

11/10/81

Memorandum 81-75

Subject: Priority to be Given Various Topics

Background

Last year when the Commission established priorities for various topics the Commission determined that the community property study should be given top priority. However, the Legislature directed that the Commission study probate law and the Legislature at the current session directed that the Commission study, on a priority basis, the statutes of limitations applicable to felonies.

Summary of Staff Recommendations

The staff recommendations in this memorandum are based on the staff's belief that it is of critical importance that the Commission take legislative desires and needs into account in determining the priority to be given to the topics the Commission has been authorized or directed to study. The staff recommendations can be summarized as follows: The staff recommends that the top priority for staff and Commission resources during 1982 be given to the legislation already introduced on creditors' remedies to the extent necessary to obtain enactment of that legislation. We recommend that the probate law study be given top priority during 1982. We recommend that the next priority be given to work on the community property study during 1982 with a view to making this study a long-range study that will require Commission consideration for a number of years. (Nevertheless, the Commission would not be precluded from possibly submitting recommendations on individual problems from time to time before the entire study is completed.) We recommend that work on the real property study be deferred during 1982 except that work on some aspects of the study may be conducted during 1982 on a nonpriority basis if staff and Commission resources permit. We recommend that work on the adoption study be deferred during 1982. We recommend that the topic of statutes of limitations on felonies be given a top priority when the consultant's background study is delivered to the Commission. These recommendations are discussed in more detail below.

Statutes of Limitations on Felonies

The staff proposes to respond to the 1981 statute directing that the Commission give priority to the statutes of limitations on felonies topic by approving a contract with an expert consultant to prepare a background study on this topic. Memorandum 81-69 contains the staff recommendation as to the consultant and proposes a contract that requires delivery of the study within one year from January 1, 1982. When we receive the study, the staff recommends that it be given a top priority so that we can respond as soon as possible to the legislative directive.

Community Property

The staff suggests that the community property study be given some priority, but we believe that this study will require a number of years to complete. The State Bar Family Law Section is concerned that considerable background research will be required by the Section to deal with the various recommendations made in the consultant's study. The Section suggests that the individual recommendations be taken up one by one on a schedule that will give the busy family law lawyers time to prepare material on the existing law and the alternatives to the recommendations of the consultant and time to form Section recommendations on the changes, if any, that should be made in existing law. See Exhibit 1 attached for a letter from the State Bar Family Law Section. This procedure would also give time to our other consultant--Professor Reppy--to prepare material relating to the particular problems identified by Professor Bruch.

At the December meeting, the Commission plans to consider the problem of increased earning capacity during marriage and good will. Professor Reppy has already sent us an extensive discussion of his views concerning the problem of increased earning capacity during marriage. His material is the equivalent of a law review article. The State Bar Section has also sent us its views on these two portions of Professor Bruch's study.

At the January 1982 meeting, the staff proposes that the Commission consider the tentative recommendation (previously distributed for comment) relating to the rights of creditors with respect to community and separate property of married persons. We have received a report from the State Bar Business Law Section on this tentative recommendation and we have

other comments from other persons and organizations. We should be in a position at the January meeting to go forward with this aspect of the community property study. We plan to have Professor Reppy present at the January meeting when we consider this material. We plan to request the Family Law Section to provide comments and representatives at the January meeting on the material.

If the Commission concludes that the staff suggested procedure would be desirable, we will prepare for the January meeting a tentative schedule for consideration during 1982 of additional, identified portions of Professor Bruch's study. (We have requested Professor Reppy to begin work on an analysis of the problem of dividing the earnings of separate property upon dissolution of marriage.)

Probate Law Study

The staff proposes that the Commission give a top priority during 1982 to the probate law study. The State Bar Section on Estate Planning, Trust and Probate Law is eager to work on a revision of the probate law. The Section believes that a study of probate law is greatly needed and looks forward to working with the Commission on this study. The members of the Section are willing to devote substantial time to this project. Other organizations look to the Commission to produce on this study. A national organization (HALT) is organizing in California, primarily with a view to pushing for immediate probate law reform. See the letter attached to the First Supplement to Memorandum 81-70. The National Association of Retired Persons is also pushing for probate law reform. While we may not produce a product that will satisfy these groups, the staff believes that we need to give a top priority to the probate law study. This will permit us to provide material to the Legislature that will help the Legislature to respond to the pressures we anticipate will be brought to bear upon the Legislature in this area of the law. It would be a mistake, the staff believes, to give this topic a relatively low priority in view of the general belief that something needs to be done and done soon.

At the present time, we have only Bob Murphy working on probate law and Mr. Murphy is working on a 3/4 time basis. We anticipate that Stan Ulrich will be devoting almost all of his time to the creditors' remedies recommendations during much of 1982. We propose that Nat Sterling devote approximately three-quarters of his time to the probate law study

and approximately one-quarter of his time to the community property study. If this proposal is adopted by the Commission, there will be little, if any, time devoted during 1982 to the real property study.

Real Property Law Study

Nat Sterling is now working on the problem of community property held in joint tenancy form and the general problem of property held in joint tenancy form by married persons. (We deal with one aspect of the problem in our proposed legislation relating to multiple-party accounts.) We propose that Mr. Sterling give top priority to this project in order to complete it before turning to other projects. The problems dealt with in the study are important ones that should be considered soon since they appear in various forms in the community property study, the probate law study, and the real property study.

Adoption Law Study

The staff believes that there is a great need for revision of the law relating to adoption. However, in view of the death of our consultant, we recommend that work on this topic be deferred during 1982. The Executive Secretary is a member of the drafting committee of the National Conference of Commissioners on Uniform State Laws that is working on a revision of the Uniform Adoption Act. When the Uniform Adoption Act has been adopted by the National Commissioners in revised form, the Commission can then commence its work on this topic.

Dismissal For Lack of Prosecution Study

If the Commission decides to defer submitting a recommendation to the Legislature on dismissal for lack of prosecution, the staff plans to present a staff recommendation to the Commission on this subject as soon as the pending California Supreme Court case is decided by the California Supreme Court.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

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November 6, 1981

California Law Revision Commission
4000 Middlefield Road, Room D-2
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Attention: John H. DeMouilly, Executive Secretary

Re: State Bar Family Law Section Study
on Bruch Report

Dear Mr. DeMouilly:

I have discussed with Barry Russ his conversations with you regarding the timing of the State Bar Family Law Section's input on part two of the Bruch Report. Because of other commitments, Mr. Russ was unable to write to you directly and I have incorporated his thoughts in this letter.

The section has reached a general consensus that more time will be required to study part two of the report, conduct appropriate background research and present you with carefully thought out commentary. It might even be appropriate to take up the subjects one recommendation at a time. If that is not practical, a schedule should be established which would allow us to pace our work and do each subject justice.

Some members of the property division committees are concerned about the completeness of the legal background and conclusions reached on the subjects dealt with in the report. Because the report includes recommendations which would entail a drastic overhaul of the existing community property system, the members of the committees feel rather strongly that more background work and research by them is essential in forming responsible recommendations. For example, in reviewing the recommendations on good will for our report which we have already prepared and sent to you, members of the committee noted that the background work on that subject was cursory and the recommendations made in the report did not logically flow from the critique of the existing law.

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The members of the committees are anxious to go to work on the report and give you the results of their best efforts. However, they do not feel that there is any way that they can do an adequate job prior to December 10, 1981. Having attended a number of commission meetings during which such matters were discussed, I doubt that more than the first few recommendations would be taken up at the first meeting in any event. We propose, therefore, that a timetable be established which will allow us time to do a decent job and which will more realistically reflect the probable pace at which the report will be acted on by the Commission.

I am now a member of the executive committee of the State Bar Family Law Section and one of my assignments is co-liaison to the Law Revision Commission together with Susan Keel who was official liaison last year. I look forward to working with you in the coming year.

Thank you very much for your consideration.

Sincerely,



JAN C. GABRIELSON

JCG:jd

cc: Barry Russ
Tom Stabile
Susan Keel
Sandra Musser