

Memorandum 90-40

Subject: Administrative Matters (Suggestions Concerning Family Law
Consultants)

FAMILY RELATIONS CODE

In Memorandum 90-37, concerning questionnaire responses and method of proceeding on the Family Relations Code project, the staff suggests that the Commission retain a number of law professors as consultants. The consultants would serve the same function as the law professor consultants on the Probate Code project: review meeting materials and provide comments to the Commission on the materials. The consultants would not receive any compensation for their services as consultants, but would receive recognition as Commission consultants. Our contracts with them would permit us to pay their travel expenses in attending Commission meetings if we asked them to attend. Some of our Probate Code law professor consultants (e.g., Professor Halbach) attended a number of meetings and made significant contributions to the project.

We have compiled a list of about 40 law professors who teach family law in California law schools. See Exhibit 1. The list is drawn from the current American Association of Law Schools directory of law teachers. Many of the professors may be uninterested in this project, and others may not be particularly helpful to us.

Rather than trying to ascertain which professors would be good consultants by interviewing all of them, reviewing their writings, checking their schedules, etc., the staff suggests a sort of self-selection process. We would send a letter to each law professor who has been identified as a California family law teacher, asking whether the professor would be willing to review and comment on Commission meeting materials and drafts. The first cut would be those who indicate yes. We would send materials for a few months and wait

for responses. The second cut would be those that respond. We would review the responses, and those that seem helpful would provide the basis for making consultant contracts to attend Commission meetings.

REVOCABILITY OF DONATIVE TRANSFER OF COMMUNITY PROPERTY

At the March 1990 meeting the Commission asked the staff to report back at the next meeting with suggestions concerning a possible academic consultant on issues raised by the MacDonald case concerning donative transfers and revocation of consent.

Our initial step was to contact Professor Reppy at Duke Law School, who has served as the Commission's consultant on community property matters in the past, and whose work for us has been outstanding. However, as it happens, Professor Reppy is the husband's attorney in the Supreme Court in the MacDonald case. He has written and filed the husband's brief and will be arguing the case before the court. For this reason, the staff believes Professor Reppy should not be considered as a consultant on this matter; it involves major and important issues, and the Commission's consultant should not be, and not be viewed as, partisan.

Because this study involves core issues relating both to community property and estate planning, the staff believes a person who is expert in both fields would be most desirable. The staff has determined that there are currently five California law professors who teach in both fields. They are Gail Bird (Hastings), Susan Channick (California Western), Jerry Kasner (Santa Clara), Anthony Pagano (Golden Gate), and Sarah Velman (San Diego). We have reviewed their published writings during the past decade, and found five articles by Professor Kasner, three by Professor Bird, one co-authored by Professor Velman, and none by Professors Channick and Pagano.

Professor Kasner is the staff's first choice as a consultant. Besides writing prolifically and well, he has a great breadth of knowledge in matters relating to community property and estate planning. He is a former editor of the CEB Estate Planning and Probate Law Reporter and is the Current Developments reporter for the Annual UCLA-CEB Estate Planning Institute. The staff has consulted with him

from time to time in the past concerning difficult community property and estate planning issues. The staff believes he would be practical, and a good consultant on this topic.

We have spoken with him, and he would be quite interested in preparing this study for the Commission. He is familiar with the MacDonald case and the issues, and in fact has abstracted the case for a national tax service for which he analyzes developments in the law. If he were retained by the Commission this spring, he would plan to spend time during the summer roughing out the study and during the fall refining it, with an expected completion date by December 31, 1990. If the Commission decides to defer decision on a consultant, we could not expect a study from Professor Kasner on quite as rapid a schedule, since he would need a summer at some point for the bulk of the work.

Professor Reppy believes it is premature to hire a consultant on this matter; the Supreme Court's decision will take care of the problem. The staff cannot agree with this analysis. Regardless of whether the Supreme Court corrects the immediate problems caused by the Court of Appeal decision in MacDonald, there are many related and unrelated issues suggested by the case that require comprehensive statutory treatment. To delay hiring a consultant will simply delay the entire project for no benefit. It will take the consultant some time to prepare the background study for the Commission, and the consultant can take into account the Supreme Court's eventual decision in MacDonald in the process.

The staff believes we have an excellent consultant available now who can prepare a very good and useful study for the Commission on short notice. The staff recommends the Commission retain Professor Kasner to prepare a background study that analyzes issues involved in donative transfers of community property. The study should include a discussion of consent and transmutation problems, revocability problems, effect of termination of marriage by dissolution or death, rights of creditors, and any other matters the consultant finds are relevant. The study should also state the consultant's proposed resolution of the various problems identified in the study. The consultant's contract should be in the Commission's standard form for studies by academic consultants. The staff suggests compensation of

\$5,000 for the background study, plus an additional amount not exceeding \$1,500 for the consultant's travel expenses in attending Commission meetings and legislative hearings when requested by the Commission.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

EXHIBIT 1

CALIFORNIA FAMILY LAW TEACHERS
(From 1989-90 AALS Directory)

<u>PROFESSOR</u>	<u>LAW SCHOOL</u>
Altman, Scott	USC
Blumberg, Grace	UCLA
Bowermater, Janet	Cal Western
Bruch, Carol	Davis
Ciesielski, Joseph	San Diego
Cochran, Robert	Pepperdine
Costello, Jan	Loyola
Donovan, Dolores	USF
Folberg, Jan	USF
Foote, Caleb	Boalt
Goldberg, Charlotte	Loyola
Goodman, Max	Southwestern
Gough, Aidan	Santa Clara
Horton, Paul	San Diego
Kay, Herma Hill	Boalt
Keogh, William	Stanford
Kosel, Janice	Golden Gate
Kuehl, Sheila	Loyola
Levine, Martin	USC
Miller, Anthony	Pepperdine
Myers, John	McGeorge
Noonan, John	Boalt
Olsen, Frances	UCLA
Parnas, Ray	Davis
Prager, Susan	UCLA
Sanger, Carol	Santa Clara
Schuele, Donna	Whittier
Scully, Glendalee	Loyola
Shultz, Marjorie	Boalt
Skolnick, Jerome	Boalt
Smedley, Theodore	Hastings
Talbot, Robert	USF
Taylor, Leigh	Southwestern
Trinkaus, Walter	Loyola
Ursin, Edmund	San Diego
Wald, Michael	Stanford
Weisberg, Kelly	Hastings
Wiggins, Charles	San Diego
Wiley, John	USC
Woody, Wayne	Hastings
Zimring, Franklin	Boalt