

2/23/82

Memorandum 82-14

Subject: 1983 Legislative Program

It would be useful to the staff in allocating staff resources and Commission meeting time if the Commission were to establish its goals for the 1983 legislative session. The staff is concerned that our 1983 legislative program will be significantly below the level of past years unless we determine our goals for the 1983 session. Some realistic goals should be set now to assure that the 1983 legislative program will be one that justifies the existence of the Commission. This is especially important since Chapter 503 of the Statutes of 1979 requires that all existing state programs be reviewed and low-priority programs be identified. This mandate is to be completed by the Department of Finance by January 31, 1984, so the need for a significant 1983 legislative program is clear.

1983 Legislative Program

The following matters appear at this time to be possible for inclusion in the 1983 legislative program.

Intestate Succession and Wills. This is a project that the staff believes will be considered significant by the Legislature and others. The Commission should be able to complete its work on this project and submit a recommendation in 1983 if the project is given a top priority. Assuming that all remaining policy decisions are made at the March meeting, the devotion of substantially all staff resources to the project during the following two months should make it possible to produce a draft of a comprehensive tentative recommendation by May 28, 1982. This could be considered at a special one-day meeting on June 11 or 12. After the June meeting, the tentative recommendation could be revised and distributed for review and comment. Comments could be considered at the Commission's September 1982 meeting, and the recommendation could be approved for printing at the October 1982 meeting.

Creditor's Rights in Marital Property. We have a revised tentative recommendation which incorporates Commission decisions to date. This project is of interest primarily to the Business Law Section of the State Bar; the Family Law Section has shown little interest in the tentative recommendation. The staff suggests that this tentative recommendation be given top priority at the May meeting (if not considered at

the March meeting) so that it can be approved for printing and submission in 1983. We do not believe that it is essential that the tentative recommendation again be distributed generally for comments unless the Commission makes drastic changes in the former tentative recommendation that has already been distributed for comment.

Nonprobate Transfers. We could submit a revised recommendation relating to nonprobate transfers in 1983. We would not need again to distribute the recommendation for review and comment, but we would need to work with the financial institutions to attempt to eliminate their opposition. We also need to obtain support for the recommendation from interested organizations.

Consent to Medical Care. The comments we have received to date on the working draft of the Uniform Act are not in agreement as to the need for legislation on this subject. The Commission may or may not be able to submit a recommendation on this subject to the 1983 session. A decision will have to be made when the comments we received are reviewed, possibly at the May meeting.

Community Property. The Commission has decided to give first priority in the community property area to problems of definition of the community. This is a major portion of the study that will take some time to complete. Meanwhile, Professor Reppy has provided the staff with his "dirty dozen" of California cases relating to community property. These cases are ones that show a need for immediate attention. He also has provided us with a list of four code sections that need revision and two that need to be repealed. The staff could examine the material submitted by Professor Reppy, along with Professor Bruch's comments on the same matters, to determine if any one or more of the matters would be of such a nature that a recommendation could be prepared to remedy the existing defect with a modest expenditure of staff resources and Commission time. This would permit the Commission to submit some short recommendations that would nevertheless be considered significant improvements in the law.

Dismissal for Lack of Prosecution. The Commission has prepared a tentative recommendation on this topic and is awaiting further developments in the Supreme Court. When the Supreme Court decision comes down, we will be in a position to conclude our work in this area. We should be able to do this relatively quickly.

Other Projects During 1983

To the extent time permits, work could be continued on the overall revision of probate law and the community property study, with priority being given to completing the probate law revision. (The Commission has previously determined that the probate law study should be given top priority.) If we do not obtain a consultant on the statute of limitations on felonies, it is possible that the Commission will want this study prepared by the staff, and this will significantly affect that amount of work the staff can accomplish on the other major studies under active consideration.

Manner of Scheduling Meetings

The staff has attempted to schedule the subject matter to be considered at particular meetings so that we could devote a particular meeting primarily to probate law or community property law. We devoted the last meeting to community property. The next meeting will be devoted primarily to probate law. We have six consultants on the probate law study (eight if we count Carol Bruch and Bruce Wolk). These consultants attend our meetings to provide us with their views on the matters under study; they do not prepare background studies. We also have had one or more members of the State Bar Section on Estate Planning, Trusts, and Probate Law attend our meetings when the probate law revision project is considered. The staff believes that it is less expensive to have our probate law consultants attend every other meeting and have substantially all the meeting devoted to probate law than it is to have each meeting devoted both to probate law and community property. Also, representatives of the interested State Bar Section should not be required to take time from their practices to attend a meeting and then have to wait until the topic that is of interest is reached for discussion. On the other hand, there is a loss of continuity when a topic is taken up one month and then not again considered until three or four months later. On balance, however, considering expense and convenience to consultants and persons interested in particular topics, the staff believes that it is desirable to devote a meeting primarily to probate law or to community property instead of having each topic considered at each meeting. What procedure does the Commission wish to follow?

Respectfully submitted,

John H. DeMouilly
Executive Secretary