

Memorandum 89-102

Subject: Study L - Revised Comments to New Probate Code

Attached is a draft of the Comments to the New Probate Code. The staff requests that the Commission approve the draft for printing as a part of the *Recommendation Proposing New Probate Code*. Because of the volume of the attached material, we have not made copies of the draft of the Comments for all the persons who generally receive copies of materials prepared for Commission meetings. But once the Comments are available in the form of a printed pamphlet, interested persons will have the Comments available in a convenient form and the Comments will be much easier to review. Interested persons can then suggest any revisions in the Comments (as they appear in the printed pamphlet) that are needed to correct or clarify the Comments.

We have just been advised that the \$21,000 we encumbered to print our *Annual Report* (\$3,000) and the *Recommendation Proposing New Evidence Code* (Comments to New Code) (\$18,000) has been taken away from us. State agencies have been advised by the Department of Finance that all money encumbered during the 1988-89 fiscal year for goods or services that were not actually received by November 22, 1989, will revert to the General Fund. There is a procedure for appeal to the Department of Finance to obtain permission to have the reverted money made reavailable for the purpose for which it was encumbered if it is established to the Department that the encumbrance must be reinstated. We plan to appeal for restoration of the money. However, in order that we will have a strong case for restoration of the money, it is essential that we have the material we want to publish ready to take to the printer in Sacramento immediately after the meeting. So that we can do this, we do not want to make any changes in the material unless absolutely essential. The *Recommendation Proposing New Probate Code* will be close to 1,000 pages. If we cannot get the encumbrance restored to print this recommendation, it will not be printed. In

addition to the financial problem, we must send this recommendation to the printer immediately after the November-December meeting if we are to have the report containing the new Probate Code Comments available before Assembly Bill 759 is heard in the Senate.

We distributed an earlier version of the Comments to the New Probate Code to the State Bar Section on Estate Planning, Trust and Probate Law. We have received suggested revisions from the Section, and we have made revisions in the Comments as a result. We have written to the State Bar Section indicating the action taken on each suggestion received. If the State Bar Section has further suggestions concerning a particular Comment, we can revise the Comment after the pamphlet containing our *Recommendation Proposing New Probate Code* is printed.

The attached Comments are ready to send to the printer. We have reproduced them for the meeting as we finished each portion. We received one letter from the State Bar Section concerning Comments we had already reproduced for the meeting. We have written to the State Bar Section, indicating the few revisions we have made as a result of this letter in the Comments as we will print them in the *Recommendation Proposing New Probate Code*. If we receive any more such letters, we will have to revise the Comments after the Recommendation is published.

The attached Comments are based on the assumption that the recommendation relating to compensation of the estate attorney will be enacted in 1990. If necessary, we will prepare a report (during the legislative session) to make any revisions in the Comments that are needed to reflect the compensation provisions as enacted.

The *Recommendation Proposing New Evidence Code* will consist of the material listed in Memorandum 89-100.

Respectfully submitted,

John H. DeMouilly
Executive Secretary