

Memorandum 85-79

Subject: Study L-600 - Estates and Trusts Code (Form of Comments)

Charles A. Collier, Jr., makes a suggestion concerning the form of the Comments to sections of the new Estates and Trusts Code. He suggests that the Comments use a uniform system to explain how a particular new provision compares with prior law. His suggestion, which is set out in a modified form below, can be found on page 4 of his letter which is attached as Exhibit 1 to the First Supplement to Memorandum 85-72.

The staff suggests that the Comments to the new sections of the Estates and Trusts Code use the following categories to explain how a particular new provision compares with prior law:

(a) A section or provision of the new code continues a specified section or sentence (or provision) of prior law without change.

(b) A section or provision of the new code continues a specified section or sentence (or provision) of prior law with changes for clarification only and without substantive change.

(c) A section or provision of the new code restates a specified section or sentence (or provision) of prior law without substantive change.

(d) A section or provision of the new code restates (or continues) a specified section or sentence (or provision) of prior law with the following addition(s):

(e) A section or provision of the new code restates (or continues) a specified section or sentence (or provision) of prior law with the following change(s):

(f) A section or provision of the new code restates (or continues) a specified section or sentence (or provision) of prior law with the following omission(s):

(g) A section or provision of the new code supersedes (or replaces) a specified section or sentence (or provision) of prior law. [This form of Comment is to be used where the new provision covers the same subject matter as prior law but treats it in a different manner.]

(h) A specified section or sentence (or provision) of prior law has been omitted as unnecessary.

The staff plans to use this scheme in the Comments to the sections of the new code to explain how a particular new provision compares with prior law. We will appreciate any suggestions for improvement of the scheme. We recognize that it sometimes may be difficult to determine the precise category into which a particular situation fits.

Respectfully submitted,

John H. DeMouilly
Executive Secretary