

Memorandum 93-28

Subject: Status of 1993 Legislative Program

Attached to this memorandum is a chart showing the status of the Commission's 1993 legislative program. Issues involving AB 1500 (Family Code cleanup) are discussed in the First Supplement to Memorandum 93-28. This memorandum discusses issues involving AB 209 (deposit of estate planning documents), AB 1704 (litigation involving decedents cleanup), and AB 2209 (parent and child relationship for intestate succession).

AB 209 (Deposit of Estate Planning Documents)

AB 209 was approved by the Assembly Judiciary Committee by a vote of 11 to 0 after the author, Assembly Member Paul Horcher, agreed to amend the bill in two respects to address concerns of the California County Clerks Association:

(1) The bill was amended to limit the authority to file an estate planning document with the superior court clerk to the case where the filing attorney is deceased, lacks legal capacity, or is no longer an active member of the State Bar. The Committee Chairperson, Assembly Member Isenberg, asked for this amendment to prevent a flood of documents from being sent to the courts.

(2) The bill was amended to increase the clerk's filing fee to \$10 unless the county board of supervisors approves a higher fee, but not to exceed the direct cost of microfilming, indexing, and storing the document. The court may waive the fee for hardship, or where the court has assumed jurisdiction over the attorney's law practice. The County Clerks had asked that the amendment provide for a fee sufficient to cover "actual cost" as determined by the county board of supervisors, not to exceed \$182 for each document. The staff made the more limited counter-proposal (\$10 or enumerated direct costs) after consulting with the Commission's Chairperson.

The following are the sections as amended:

Prob. Code § 732 (added). Termination by transferring document to another attorney or superior court clerk; reduced standard of care

732. (a) An attorney may terminate a deposit under this section if the attorney has mailed notice to reclaim the document to the

depositor's last known address and the depositor has failed to reclaim the document within 90 days after the mailing.

(b) Subject to subdivision ~~(e)~~ (f), an attorney may terminate a deposit under this section by transferring the document to ~~either of the following:~~

~~(1) Another~~ another attorney. All documents transferred under this subparagraph ~~subdivision~~ shall be transferred to the same attorney.

~~(2) The~~ (c) Subject to subdivision (f), if an attorney is deceased, lacks legal capacity, or is no longer an active member of the State Bar, a deposit may be terminated under this section by transferring the document to the clerk of the superior court of the county of the depositor's last known domicile. The attorney shall advise the clerk that the document is being transferred pursuant to Section 732.

~~(e)~~ (d) An attorney may not accept a fee or compensation from a transferee for transferring a document under this section. An attorney may charge a fee for receiving a document under this section.

~~(d)~~ (e) Transfer of a document by an attorney under this section is not a waiver or breach of any privilege or confidentiality associated with the document, and is not a violation of the rules of professional conduct. If the document is privileged under Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code, the document remains privileged after the transfer.

~~(e)~~ (f) If the document is a will and the attorney has actual notice that the depositor has died, the attorney may terminate a deposit only as provided in Section 734.

Gov't Code § 26827.6 (added). Fee for filing estate planning document

26827.6. (a) The fee for receiving and storing a document transferred to the clerk of the superior court under Section 632 of the Probate Code is ~~the same as the fee under Section 26850 for filing and indexing papers.~~

~~(b) The fee for searching a document transferred to the clerk of the superior court under Section 732 of the Probate Code is the same as the fee under Section 26854 for searching records or files ten dollars (\$10), unless the board of supervisors determines that ten dollars (\$10) is less than the direct cost of making a photograph, microphotograph, photocopy, or electronic image of the document, if any, and the direct cost of indexing and long-term storage of the document or its photograph, microphotograph, photocopy, or electronic image.~~

(b) If the board of supervisors makes the determination provided in subdivision (a), the board may set a fee for receiving and storing a

document that exceeds ten dollars (\$10), but that fee shall not exceed the direct costs specified in subdivision (a).

Gov't Code § 26827.7 (added). Fee for searching estate planning document
26827.7. The fee for searching a document transferred to the clerk of the superior court under Section 732 of the Probate Code is the same as the fee under Section 26854 for searching records or files.

In view of these amendments, the County Clerks Association told the staff they will no longer actively oppose the bill. The bill goes next to the Assembly Committee on Ways and Means.

AB 1704 (Litigation Involving Decedents Cleanup)

AB 1704 is cleanup legislation to take care of chaptering out and other minor and technical issues resulting from last year's comprehensive legislation on litigation involving a decedent. The bill is set for hearing on May 19. Meanwhile, Assembly Member Horcher's office has inquired whether this bill might not be made part of the Judiciary Committee's miscellaneous civil practice bill (AB 2205). We have told them we would have no problem doing this, and have given the relevant background material to the Judiciary Committee. If it is incorporated in the Committee bill, it would be done in the Senate.

AB 2209 (Parent and Child Relationship for Intestate Succession)

AB 2209 is a Judiciary Committee miscellaneous probate bill that is intended to include the Commission's clarifying and reorganizing legislation on the parent and child relationship for intestate succession. Because the Committee's consultant on this bill has been ill and unable to prepare materials on it, the Committee will be holding this bill for action next session as a two-year bill. If we wish to push our legislation this session, it will have to be done in another bill.

Assembly Member W. J. "Pete" Knight has a bill, AB 1137, that would affect the statute on parent and child relationship for intestate succession. That bill would add DNA testing to the methods of proving paternity after death of the alleged father for the purpose of intestate succession.

The State Bar Probate Section favors adding DNA testing as provided in the Knight bill. The Commission previously considered whether DNA testing should be authorized as a method of proving paternity after the alleged father's death. The Commission was persuaded by Professor Halbach that the issue is not scientific reliability, but that rather the issue is one of trying to effectuate the

decedent's likely intent. The Commission concluded that the decedent probably would not have wanted to provide for a child of which he was either unaware or had not acknowledged as his own before his death.

Mr. Knight has agreed to amend the Commission recommendation on Parent and Child Relationship for Intestate Succession into his bill. The staff has sent Mr. Knight amendments to include the Commission recommendation, but has isolated the DNA provision as a separate section from the Commission-recommended material:

6453.5. (a) Notwithstanding subdivision (b) of Section 6453, if it was not possible for the father openly to hold out the child as his own during the father's lifetime, paternity may be established by DNA testing.

(b) This section applies to proceedings for administration of decedents' estates in which a final order for distribution of the estate is entered on or after January 1, 1994.

The staff has made clear to Mr. Knight and the Consultant to the Assembly Judiciary Committee that the Commission takes no position on proposed Section 6453.5.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

STATUS OF 1993 COMMISSION LEGISLATIVE PROGRAM
(as of May 5, 1993)

AB 209 (Horchner): Deposit of Estate Planning Documents

AB 1500 (Speier): Family Code Cleanup

AB 1704 (Horchner): Litigation Involving Decedents Cleanup

AB 2209 (Assembly Judiciary): Parent and Child
Relationship for Intestate Succession

AB 2211 (Assembly Judiciary): Maintenance of Codes
[includes 3 CLRC technical revisions]

SCR 4 (Senate Judiciary): Continuing Authority to Study
Topics [includes 3 new topics]

Bill Status		AB 209	AB 1500	AB 1704	AB 2209	AB 2211	SCR 4
Introduced		Jan 25	Mar 4	Mar 4	Mar 5	Mar 5	Jan 7
Last Amended		Apr 21	Apr 28				
First House	Policy Committee	Apr 20	Apr 27	[May 19]			Feb 9
	Fiscal Committee			—	—	—	Mar 1
	Passed House						Mar 4
Second House	Policy Committee						Apr 29
	Fiscal Committee			—	—	—	
	Passed House						
Concurrence							
Governor	Received						
	Approved						
Chaptered by Secretary of State	Date						
	Chapter #						

• Unless otherwise noted, all dates are in 1993.

[date]: scheduled

—: not applicable