

Memorandum 89-46

Subject: 1990 Legislative Program

The Commission's major recommendation to the 1990 Legislature is the completion of the revised Probate Code. The project is on track; our schedule for completion of work on the new Probate Code is attached to the meeting agenda.

The Commission's next major project is the administrative law study. The Commission's administrative law consultant will begin delivering background studies to the Commission at the end of this summer. The Commission has also asked the staff to give priority to the study of shifting attorneys' fees between litigants. However, if ACR 30 is enacted requiring the Commission to give priority to compilation of a family relations code, work on shifting of attorneys' fees may have to be demoted or deferred. None of these major projects could be scheduled for submission in 1990.

Meanwhile, there are a number of smaller projects, all in the probate field, that could be completed in time for submission to the 1990 Legislature along with the new Probate Code. The staff has scheduled the most likely candidates for Commission review at the July meeting in order to make this feasible. The status of each of these is summarized briefly below.

(1) Marital deduction gifts--qualified domestic trusts. The marital deduction gift saving legislation was revised a year or two ago on Commission recommendation, but a new Internal Revenue Code limitation on gifts to noncitizen spouses raises the need to update the legislation. This is a small item that can be done quickly and with minimal imposition on Commission or staff resources.

(2) In-law inheritance. The Commission has adopted the policy that the in-law inheritance statute should be repealed. Approval of a tentative recommendation at the July meeting will enable us to distribute it for comment over the summer and to perfect a final recommendation during the fall.

(3) Uniform Management of Institutional Funds Act. The Commission has distributed a tentative recommendation to broaden coverage of this existing California statute. The Commission can review comments in July or, if there is not sufficient time, in the fall, for submission of a final recommendation in 1990.

(4) Uniform Statutory Rule Against Perpetuities. Our consultant, Chuck Collier, has given us a study analyzing the new uniform act, comparing it with the existing California version of the rule against Perpetuities, and recommending adoption of the uniform act. If the Commission agrees with the policy of the uniform act, this can be circulated for comment on a schedule that could result in submission to the Legislature in 1990.

(5) Statutory short form power of attorney. California's existing statutory short form power of attorney, enacted on Commission recommendation, has been criticized as being too broad. A new uniform act has been promulgated which, if adopted, would narrow the existing statute in a number of respects. The Commission can review this matter at its July meeting and send out a tentative recommendation for comment.

The Commission has reserved a few of the more complex probate issues for later action--the Commission's probate "back burner". The staff has prepared material on a number of these issues for Commission consideration. It would be possible to submit recommendations on some of them for the 1990 session, if the Commission were to find sufficient time at the next few meetings to consider them. The staff will schedule these items for Commission review whenever it appears there will be sufficient time at a meeting after giving priority to the other matters intended for the 1990 session.

There are two other studies, both outside the probate field, that the Commission has been active in and that are currently pending. These are the studies of (1) limitations on disposition of community property and (2) commercial real property assignment and sublease (related problems). Staff and consultant work on these topics is available. The topics have been scheduled for Commission consideration at prior meetings, but there has not been sufficient time to cover them. In the staff's judgment both these topics may take somewhat more

meeting time than is currently available in order to make it into the 1990 legislative program. We have therefore not given them space on the July agenda, but will take them up as soon as time permits.

Respectfully submitted,

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