

2/20/85

Memorandum 85-29

Subject: Probate Code Study Schedule

At the January meeting, the Commission considered but deferred any action concerning the Probate Code study schedule.

Attached as Exhibit 1 is a tentative schedule for preparation of a new Probate Code. The staff will follow this schedule, as revised by the Commission, in planning and scheduling material for consideration by the Commission. The schedule also is useful because it indicates to interested persons the meeting at which particular matters are likely to be first considered.

Exhibit 2 indicates the State Bar consultants who are primarily responsible for review of particular matters.

The tentative schedule contemplates that a complete draft of Division 7 (administration) and some other portions of the new Code will be available after the September meeting. When this draft is available the entire staff plans to review the draft with care, and we are hopeful that the State Bar consultants will sit with us when we review the portions for which they are primarily responsible. We expect that this review will take at least two weeks of full time work.

Attached as Exhibit 3 is a tentative outline of Division 7 (administration of decedent's estates) of the new Probate Code.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EXHIBIT 1

TENTATIVE SCHEDULE

PREPARATION OF NEW PROBATE CODE

MARCH 21-22 MEETING

1. Study L-640 - Trusts (Approve Comprehensive Trust Statute for Introduction as Preprint Bill)
2. Study L-1000 (Jurisdiction; Probate of Wills; Contest of Wills)
(Originally scheduled for consideration at January 1985 meeting)
Existing provisions: Div. 3, Chs. 1, 2 - Prob. Code §§ 300-385
3. Study L-1010 (Personal Representatives; Appointment; Letters; Termination of Authority; Oath and Bond) (Originally scheduled for consideration at January 1985 meeting)
Existing provisions: Div. 3, Chs. 3, 4, 5, 6, 7 - Prob. Code §§ 300-553.3
4. Study L-1020 (Powers and Duties of Personal Representative) (Originally scheduled for consideration at January 1985 meeting)
Existing provisions: Div. 3, Ch. 8, Art. 1, Ch. 14 - Prob. Code §§ 570-590, 830-860
5. Study L-1020 (Sales)
Existing provisions: Div. 3, Ch. 13 - Prob. Code §§ 750-814
6. Study L-1025 (Presentation of Claims)
Existing provisions: Div. 3, Ch. 12 - Prob. Code §§ 700-738
7. Study L-1026 (Payment of Claims)
Existing provisions: Div. 3, Ch. 15, Arts. 4, 4a, 5 - Prob. Code §§ 950-980
8. Study L-1027 (Accountings)
Existing provisions: Div. 3, Ch. 15, Art. 3 - Prob. Code §§ 920-932

MAY 16-17 MEETING

1. Study L-640 - Trusts (Approve Commission's Tentative Recommendation Relating to Trusts for printing. This printed report will include (1) a preliminary portion explaining the recommended legislation, (2) the recommended legislation itself in the form set out in preprint bill with official comments and, (3) any necessary conversion tables. The printed report would be distributed to interested persons and organizations for review and comment when it becomes available in printed form. Comments will be reviewed at December 1985 meeting if printing and distribution of the report can be made in time to ask for comments in time for that meeting.)

2. Study L-1028 (Independent Administration)
Existing provisions: Div. 3, Ch. 8, Art. 2 - Prob. Code §§ 591-591.7)
3. Study L-1029 (Distribution and Discharge)
Existing provisions: Div. 3, Ch. 16, Arts. 1, 2, 3, 4, 6 - Prob. Code §§ 1000-1043a, 1060-1068; Div. 3, Ch. 18 - Prob. Code §§ 1100-1106
4. Study L-1030 (Affidavit and Summary Procedure for Small Estates)
Existing provisions: Div. 3, Ch. 10, Art. 1 - Prob. Code §§ 630-632.
5. Study L-1031 (Determination and Confirmation of Spousal Property)
Existing provisions: Div. 3, Ch. 10, Arts. 2.5, 3 - Prob. Code §§ 649.1-649.6, 650-658
6. Study L-1032 (Small Estate Set Aside)
Existing provisions: Div. 3, Ch. 10, Art. 2 - Prob. Code §§ 640-647.5
7. Study L-1033 (Multiple-Party Accounts)
Existing provisions: Div. 5 - Prob. Code §§ 5100-5407
8. Further work on matters considered at March meeting (redrafts, additional research, etc.). Approval of portions of new Probate Code for distribution for review and comments.

JUNE 27-28 MEETING

1. Study L-1021 (Compensation, Commissions, and Fees)
Existing provisions: Div. 3, Ch. 15, Arts. 1 and 2 - Prob. Code §§ 900-911
2. Study L-1022 (Inventory and Appraisement and Probate Referees)
Existing provisions: Div. 3, Chs. 9, 23 - Prob. Code §§ 600-615, 1300-1313
3. Study L-1051 (Legacies and Interest)
Existing provisions: Div. 3, Ch. 11 - Prob. Code §§ 660-664
4. Study L-1052 (Orders)
Existing provisions: Div. 3, Ch. 22, Art. 2 - Prob. Code §§ 1220-1224
5. Study L-1053 (Rules of Procedure)
Existing provisions: Div. 3, Ch. 22, Art. 3 - Prob. Code §§ 1230-1233
6. Study L-1055 (Ancillary Administration)
Existing provisions: Div. 3, Ch. 1, Art. 4 - Prob. Code §§ 360-362; CCP § 1913

7. Further work on matters considered at prior meetings (redrafts, additional research, etc.). Approval of portions of new Probate Code for distribution for review and comment.

SEPTEMBER 12-13 MEETING

1. Study L-1054 (Appeals)

Existing provisions: Div. 3, Ch. 22, Art. 4 - Prob. Code
§§ 1240-1242

2. Study L-1056 (Notices)

Existing provisions: Div. 3, Ch. 22, Art. 1 - Prob. Code
§§ 1200-1210

3. Study L-1057 (Miscellaneous Matters)

Existing provisions: Div. 3, Ch. 17 - Prob. Code §§ 1080-1082 (determination of heirship); Div. 3, Ch. 21 - Prob. Code §§ 1190-1192 (establishing identity of heirs); Div. 3, Ch. 20 - Prob. Code §§ 1140-1155 (public administrators); Div. 3, Ch. 24 - Prob. Code §§ 1350-1359 (administration of estates of missing persons presumed dead).

4. Further work on matters considered at prior meetings (redrafts, additional research, review of comments submitted by interested persons, etc.). Approval of portions of new Probate Code for distribution for review and comment.

OCTOBER 10-11 MEETING

1. Further work on matters considered at prior meetings (redrafts, additional research, review of comments submitted by interested persons, etc.). Approval of portions of new Probate Code for distribution for review and comment.
2. Revisions of Divisions 1 (Preliminary Provisions and Definitions), Division 2 (General Provisions), Division 2.5 (Disclaimer of Testamentary and Other Interests), Division 4 (Guardianship, Conservatorship, and Other Protective Proceedings), Division 6 (Wills and Intestate Succession).

DECEMBER 5-6 MEETING

1. Review comments on printed Tentative Recommendation Relating to Trusts

JANUARY 1986 MEETING

1. Approval of new Probate Code for introduction as a bill
2. Review of Conforming Revisions in Other Codes
3. Further work on matters considered at prior meetings (redrafts, additional research, review of comments submitted by interested persons, etc.)

MARCH 1986 MEETING

1. Approval of Tentative Recommendation Proposing a New Probate Code for printing

EXHIBIT 2

STAFF ASSIGNMENTS AND STATE BAR SECTION CONSULTANTS

1. JURISDICTION: PROBATE OF WILLS; CONTEST OF WILLS (Sterling & DeMouilly)

Division 3, Chs. 1 and 2 (PC §§ 300-385)

State Bar Section Consultants:

H. Neal Wells, III (714) 850-1310
Suite 1650
695 Town Center Drive
Costa Mesa, CA 92626

Hermione K. Brown (213) 463-4863
6400 Sunset Blvd.
Los Angeles, CA 90028

2. EXECUTORS AND ADMINISTRATORS; APPOINTMENT; LETTERS; TERMINATION
OF AUTHORITY; OATH AND BONDS (Sterling & DeMouilly)

Div. 3, Chs. 3, 4, 5, 6, 7 (PC §§ 400-553.5)

State Bar Section Consultants:

Chs. 3, 4, 5, 6 (Arts. 1 and 2)

Colleen M. Claire (714) 759-3838
Suite 600
800 Newport Center Drive
Newport Beach, CA 92660

William V. Schmidt (213) 625-7586
Suite 1400
611 Anton Blvd.
Costa Mesa, CA 92626

Chs. 6 (Arts. 3 and 4), 7

James C. Opel (213) 229-7000
Crocker Center
333 S. Grand Ave.
Los Angeles, CA 90071

Robert A. Schlesinger (619) 325-2076
P.O. Box 2268
383 S. Palm Canyon Drive
Palm Springs, CA 92263

3. POWERS AND DUTIES OF EXECUTORS AND ADMINISTRATORS (Murphy & DeMouilly)

Generally Div. 3, Ch. 8, Art. 1 (PC §§ 570-590)

Sales Div. 3, Ch. 13 (PC §§ 750-814)

Notes, Mortgages, Leases, Conveyances and Exchanges Div. 3,
Ch. 14 (PC §§ 830-860)

State Bar Section Consultants:

Ch. 8 (Art. 1)

James C. Opel; Robert A. Schlesinger

Chs. 13, 14

Kathryn A. Ballsun (213) 474-5257
Avco Center, 6th Floor
10850 Wilshire Blvd.
Los Angeles, CA 90024

James F. Rogers (213) 295-5435
3685 Crenshaw Blvd., Ste. 500
Los Angeles, CA 90016

4. INVENTORY AND APPRAISEMENT AND PROBATE REFEREES (Murphy & DeMouilly)

Inventory and Appraisal Div. 3, Ch. 9 (PC §§ 600-615)
Probate Referees Div. 3, Ch. 23 (PC §§ 1300-1313)

State Bar Section Consultants:

Matthew S. Rae, Jr. (213) 627-8104
Suite 1900
606 South Olive Street
Los Angeles, CA 90014

Irwin D. Goldring (213) 274-5913
Suite 888
433 North Camden Drive
Beverly Hills, CA 90210

5. CREDITORS' CLAIMS; PRESENTATION AND PAYMENT OF CLAIMS; ACCOUNTINGS
(Sterling & DeMouilly)

Presentation and Payment of Claims Div. 3, Ch. 12 (PC §§ 700-738)
Accountings Div. 3, Ch. 15, Art. 3 (PC §§ 920-932)
Payment of Debts and Expenses Div. 3, Ch. 15, Art. 4
(PC §§ 950-956)
Federal Estate Tax Proration Div. 3, Ch. 15, Art. 4a
(PC §§ 970-977)
Apportionment of Debts Div. 3, Ch. 15, Art. 5 (PC § 980)

State Bar Section Consultants:

Ch. 12

Harley J. Spitler (415) 981-5252
One Maritime Plaza, Ste. 2000
San Francisco, CA 94111

Clare H. Springs (415) 788-1100
Suite 2701
One Embarcadero, 27th Fl.
San Francisco, CA 94111

Ch. 15 (Arts. 3, 4, 4a, 5)

James D. Devine (408) 372-7535
P.O. Box 2229
400 Camino El Estero
Monterey, CA 93940

James V. Quillinan (415) 969-4000
444 Castro St., Ste. 900
Mountain View, CA 94041

6. COMPENSATION, COMMISSIONS, AND FEES (Murphy & DeMouilly)

Div. 3, Ch. 15, Arts. 1 and 2 (PC §§ 900-911)

State Bar Section Consultants:

James A. Willett, Vice Chair (916) 441-0131
555 Capitol Mall, Ste. 1050
Sacramento, CA 95814

H. Bruce Friedman (415) 434-1363
One Maritime Plaza, Ste. 1430
San Francisco, CA 94111

7. PARTITION BEFORE DISTRIBUTION (Sterling & DeMouilly)

Div. 3, Ch. 18 (PC §§ 1100-1106)

State Bar Section Consultants:

Leonard W. Pollard, II (714) 236-3651
355 County Administrative Center
1600 Pacific Highway
San Diego, CA 92101

James R. Goodwin (619) 239-6161
303 "A" Street, Ste. 402
San Diego, CA 92101

8. DISTRIBUTION AND DISCHARGE

Div. 3, Ch. 16, Arts. 1, 2, 3, 4, 6 (PC §§ 1000-1043a;
1060-1068) (Murphy & DeMouilly)

State Bar Section Consultants:

Lloyd W. Homer, Treasurer (408) 377-3901
1999 S. Bascom Ave., Ste. 1010
Campbell, CA 95008-2297

John S. Hartwell (415) 447-1222
Box 511
2109 Fourth St.
Livermore, CA 94550

D. Keith Bilter (415) 392-6320
Two Embarcadero, Ste. 2140
San Francisco, CA 94111

9. DISTRIBUTION WITHOUT ADMINISTRATION (Murphy & DeMouilly)

Affidavit Procedure for Small Estate Div. 3, Ch. 10, Art. 1
(PC §§ 630-632)

Small Estate Set Aside Div. 3, Ch. 10, Art. 2 (PC §§ 640-647)

Administration of Spousal Property Div. 3, Ch. 10, Art. 2.5
(PC §§ 649.1-649.5)

Determination or Confirmation of Spousal Property Div. 3,
Ch. 10, Art. 3 (PC §§ 650-657)

Multiple Party Accounts Div. 5 (PC §§ 5100-5407)

State Bar Section Consultants:

William H. Plageman, Jr. (415) 893-5195
1 Kaiser Plaza
Ordway Building, Ste. 1950
Oakland, CA 94612

John L. McDonnell, Jr. (415) 451-3300
1330 Broadway, Ste. 1730
Oakland, CA 94612

10. INDEPENDENT ADMINISTRATION (Murphy & DeMouilly)

Div. 3, Ch. 8, Art. 2 (PC §§ 591-591.7)

State Bar Section Consultants: William H. Plageman, Jr.; John L. McDonnell, Jr.

11. LEGACIES AND INTEREST (Sterling & DeMouilly)

Div. 3, Ch. 11 (PC §§ 660-664)

State Bar Section Consultants: not yet named

12. MISCELLANEOUS MATTERS (Sterling & DeMouilly)

Determination of Heirship Div. 3, Ch. 17 (PC §§ 1080-1082)
Establishing Identity of Heirs Div. 3, Ch. 21 (PC §§ 1190-1192)
Public Administrators Div. 3, Ch. 20 (PC §§ 1140-1155)
Administration of Estate of Missing Persons Presumed Dead
Div. 3, Ch. 24 (PC §§ 1350-1359)

State Bar Section Consultants: Leonard W. Pollard, II; James R. Goodwin

13. NOTICES (Sterling & Staff)

Div. 3, Ch. 22, Art. 1 (PC §§ 1200-1210)

State Bar Section Consultants:

Theodore J. Cranston (619) 454-9101
1200 Prospect St.
La Jolla, CA 92037

Charles A. Collier, Jr. (213) 277-1010
Suite 900
1800 Avenue of the Stars
Los Angeles, CA 90067

14. ORDERS; RULES OF PROCEDURE; APPEALS (Sterling & DeMouilly)

Div. 3, Ch. 22, Arts. 2, 3, 4 (PC §§ 1220-1224, 1230-1233;
1240-1242)

State Bar Section Consultants: Theodore J. Cranston; Charles A. Collier, Jr.

15. TRUSTS (Ulrich & Sterling)

Div. 3, Ch. 19 (PC §§ 1120-1139, 19), Ch. 22, Art. 1.5
(PC §§ 1215-1215.4) and other provisions in other codes

EXHIBIT 3

DIVISION 7. ADMINISTRATION OF ESTATES
OF DECEDENTS

PART 1. GENERAL PROVISIONS

Chapter 1. Necessity of Administration (Existing § 300)	\$ 7000
Chapter 2. Jurisdiction and Courts	\$ 7050
Article 1. Jurisdiction and Venue	
Article 2. Courts and Judges	
Article 3. Transfer of Proceedings	
Chapter 3. Rules of Procedure	\$ 7100
Chapter 4. Notices	\$ 7150
Chapter 5. Orders	\$ 7200
Chapter 6. Appeals	\$ 7250
Chapter 7. Public Administrators (Existing §§ 1140-1155)	\$ 7300
Chapter 8. Probate Referees (Existing §§ 1300-1310)	\$ 7350

PART 2. OPENING ESTATE ADMINISTRATION

Chapter 1. Commencement of Proceedings	\$ 7500
Chapter 2. Notice of Hearing	\$ 7530
Article 1. Contents	\$ 7530
Article 2. Service	\$ 7540
Article 3. Publication or Posting	\$ 7545
Chapter 3. Probate of Will	\$ 7550
Article 1. Production of Will	\$ 7550
Article 2. Proof of Will	\$ 7560
Article 3. Contest of Will	\$ 7570
Article 4. Revocation of Probate	\$ 7580
Chapter 4. Appointment of Personal Representative	\$ 7650
Article 1. General Provisions	\$ 7650
Article 2. Executors	\$ 7660
Article 3. Administrators With The Will Annexed	\$ 7670
Article 4. Administrators	\$ 7680
Article 5. Bond	\$ 7700
Article 6. Removal From Office	\$ 7720
Article 7. Changes in Administration	\$ 7730
Article 8. Nonresident Personal Representative	\$ 7750
Article 9. Special Administrators	\$ 7770

PART 3. INVENTORY AND APPRAISEMENT (Existing §§ 600-615)	\$ 7800
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PART 4. CREDITORS' CLAIMS (Existing §§ 700-750)	\$ 7900
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PART 5. ESTATE MANAGEMENT	\$ 8100
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Chapter 1. Estate Management Generally	
§ 8100 Duty to manage estate using ordinary care and diligence	
(Portions of § 920?)	

§ 8101 Joint personal representatives	
§ 8102 Instructions from or confirmation by court	
§ 8103 Possession of decedent's estate	
§ 8104 Duty to recover property transferred in fraud of creditors	
§ 8105 Delivery of property to heirs or devisees	
§ 8106 Voting rights with respect to corporate shares, memberships or property	
§ 8107 Purchase of estate property by personal representative	
§ 8108 Summary determination of disputes; submission to commissioner, judge pro tempore or probate judge	
§ 8109 Submission of dispute to arbitration	
Chapter 2. Deposit of Money and Personal Property with Financial Institutions	§ 8120
Chapter 3. Investments and Purchase of Property	§ 8130
Chapter 4. Operation of Decedent's Business	§ 8140
Chapter 5. Actions and Proceedings by or Against Personal Representative	§ 8150
Chapter 6. Compromise of Claims and Actions; Extension, Renewal, or Modification of Obligations	§ 8160
Chapter 7. Conveyance or Transfer of Property Claimed to Belong to Decedent or Other Person	§ 8180
Chapter 8. Option to Purchase Given in Will	§ 8200
Chapter 9. Notes, Mortgages, Conveyances, and Exchanges	§ 8210
Chapter 10. Leases	§ 8230
Chapter 11. Sales	§ 8240
Article 1. Definitions and General Provisions	§ 8240
Article 2. Contract With Agent, Broker, or Auctioneer	§ 8260
Article 3. Sale of Personal Property	§ 8270
Article 4. Sale of Real Property	§ 8290
Article 5. Vacating Confirmation of Sale of Real or Personal Property	§ 8310
Article 6. Application of Sale Proceeds of Encumbered Property	§ 8320
Chapter 12. Independent Administration	§ 8350
PART 6. COMPENSATION (Existing §§ 900-911)	§ 8400
PART 7. ACCOUNTING (Existing §§ 920-933)	§ 8500
PART 8. PAYMENT OF DEBTS, EXPENSES, CHARGES, AND TAXES (Existing §§ 950-956, 970-977, 980)	§ 8600
PART 9. PARTITION BEFORE DISTRIBUTION (Existing §§ 1100-1106)	§ 8700
PART 10. DISTRIBUTION AND DISCHARGE (Existing §§ 1000-1068, 660-664, 750-752)	§ 8800
PART 11. DETERMINATION OF HEIRSHIP OR IDENTITY OF PERSONS WITHIN CLASS (Existing §§ 1080-1082, 1190-1192)	§ 8900

PART 12. ADMINISTRATION OF ESTATES OF MISSING PERSONS PRESUMED DEAD (Existing §§ 1350-1359)	\$ 9000
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DIVISION 8. DISPOSITION OF ESTATES
WITHOUT ADMINISTRATION

PART 1. PASSAGE OF PROPERTY TO SURVIVING SPOUSE WITHOUT ADMINISTRATION	\$ 9500
Chapter 1. General Provisions (Existing §§ 649.1, 649.3, 649.5, 649.6, 658)	\$ 9500
Chapter 2. Right of Surviving Spouse to Dispose of Real Property (Existing § 649.2)	\$ 9520
Chapter 3. Liability for Debts of Deceased Spouse (Existing § 649.4)	\$ 9540
Chapter 4. Determination or Confirmation of Property Passing or Belonging to Surviving Spouse (Existing §§ 650-657)	\$ 9560
PART 2. COLLECTION OR TRANSFER OF SMALL ESTATES WITHOUT ADMINISTRATION	\$ 9600
Chapter 1. Definitions (Mostly New)	\$ 9600
Chapter 2. General Provisions (Existing § 630 (portion))	\$ 9610
Chapter 3. Affidavit Procedure for Collection or Transfer of Personal Property (Existing §§ 630-631.1)	\$ 9630
Chapter 4. Court Order Determining Succession to Real Property (New)	\$ 9650
Chapter 5. Affidavit Procedure for Transfer of Real Property of Small Estate (New)	\$ 9680