

Memorandum 90-90

Subject: Study L-608 - Deposit of Estate Planning Documents With
Attorney

At the May-June meeting, the Commission considered a *Tentative Recommendation Relating to Deposit of Estate Planning Documents With Attorney*. The TR would have allowed an attorney intending to go out of practice to transfer estate planning documents in his or her possession to another depository, and to give notice of the transfer to the State Bar. The Commission also considered a letter from Alan Rothenberg, President of the State Bar, expressing serious concerns about the proposal.

The Commission decided to table the proposal until the State Bar Estate Planning, Probate and Trust Law Section could discuss these concerns with the Board of Governors and reach a satisfactory solution. The Commission asked the staff to write to the Board of Governors and the Probate Section advising of the Commission's action. At the July meeting, the Commission asked for a status report.

On June 5, the staff wrote to Mr. Rothenberg for the Board of Governors, copy to Jim Quillinan for the Probate Section, advising that the Commission had decided to take no further action on the proposal until the Probate Section could discuss it with the Board of Governors and resolve the questions raised by Mr. Rothenberg.

The staff recently followed up by telephone. The staff talked with David Long, Director of Research for the State Bar. Mr. Long said the Board of Governors is concerned about the cost of setting up a system for receipt, storage, and retrieval of information relating to transfers of estate planning documents. He said the system would have to index the name of the transferring depository, receiving depository, and maker of the document. The Membership Records Section of the State Bar estimated an initial cost of a quarter of a million dollars to set up such a system. Mr. Long doubted that a filing fee could be both reasonable and large enough to amortize initial setup costs within a reasonable period of time. The other alternative is to include in the proposal an appropriation for the State Bar, probably not acceptable in

the state's present fiscal crisis.

The staff also talked with Jim Quillinan for the Probate Section. He said the Section's Executive Committee will discuss it at their meeting on August 27th, and will have a report for the Commission some time after that. If we receive it in time for the September meeting, we will send it out by a supplement to this memorandum. If not, the staff recommends the Commission continue to defer action on this proposal until we have the Executive Committee report.

Respectfully submitted,

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