter and Powers of Termination (Auth. 1975)	Have Study on Hand
400 - Marketable Title Act (Auth. 1975)	Have Study on Hand
500 - Quiet Title Actions (Auth. 1978)	Recommendation--1980
600 - Civil Code Section 1464 (Auth. 1978)	Have Study on Hand
700 - Abandonment and Vacation of Public Streets and Highways (Auth. 1978)	Recommendation--1980

I - INVERSE CONDEMNATION (Auth. 1965)

Inactive

J - CIVIL PROCEDURE

101 - Security for Costs (Gov't Code § 10331)	Recommendation--1980
200 - Prejudgment Interest (Auth. 1971)	Deferred
300 - Class Actions (Auth. 1975)	Deferred
400 - Offers of Compromise (Auth. 1975)	Deferred
500 - Discovery (Auth. 1975)	Deferred. State Bar active in this field
600 - Dismissal for Lack of Prosecution (Auth. 1978)	Consultant Retained

K - EVIDENCE (Auth. 1965)

100 - Evidence of Market Value	Recommendation--1980
200 - Comparison With Federal Rules	Have Study on Hand

L - ESTATE PLANNING, PROBATE, AND TRUSTS

100 - Escheat; Unclaimed Property (Auth. 1956)	Enacted
200 - Powers of Appointment (Auth. 1979)	Enacted
300 - Probate Homesteads (Auth. under Study D)	Recommendation--1980
400 - Rights and Disabilities of Minors/Incompetent Persons (Auth. 1979)	Deferred

EXHIBIT 2

Proposed Schedule of Recommendations

1980 Legislative Session

Application of Evidence Code Property Valuation Rules in Noncondemnation Cases
Security for Costs
Special Assessment Liens on Property Acquired for Public Use
Assignments for Benefit of Creditors
Quiet Title Actions
Vacation of Public Streets, Highways, and Public Service Easements
Agreements for Entry of Paternity and Support Judgments
Enforcement of Claims and Judgments Against Public Entities
The Probate Homestead
Uniform Veterans' Guardianship Act
Enforcement of Obligations After Death (possible recommendation)

1981 Legislative Session

Enforcement of Judgments
Miscellaneous Child Custody Revisions
Dismissal for Lack of Prosecution
Miscellaneous Evidence Code Revisions
Miscellaneous Property Law Revisions
Offers of Compromise
Powers of Appointment

1982 Legislative Session

Adoption
Community Property

1983 Legislative Session

Comprehensive Revision of Property Law

1984 Legislative Session

Class Actions (if study to be made)