2/28/86

Second Supplement to Memorandum 85-94

Subject: Topics and Priorities for 1988 and Thereafter

Attached is additional material relating to possible projects after the Commission has prepared the draft of the new Estate and Trust Code.

Exhibit 1 is a copy of a letter from Ralph J. Gampell, Director, of the Administrative Office of the Courts to Judge Harlan K. Veal. A letter suggesting the need for legislation from Judge Veal is attached as Exhibit 2 to the First Supplement to Memorandum 85-94. The Judicial Council is going to sponsor the legislation suggested by Judge Veal.

Exhibit 2 is a letter from David G. Justl pointing out the need for a revision in Section 1710.20 to permit an application for entry of a judgment based on a sister-state judgment to be filed in the municipal or justice court where the judgment amounts to $25,000 or less. This would raise the existing limit which is $15,000. The change would conform to the change in the jurisdictional limit of the municipal court from $15,000 to $25,000. This is a needed change and the staff believes that the Commission should recommend this change to the 1987 Legislature. It would take no significant amount of Commission or staff time to make this recommendation.

Exhibit 3 is a letter from attorney Michael T. McQuillen, suggesting a change in the law relating to declared homesteads. You should read his letter for details of the suggestion. The Commission submitted a recommendation that would have eliminated declared homesteads and given debtors the same benefit as if they had filed a declared homestead. The recommendation had some support, but it was dropped out of an overall revision of debtor-creditor law. When time becomes available, perhaps the Commission will want to review this

recommendation with a view to submitting a new recommendation. The existing statutory law in this area makes little sense. Attorney McQuillen suggests a specific change in the existing law, but the staff does not believe that the Commission has time to study his suggestion at this time.

Exhibit 4 is a copy of an article that appeared in the February 20 issue of The Daily Recorder. The article reflects the view of a number of persons, including legislators, that significant revisions are needed in the law relating to property division and support upon marriage dissolution. There is great pressure from women's rights organizations for changes in the law. The reason for this pressure is shown by examples given in the attached article.

Respectfully submitted,

John H. DeMoully
Executive Secretary

2nd Supp Memo 86-94

Exhibit 1

CHIEF JUSTICE
ROSE ELIZABETH BIRD
CHAIRPERSON

JUDICIAL COUNCIL OF CALIFORNIA

ADMINISTRATIVE OFFICE OF THE COURTS
STATE BUILDING, ROOM 3154
350 McALLISTER STREET, SAN FRANCISCO 94102 • (415) 557-3203

LEGISLATIVE OFFICE
100 LIBRARY AND COURTS BUILDING, SACRAMENTO 95814 • (916) 445-7524

RALPH J. GAMPELL
DIRECTOR

BURTON W. OLIVER
CHIEF DEPUTY DIRECTOR

February 13, 1986

Hon. Harlan K. Veal
Judge of the Superior Court
San Mateo County
401 Marshall Street
Redwood City, California 94063

Dear Judge Veal:

Thank you for sending us a copy of your recent letter to the California Law Revision Commission concerning legislation to revise Code of Civil Procedure section 1005. As you know, the court in Iverson v. Superior Court (1985) 167 Cal.App.3d 544 held that the statutory requirement that a responding brief is due five days before a law and motion hearing means five calendar days. Accordingly, the court stated that California Rules of Court, rule 317, is invalid insofar as it requires the filing of a responding brief five court days before the hearing.

At its November meeting, the Judicial Council voted to sponsor legislation to amend Code of Civil Procedure section 1005 to provide that the five-day period for filing a responding brief is five court days. This amendment would solve the conflict between the statute and the rule.

As we read the opinion, the Iverson court did not hold the two-court-day requirement for reply briefs (rule 317) invalid and there is no mention of reply briefs in section 1005.

We are informed by our Sacramento office that legislation implementing the council's decision will be introduced shortly.

Very truly yours,

Ralph J. Gampell
Director

RJG/dv
36691
cc: California Law Revision Commission

2nd Supp Memo 85-94

Exhibit 2

LAW OFFICES

COSKEY, COSKEY & BOXER

A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

SUITE 1960 WORLD SAVINGS CENTER

11601 WILSHIRE BOULEVARD

LOS ANGELES, CALIFORNIA 90025-1781

TELEPHONE (213)
473-4583 - 879-9558

February 7, 1986

California Law Revision
Commission
4000 Middlefield Road
Suite D-2
Palo Alto, CA 94303

Dear Sir/Madam:

As you are probably aware, the Municipal Court jurisdiction in California was recently raised to $25,000 by California Code of Civil Procedure Section 86. I recently had occasion to refer to California Code of Civil Procedure Section 1710.20 regarding applications for entry of a judgment based on a sister-state judgment. California Code of Civil Procedure Section 1710.20 states that the application shall be filed in the Municipal or Justice Court in all cases in which the sister-state judgment amounts to $15,000 or less. I believe that this statute was overlooked by the legislature when they raised the Municipal Court jurisdiction to $25,000. I bring this to your attention so that you may so advise the legislature.

Very truly yours,

David G. Justl

David G. Justl for
COSKEY, COSKEY & BOXER

DGJ:rr

MICHAEL T. McQUILLEN
A Professional Corporation
ATTORNEY AT LAW

4190 BONITA RD., STE 208
BONITA, CA 92002
(619) 267-6300

February 21, 1986

Mr. John Demolly
California Law Revision Commission
4000 Middlefield Road,
Suite D-2
Palo Alto, California 94305

IN RE: CALIFORNIA DECLARED HOMESTEAD LAW
CCP 704.930

Dear Mr. Demolly:

I would like to bring to the attention of the law revision commission a situation which has arisen as a result of the most recent revision to the California declared homestead law. Enclosed with this letter is a copy of a homestead which was prepared by another attorney on behalf of my client. I review this homestead prior to filing a petition on behalf of my client seeking relief under the provisions of Chapter 7 of the United States Bankruptcy Code. The homestead appeared to me to be at that time to be valid.

The situation my client found herself faced with in July of 1985 was that foreclosure proceedings had been commenced in February of 1985 and the home was set for Trustee's sale sometime during the later part of July of 1985. Although the bankruptcy petition effectively stayed further action on the foreclosure, the lender could easily have filed a motion seeking relief from the automatic stay, which in my opinion would have been successful, as my client was totally unable to make any payments owing on the obligation. Since there was over $100,000.00 worth of equity in the property, the only course of action open to us was to seek a voluntary sale.

My client's home was subsequently sold and pursuant to orders of the Bankruptcy Court the proceeds of the sale were deposited into accounts administered jointly by two bankruptcy trustees. The first trustee represents creditors of her estate, and the other trustee represents creditors of her former husband's estate. Her former husband filed a bankruptcy about the same time she did.

The problem with this declared homestead, is that it does not contain a statement that the facts stated in the homestead declaration are known to be true as of the personal knowledge of the person executing and acknowledging the homestead declaration. This requirement was added to the previous requirements of California's homestead law when Section 1263 of the Civil Code was replaced by Section 704.930 of the Code of Civil Procedure.

It should be noted that the homestead declaration my client executed was a standard Woolcots form dated sometime in 1979. I believe there are probably thousands of other homesteads floating about the state on either this form or some similar form which became obsolete when the legislature added subsection (c) of 704.930 to the Code of Civil Procedure. In my client's case, the trustee in Bankruptcy and attorneys for two lien creditors have objected to my client's claim of exemption on the grounds that the homestead declaration is invalid for failure to comply with 704.930 (c).

Specifically they object because the homestead declaration does not contain the statement that "the facts as stated therein i.e. that she is who she is, lives where she lives, and with whom she says she lives, was made of her own personal knowledge". While it seems clearly absurd to require someone to declare they have personal knowledge of who they are, where they live, and with whom, the Bank of America, and at least one Bankruptcy Trustee are asserting this position. And conceivably they could win.

I therefore strongly suggest that CCP 704.930 (c) be modified so as to not require the statement of the obvious. I would also like if possible to obtain some sort of statement from the law revision commission to the effect that the addition of this requirement was meant to be a procedural rather then a substantive change in the declared homestead law.

As things now stand, my client is faced with the possibity of losing her $45,000.00 homestead exemption, because her previous attorney had the homestead declaration acknowledged on the lower left hand portion of the form, rather then the lower

right portion of the form. I think there are probably a few thousand of these homesteads floating around, and I feel that a grave injustice will occur unless some change is made in the law and that change is made retroactive.

Very truly yours,

MICHAEL T MCQUILLEN
Attorney at Law

MTM/tmb
encl:Copy of Homestead

RECORDING REQUESTED BY
Attorney Stephen Temko

AND WHEN RECORDED MAIL TO

Name
Street Address
City & State

LUCY M. WILLIAMS
899 Second Avenue
Chula Vista, CA

.00 1706

85-036082

RECORDED IN OFFICIAL RECORDS OF SAN DIEGO COUNTY, CA

1985 FEB -1 PM 2:25

VERA L. LUCKE
COUNTY RECORDER

SPACE ABOVE THIS LINE FOR RECORDER'S USE

RF	3.00
AR	1.00
TLR	4.00
MG	1.00

DECLARATION OF HOMESTEAD

(CCP § 704.730(2)
(BY HEAD OF FAMILY)

KNOW ALL MEN BY THESE PRESENTS: That I, LUCY M. WILLIAMS (Name) do certify and declare as follows:

(1) I am the head of a family, [illegible] (Husband or Wife)

(2) I am now residing with my family, consisting of minor child, Jimmy

on the land and premises located in the City of Chula Vista

County of San Diego, State of California, and more particularly described as follows:

Lot 52, Whitting Subdivision Unit No. 3, in the City of Chula Vista, County of San Diego, State of California, according to the Map thereof No. 3266, filed in the office of the County Recorder of San Diego County, July 14, 1955

and commonly known as 999 Second Ave., Chula Vista, CA

(3) I claim the land and premises hereinabove described, together with the dwelling house thereon, and its appurtenances, as a Homestead.

(4) No former declaration of homestead has been made by me or my spouse except as follows:[1]

(5) The character of said property so sought to be homesteaded, and the improvements thereon, may generally be described as follows:[2] residence

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of January 19 85

Lucy M. Williams
(Signature of Head of Family)

Footnotes 1 and 2: See Reverse Side.

STATE OF CALIFORNIA } ss.
COUNTY OF SAN DIEGO }

On 1-30 1985

before me, the undersigned, a Notary Public in and for said State, personally appeared LUCY M. WILLIAMS personally known to me or proved to me on the basis of satisfactory evidence to be

[illegible] the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same.

Witness my hand and official seal

Cheryl Ades
Notary Public in and for said State

OFFICIAL SEAL
CHERYL ADES
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
SAN DIEGO COUNTY

STATE OF CALIFORNIA } ss.
COUNTY OF _____ }

_____

_____

being duly sworn, deposes and says: That he/she is the declarant described in the foregoing declaration of homestead; that he/she has read the same and knows the contents thereof, and that the matters therein stated are true of his/her own knowledge.

_____
(Signature of Head of Family)

Subscribed and Sworn to before me on _____ 19____

_____
Notary Public in and for said State.

No. 036082

Page 16 The Daily Recorder Thursday, February 20, 1986

Guest Columnist

Redoing our divorce laws

By Sen. Leroy F. Greene
D-Sacramento

In 1970, California took a hard look at divorce, and decided it was time to do something about it. Under the laws enacted that year, a divorce no longer required that one party show he or she had been wronged by the other. It was enough for a couple to state that they had irreconcilable differences.

As the years passed, judges started looking at women's earning power in awarding alimony and child support. Alimony was awarded in fewer and fewer cases, often limited to an "adjustment period" while a woman found a job.

It unfortunately was not an idea whose time had come. It hasn't worked out. Stanford University sociologist Lenore Weitzman shows that divorce is a financial catastrophe for women. According to her statistics, in the first year after a divorce, a woman typically suffers a 73 percent decrease in her standard of living, while her ex-husband enjoys a 42 percent increase in his. No-fault divorce is creating a new class of poor women and children.

FOR EXAMPLE, John and Carol Smith married when Carol was 20 and John was 22. They have two children, ages 8 and 4. Carol had completed two years of college when they married and worked as a secretary for the first year of the marriage. When their first child was born, she quit work to stay home and care for him. John, at the time was a recent college graduate. His income has grown and is now $30,000 a year. They bought a home five years ago with mortgage payments of $400 per month. Their other assets include furnishings and two cars, one of them six years old.

A typical no-fault divorce settlement would assume that Carol can again become gainfully employed. The couple might amicably divide up the furniture and the two cars, sell the house, and split the proceeds. They will each probably get $15,000. In addition, the judge might very likely rule that John must pay child support. His income is approximately $2500 per month. He will probably be told that he must pay $300 in child support. This leaves him $2200 a month before taxes.

Carol, because she has not worked for ten years, but has good office skills, will be able to get a job paying about $15,000 a year. Her monthly before tax income will be $1250. She will use the entire $300 child support award to pay for day care. Her household of three will live on $1550 a month. Her ex-husband will be a single person living on $2200. The children may, by order of the court, continue to be covered by their father's health insurance. The mother will not.

THE FATHER has ten years invested in his career. His pay increments and cost of living adjustments will be related to his present salary. The mother has 10 years invested in her family. She is starting out where her ex-husband did 10 years ago. Additionally, since women on the average make only 59 cents for every dollar men make, she and the children will continue to fall farther and farther behind.

We did not intend to create a new class of poor women and children, and we cannot control the vagaries of life that turn a loving couple into unhappily married individuals who need to go their separate ways. No one wants to go back to the old days of accusations and acrimony, but we need to take a fresh look at where no-fault divorce has brought us.