

5/31/85

Memorandum 85-64

Subject: Study L--Schedule for Probate Code Project and Outline of
New Code

Outline of New Code

Attached to this memorandum as Exhibit 1 is a working outline of the new Probate Code. The new code takes the following general form:

New Probate Code

- Division 1. Preliminary Provisions and Definitions (§§ 1-99)
- Division 2. General Provisions (§§ 100-499)
- Division 3. Trust Law (§§ 500-1399)
- Division 4. Guardianship, Conservatorship, and Other
Protective Proceedings (§§ 1400-3999)
- Division 5. Multiple-Party Accounts (§§ 5100-5499)
- Division 6. Wills and Intestate Succession (§§ 6100-6999)
- Division 7. Administration of Estates of Decedents
(§§ 7000-9499)
- Division 8. Disposition of Estates Without Administration
(§§ 9500-9999)

There are a number of issues the Commission should review at this point concerning the general structure of the new code. The first relates to the name of the code. Although we have been intending to call the new code the Probate Code, just like the old one, recently it has been suggested that the new code be given a different name, perhaps the Trusts and Estates Code. The reasons for this suggestion are that it will avoid confusion with old law where sections of the same number are unrelated, and that "probate" is not particularly descriptive of the broad contents of the new code (or of the old one, for that matter). The staff is sympathetic to this suggestion and believes it merits serious consideration by the Commission.

A related matter is the contents of the new code. There are several matters currently found in the Civil Code that arguably are more appropriately located in the Probate Code. These are the powers of appointment and the powers of attorney statutes. It is confusing to find these estate planning tools in the Civil Code, and the staff believes we should consider their relocation. A natural location for these provisions in

the new code would be Division 2 (General Provisions) along with such other miscellaneous provisions found there as affidavits of death, disclaimers, and contractual arrangements relating to rights at death, or between Divisions 5 and 6. If we moved the power of attorney provisions, it would be more than a mere renumbering, but would involve improvements in the statute and would take some time to do.

As to some of the organizational details of the new code, it should be noted that several of the divisions, such as Division 3 (Trust Law), Division 4 (Guardianship/Conservatorship), and Division 7 (Probate Administration) have general provisions that may be duplicative. These are provisions relating to manner of notice, authority of Judicial Council, verification of pleadings, and the like. When we have completed the basic work on all divisions, we will review these duplicative provisions to see whether they should be generalized somewhere in the front of the new code and made applicable to the entire code.

A final organization matter the Commission should consider is whether the Trust Law should be introduced and enacted before completion of the remainder of the new code. This issue arises because it is now clear that the remainder of the new code will not be ready for introduction in the Legislature next session (see discussion of schedule for Probate Code project, below). The Commission's initial decision to hold back the trust law for introduction with the rest of the code as a package was based on the assumption that we would be able to meet our ambitious schedule to introduce a bill for the new code in 1986. The trust law will be completed and ready for introduction substantially before the remainder of the code. It is pretty much a self-contained unit, and is not interdependent with the remainder of the code. Representatives of banks and attorneys we have worked with on the trust law believe that the law will be a much needed improvement over existing law, and can see no reason to delay it. Going forward with this portion of the probate project would have additional advantages for the Commission: (1) It would yield a major publication this year (otherwise we would have nothing immediate to show for this year's work). (2) It would yield a major piece of legislation for next session (otherwise we would have no legislative program for next session, an unprecedented development in the Commission's history). (3) It would increase the chances of enactment both of the trust law and of the new Probate Code by dividing the material

into manageable portions as to which problems and opposition could be dealt with more effectively.

The only problem the staff sees at this point is an organizational one. As can be seen from our outline, the trust law is slated to go into Division 3 where administration now stands. There are a number of good solutions to this problem, however. Perhaps the best would be to locate the trust law at Sections 4000-4999 as Division 4.5 (the division headings could be renumbered later if it was felt necessary to make them all whole numbers). Another is to number the trust law 10500-11399 (Division 9) for now, and either renumber it 500-1399 (Division 3) later, or just leave it at 10500. Better yet, if the Commission decides the new code is to receive a new name such as Trusts and Estates Code, the trust law could be enacted as part of the new code, in its proper location at Sections 500-1399 (Division 3) to begin with, and the remainder of the Probate Code poured over into the new code when ready.

Schedule for Probate Code

Our initial schedule for completion of work on the Probate Code revision so as to have a bill for introduction in 1986 called for completion of initial consideration of all matters (with the exception of appeals, notices, and miscellaneous provisions) at the June meeting. The June meeting is now here, and we are nowhere near keeping to the required schedule. In fact, on the June agenda essentially all we have are matters originally produced and scheduled for earlier meetings, including substantial amounts of material originally scheduled and prepared for the January through March meetings and on the agenda at every meeting since.

In light of this progress, we must be more realistic about our proposed schedule. It is clear at the rate we are progressing that we will be unable to produce the complete code for introduction in 1986. However, the staff believes we should be able to produce a bill for 1987, if we continue to devote all resources to this project as we have been doing. The 1987 date is not a radical alteration of plans, since our original schedule called for introduction in 1986 but anticipated substantial review and hearings and eventual enactment in 1987. We believe we can still get a bill introduced and enacted in 1987 if we

continue to lay the groundwork for this by encouraging review by interested persons as we go along. Under this schedule, we would complete our initial consideration of the code by February 1986, would send it out widely for comment during Fall of 1986, introduce a preprinted bill in December of 1986, and review and revise early in the 1987 session, with sufficient time for legislative hearings and political work necessary to attain enactment at the 1987 session. A detailed schedule is attached as Exhibit 2.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

Exhibit 1

NEW PROBATE CODE
(Working Outline)

DIVISION 1. PRELIMINARY PROVISIONS AND DEFINITIONS

- Part 1. Preliminary Provisions (§§ 1-12) (ENACTED, OPERATIVE 1/1/85)
- Part 2. Words and Phrases Defined (§§ 20-88) (ENACTED, OPERATIVE 1/1/85)

DIVISION 2. GENERAL PROVISIONS

- Part 1. Effect of Death of Married Person on Community and Quasi-Community Property (§§ 100-105) (ENACTED, OPERATIVE 1/1/85)
- Part 2. Surviving Spouse's Right in California Real Property of Nondomiciliary Decedent (§ 120) (ENACTED, OPERATIVE 1/1/85)
- Part 3. Contractual Arrangements Relating to Rights at Death (§§ 140-160) (ENACTED, OPERATIVE 1/1/85)
- Part 4. Establishing Fact of Death (§§ 200-212) (ENACTED, OPERATIVE 1/1/85)
- Part 5. Simultaneous Death (§§ 220-234) ENACTED, OPERATIVE 1/1/85)
- Part 6. Division by Representation (§§ 240-241) (ENACTED, OPERATIVE 1/1/85)
- Part 7. Effect of Homicide (§§ 250-256) (ENACTED, OPERATIVE 1/1/85)
- Part 8. Disclaimer of Testamentary and Other Interests (§§ 260-295) (ENACTED, OPERATIVE 1/1/85, CURRENTLY A DIVISION RATHER THAN A PART)
- Part 9. Trust Company as Fiduciary (§§ 300-301) (WORK IN PROGRESS)
- Part 10. Establishing Identity of Heirs (§§ 320-324) (WORK IN PROGRESS)
- Part 11. Fiduciaries' Wartime Substitution Law (§§ 350-377) (WORK IN PROGRESS)

DIVISION 3. TRUST LAW (WORK IN PROGRESS)

- Part 1. General and Transitional Provisions (§§ 500-556)
 - Chapter 1. General Provisions
 - Chapter 2. Transitional Provisions
- Part 2. Creation, Validity, Modification, and Termination of Trusts (§§ 600-653)
 - Chapter 1. Creation and Validity of Trusts
 - Chapter 2. Spendthrift and Other Protective Trusts
 - Chapter 3. Modification and Termination of Trusts
- Part 3. Trust Administration (§§ 700-982)
 - Chapter 1. Duties of Trustees
 - Chapter 2. Powers of Trustees
 - Chapter 3. Revised Uniform Principal and Income Act
 - Chapter 4. Liability of Trustees to Beneficiaries

- Part 4. Trustees (§§ 1000-1044)
 - Chapter 1. General Provisions
 - Chapter 2. Cotrustees
 - Chapter 3. Resignation and Removal of Trustees
 - Chapter 4. Appointment of Trustees
 - Chapter 5. Compensation and Indemnity of Trustees
- Part 5. Judicial Proceedings Concerning Trusts (§§ 1100-1187)
 - Chapter 1. Jurisdiction and Venue
 - Chapter 2. Notice
 - Chapter 3. Proceedings Concerning Trusts
 - Chapter 4. Transfer of Trust to Another Jurisdiction
 - Chapter 5. Transfer of Trust from Another Jurisdiction
- Part 6. Rights of Third Persons (§§ 1200-1221)
 - Chapter 1. Liability of Trustee to Third Persons
 - Chapter 2. Protection of Third Persons
 - Chapter 3. Rights of Creditors of Trustor

DIVISION 4. GUARDIANSHIP, CONSERVATORSHIP, AND OTHER PROTECTIVE PROCEEDINGS

- Part 1. Definitions and General Provisions (§§ 1400-1491) (ENACTED, OPERATIVE 1/1/81)
- Part 2. Guardianship (§§ 1500-1601) (ENACTED, OPERATIVE 1/1/81)
- Part 3. Conservatorship (§§ 1800-1910) (ENACTED, OPERATIVE 1/1/81)
- Part 4. Provisions Common to Guardianship and Conservatorship (§§ 2100-2808) (ENACTED, OPERATIVE 1/1/81)
- Part 5. [Reserved]
- Part 6. Management or Disposition of Community Property Where Spouse Lacks Legal Capacity (§§ 3000-3154) (ENACTED, OPERATIVE 1/1/81)
- Part 7. Authorization of Medical Treatment for Adult Without Conservator (§§ 3200-3211) (ENACTED, OPERATIVE 1/1/81)
- Part 8. Other Protective Proceedings (§§ 3300-3803) (ENACTED, OPERATIVE 1/1/81)
- Part 9. California Uniform Transfers to Minors Act (§§ 3900-3925) (ENACTED, OPERATIVE 1/1/85)

DIVISION 5. MULTIPLE-PARTY ACCOUNTS (§§ 5100-5407) (ENACTED, OPERATIVE 7/1/84)

DIVISION 6. WILLS AND INTESTATE SUCCESSION

- Part 1. Wills (§§ 6100-6390) (ENACTED, OPERATIVE 1/1/85)
- Part 2. Intestate Succession (§§ 6400-6414) (ENACTED, OPERATIVE 1/1/85)
- Part 3. Family Protection (§§ 6500-6580) (ENACTED, OPERATIVE 1/1/85)
- Part 4. Escheat of Decedent's Property (§§ 6800-6806) (ENACTED, OPERATIVE 1/1/85)

DIVISION 7. ADMINISTRATION OF ESTATES OF DECEDENTS (WORK IN PROGRESS)

- Part 1. General Provisions (§§ 7000-7360)
 - Chapter 1. Necessity of Administrations
 - Chapter 2. Jurisdiction and Courts
 - Chapter 3. Rules of Procedure
 - Chapter 4. Notices
 - Chapter 5. Orders

- Chapter 6. Appeals
- Chapter 7. Public Administrators
- Chapter 8. Probate Referees
- Part 2. Opening Estate Administration (§§ 7500-7770)
 - Chapter 1. Commencement of Proceedings
 - Chapter 2. Notice of Hearing
 - Chapter 3. Probate of Will
 - Chapter 4. Appointment of Personal Representative
- Part 3. Inventory and Appraisal (§§ 7800-____)
- Part 4. Creditors' Claims (§§ 7900-7997)
 - Chapter 1. General Provisions
 - Chapter 2. Making Claims
 - Chapter 3. Time for Making Claims
 - Chapter 4. Claims in Civil Actions
 - Chapter 5. Claims by Surviving Spouse
 - Chapter 6. Claims by Public Entities
 - Chapter 7. Allowance and Rejection of Claims
 - Chapter 8. Claims Established by Judgment
 - Chapter 9. Payment of Claims
- Part 5. Estate Management (§§ 8100-8391)
 - Chapter 1. Estate Management Generally
 - Chapter 2. Deposit of Money and Personal Property with Financial Institutions
 - Chapter 3. Investments and Purchase of Property
 - Chapter 4. Operation of Decedent's Business
 - Chapter 5. Actions and Proceedings by or Against Personal Representative
 - Chapter 6. Compromise of Claims and Actions; Extension, Renewal, or Modification of Obligations
 - Chapter 7. Conveyance or Transfer of Property Claimed to Belong to Decedent or Other Person
 - Chapter 8. Option to Purchase Given in Will
 - Chapter 9. Notes, Mortgages, Conveyances, and Exchanges
 - Chapter 10. Leases
 - Chapter 11. Sales
 - Chapter 12. Independent Administration
- Part 6. Compensation (§§ 8400-____)
- Part 7. Accounting (§§ 8500-8532)
 - Chapter 1. General Provisions
 - Chapter 2. When Account Required
 - Chapter 3. Settlement of Account
 - Chapter 4. Compelling Accounting
- Part 8. Payment of Debts, Expenses, Charges, and Taxes (§§ 8600-8636)
 - Chapter 1. General Provisions
 - Chapter 2. Allocation of Claim Between Estate and Surviving Spouse
 - Chapter 3. Proration of Estate Taxes
- Part 9. Distribution of Estate (§§ 8700-8887)
 - Chapter 1. Order for Distribution
 - Chapter 2. Determination of Persons Entitled to Distribution
 - Chapter 3. Deceased Distributee
 - Chapter 4. Deposit with County Treasurer
 - Chapter 5. Distribution to State
 - Chapter 6. Partition or Allotment of Distributed Property

- Part 10. Closing Estate Administration (§§ 8910-____)
 - Chapter 1. Time for Closing Estate
 - Chapter 2. Discharge of Personal Representative
 - Chapter 3. Statutes of Limitation; Effect of Discharge
- Part 11. Administration of Estates of Missing Persons Presumed Dead (§§ 9000-9009)
- Part 12. Ancillary Administration (§§ 9100-____)

DIVISION 8. DISPOSITION OF ESTATES WITHOUT ADMINISTRATION (WORK IN PROGRESS)

- Part 1. Passage of Property to Surviving Spouse Without Administration (§§ 9500-9571)
 - Chapter 1. General Provisions
 - Chapter 2. Right of Surviving Spouse to Dispose of Real Property
 - Chapter 3. Liability for Debts of Deceased Spouse
 - Chapter 4. Collection by Affidavit of Compensation Owed to Deceased Spouse
 - Chapter 5. Determination or Confirmation of Property Passing or Belonging to Surviving Spouse
- Part 2. Collection or Transfer of Small Estates Without Administration (§§ 9600-9688)
 - Chapter 1. Definitions
 - Chapter 2. General Provisions
 - Chapter 3. Affidavit Procedure for Collection or Transfer of Personal Property
 - Chapter 4. Court Order Determining Succession to Real Property
 - Chapter 5. Affidavit Procedure for Transfer of Real Property of Small Estate

Exhibit 2

REVISED SCHEDULE
PREPARATION OF NEW PROBATE CODE

June 27-28 Meeting

1. Study L-601 (Multiple-Party Accounts)

Existing provisions: Div. 5 - Prob. Code §§ 5100-5407

2. Study L-640 (Trust Law - Spendthrift Trusts)

3. Study L-655 (Probate Referee System)

Existing provisions: Div. 3, Ch. 23, Prob. Code §§ 1300-1313

4. Study L-1020 (Powers and Duties of Personal Representative)

Existing provisions: Div. 3, Ch. 8, Art. 1, Ch. 14 - Prob.
Code §§ 570-590, 830-860

5. Study L-1025 (Presentation of Claims)

Existing provisions: Div. 3, Ch. 12 - Prob. Code §§ 700-738

6. Study L-1026 (Payment of Demands)

Existing provisions: Div. 3, Ch. 15, Arts. 4, 4a, 5 - Prob.
Code §§ 950-980

7. Study L-1027 (Accounts)

Existing provisions: Div. 3, Ch. 15, Art. 3 - Prob. Code
§§ 920-932

8. 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

9. Study L-800 (Abatement; Distribution of Interest and Income)

Existing provisions: Prob. Code §§ 660-665

September 12-13

1. Study L-640 (Trust Law)

Review trust statute and comments on trust statute and make all decisions necessary to production of recommendation.

2. Study L-1028 (Independent Administration)

Existing provisions: Div. 3, Ch. 8, Art. 2 - Prob. Code §§ 591-591.7

3. Study L-1030 (Affidavit and Summary Procedure for Small Estates)

Existing provisions: Div. 3, Ch. 10, Art. 1 - Prob. Code §§ 630-632.

4. 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

5. Study L-1032 (Small Estate Set Aside)

Existing provisions: Div. 3, Ch. 10, Art. 2 - Prob. Code §§ 640-647.5

6. Material prepared for June meeting but not considered at that meeting.

October 10-11 Meeting

1. Study L-640 (Trust Law)

Approve tentative recommendation, consisting of explanatory material, draft statute, and any necessary conversion tables. The tentative recommendation would be distributed to interested persons and groups for comment.

2. Study L-1021 (Compensation, Commissions, and Fees)

Existing provisions: Div. 3, Ch. 15, Arts. 1 and 2 - Prob. Code §§ 900-911

3. Study L-1022 (Inventory and Appraisement)

Existing provisions: Div. 3, Ch. 9 - Prob. Code §§ 600-615

4. Study L-____ (Establishing Identity of Heirs)

Existing provisions: Div. 3, Ch. 21 - Prob. Code §§ 1190-1192

5. Study L-____ (Public Administrators)

Existing provisions: Div. 3, Ch. 20 - Prob. Code
§§ 1140-1155

6. Study L-____ (Administration of Estates of Missing Persons
Presumed Dead)

Existing provisions: Div. 3, Ch. 24 - Prob. Code
§§ 1350-1359

7. Material prepared for September meeting but not considered at
that meeting.

December 5-6 Meeting

1. Study L-1052 (Orders)

Existing provisions: Div. 3, Ch. 22, Art. 2 - Prob. Code
§§ 1220-1224

2. Study L-1053 (Rules of Procedure)

Existing provisions: Div. 3, Ch. 22, Art. 3 - Prob. Code
§§ 1230-1233

3. Study L-1054 (Appeals)

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

4. Material prepared for October meeting but not considered at that
meeting

5. Further work on matters considered at prior meetings (redrafts,
additional research, etc.).

February 1986 Meeting

1. Review comments on tentative recommendation relating to trust law

2. Study L-1055 (Ancillary Administration)

Existing provisions: Div. 3, Ch. 1, Art. 4 - Prob. Code
§§ 360-362; CCP § 1913

3. Study L-1056 (Notices)

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

4. 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).

5. Further work on matters considered at prior meetings (redrafts, additional research, review of comments submitted by interested persons, etc.).

April 1986 Meeting

1. Further work on matters considered at prior meetings (redrafts, additional research, review of comments submitted by interested persons, etc.).
2. Review of explanatory material for new code.
3. Review of conforming revisions in other codes.

June 1986 Meeting

Staff meets with representatives of bar, other interested groups to work out final drafting details and note any remaining policy questions.

September 1986 Meeting

Commission approval of tentative recommendation for new Probate Code for printing. Commission approval of text of new Probate Code for printing as preprinted bill.

December 1986

Preprint bill introduced as bill.

February 1987

Review of comments on tentative recommendation.
Drafting of amendments to bill.

March 1987

Review of comments on tentative recommendation.
Drafting of amendments to bill.