

Memorandum 94-4

1994 Work Schedule

The Commission has set its priorities for work during 1994. The highest priority matter is trial court unification. Two statutorily mandated creditors remedies studies must be completed by year's end. Work on other ongoing studies will be wrapped up to the extent time and resources permit. Background studies also are in preparation for future Commission consideration.

In this memorandum the staff reviews the status of these projects and the available Commission resources, and makes suggestions for how the Commission might best schedule its work during 1994.

STATUS OF PROJECTS

Trial Court Unification

Constitutional Amendment. The constitutional phase of the Commission's trial court unification study will conclude by February 1, 1994. We will need to supplement the initial recommendation immediately with a proposed procedure for resolving personnel issues, offered for adoption as an urgency measure at the 1994 legislative session. We are awaiting receipt of a trial court coordination study commissioned by the Judicial Council, due February 1.

Statutory Amendment. A more substantial task will be statutory implementation of trial court unification. Thousands of statutes must be reviewed. The difficult decisions deferred as part of the constitutional phase must be considered and resolved—e.g., appeal path for civil causes, compensation of judges, retirement allowances of judges, unification of provisions governing subordinate judicial officers, consolidation of bailiffing functions, application of special rules of procedure (small claims, economic litigation, judicial arbitration), consolidation of jury selection procedures, treatment of venue issues, unification of filing fees, treatment of sessions, forms, and records, consolidation of personnel statutes, and revising terminology.

The dilemma we face on this phase of the project is that if we wait until the June election to see whether SCA 3 is approved by the voters, it may be impossible to accomplish the work of statutory revision in time to enable the

Legislature to have implementing legislation in place by the proposed July 1, 1995, operative date of SCA 3. But if we start immediately, we run the risk that our efforts will have been wasted in the event that SCA 3 is not approved by the voters.

Creditors Remedies

Exemptions. Code of Civil Procedure Section 703.120 requires that the Law Revision Commission by July 1, 1993, and every ten years thereafter, review the exemptions from execution and recommend any changes in the exempt amounts that appear proper. The Commission deferred work on this task to January 1, 1995, due to budgetary considerations, as authorized by Government Code Section 7550.5. If we are to meet the deferred statutory deadline, we must devote resources to this task during 1994.

Attachment. The Commission must study the impacts of changes in Code of Civil Procedure Sections 483.010 and 483.015, relating to prejudgment attachment, during the period from January 1, 1991, through December 31, 1993. The Commission's report is due on or before December 31, 1994. If we are to meet the statutory deadline, we must devote resources to this task during 1994.

Administrative Law

Administrative procedure had been the Commission's highest priority until the study was interrupted by trial court unification. The Commission has devoted substantial resources to this project and is well along on it. The Commission is currently engaged in two major areas of the study—administrative adjudication and judicial review. There is substantial legislative interest in this study expressed by Senate and Assembly committees on governmental organization. The Commission must bring it to a conclusion as soon as possible.

The administrative adjudication phase of the project is well along. We have circulated a tentative recommendation for review and comment, have received comments, and have begun review of the comments. We have informally extended the comment period due to suspension of work on the subject, and expect additional input by January 30. We need to schedule Commission meeting time for a special session to hear and resolve exemption requests, and we need to devote the substantial time necessary to review comments and revise the

recommendation. Major amounts of staff time are also required to implement conforming revisions.

The judicial review phase of the project also is in progress. We have made initial policy decisions and reviewed some drafts concerning standing, timing, and scope of review issues. We are currently circulating for comment our consultant's background study on review procedure, in anticipation of initial policy decisions on the issues identified in the study.

Background Studies in Progress

Consultants are currently preparing background studies for the Commission in three business law-related subjects on the Commission's agenda. These are the Uniform Unincorporated Nonprofit Association Act, corporate governance, and unfair business practices litigation. The first of these studies is due at the end of 1993, the second at the end of summer 1994, and the third at the end of 1994.

Each of these studies, with the possible exception of the first, will require a fair amount of Commission time. The Uniform Unincorporated Nonprofit Association Act project should not require much work. Depending on the approach taken by our consultant, Professor Michael Hone, it may be possible simply to circulate the background study for comment and come to a conclusion for the Legislature with relative ease. The other projects will not be so simple, however.

AVAILABLE RESOURCES

As usual, our main concerns are time and money, and at present the two are more than usually connected. Due to budget cuts over the past three years, we have had to reduce our staffing and operations. In order to make ends meet during the current fiscal year without further staffing reductions, we reduced the Commission's meeting schedule to every other month, and Commissioners waived their meeting per diems. However, the trial court unification project has required and will require monthly meetings.

We have received substantial help through the Judicial Council's agreement to reproduce and distribute copies of the Commission's trial court unification materials to interested persons. In addition, the Judicial Council has commissioned Professor Kelso to help the Council do its statutory review. Professor Kelso's work, and the Judicial Council proposals, will be available to

the Commission again to give us a jump start on the statutory review portion of the project.

The Commission's budget for the remainder of the 1993-94 fiscal year is sufficient to enable the Commission to hold the necessary meetings during the last half of the fiscal year. This is due to salary savings resulting from the delay in filling our staff counsel position that was vacated as a result of reducing it from full time to half time.

The Governor's budget proposes basically the same amount for the Commission in 1994-95 as we have for 1993-94. This will leave us short of the amount necessary to hold monthly commission meetings, and short of the amount necessary to maintain regular operations. We do not anticipate any salary savings during the 1994-95 fiscal year to help us out. The staff will propose appropriate operations reductions when we have a somewhat better idea of what the Commission's actual appropriation is likely to be.

Meanwhile, we have written to Senator Lockyer's office with a budget for the trial court unification study, explaining the need for a one-time budget augmentation. We have also suggested alternatives, such as obtaining a "loaner" attorney from another agency. However, it appears now that funds for added Commission meeting time are more critical than added legal staff. We have not heard yet what the prospects of an augmentation may be.

STAFF RECOMMENDATIONS

The Commission should schedule monthly meetings during the first half of 1994. We have the funds this fiscal year and may not have them next fiscal year, so we need to maximize Commission meeting time while we can.

Developing a procedure to resolve the personnel issues involved in trial court unification will be the first priority. We will also need to devote some time to our 1994 legislative program (effect of joint tenancy title on marital property, comprehensive power of attorney statute, orders to show cause and temporary restraining orders).

The staff suggests that the remainder of the meeting time until July 1 be devoted to three subjects: (1) statutory issues in trial court unification, (2) administrative procedure, and (3) the statutorily required creditors remedies studies. This will enable us to make some progress in anticipation of passage of SCA 3, while leaving us in a position to complete work on other projects during the year if SCA 3 fails.

With respect to administrative procedure, the staff would give highest priority to completing the work on administrative adjudication and somewhat lower priority to judicial review. Although the Commission decided to propose a package combining administrative adjudication and judicial review, our present circumstances demand that we complete and submit what we can whenever we are able. We should wrap up administrative adjudication before it gets stale and while there is interest in the matter expressed by legislative committees.

The business law background studies we will not be in a position to handle immediately, except possibly the Uniform Nonprofit Unincorporated Association Act. The staff proposes to modify our contracts with our consultants to extend their due dates, if they are interested.

The Commission's work schedule during the last half of 1994 we would determine once the budget situation, and possible augmentation, for the 1994-95 fiscal year is clearer.

With these considerations in mind, the staff suggests the following as meeting dates during 1994. Dates previously scheduled or tentatively saved are noted as such; proposed new dates are indicated.

January 1994	<i>Scheduled</i>	Sacramento
Jan. 6 (Thur.)		10:00 am – 5:00 pm
Jan. 7 (Fri.)		9:00 am – 4:00 pm
January 1994	<i>Scheduled</i>	San Francisco
Jan. 20 (Thur.)		10:00 am – 5:00 pm
Jan. 21 (Fri.)		9:00 am – 4:00 pm
February 1994	<i>New</i>	Sacramento
Feb. 10 (Thur.)		10:00 am – 5:00 pm
Feb. 11 (Fri.)		9:00 am – 4:00 pm
March 1994	<i>Tentative</i>	Sacramento
March 24 (Thur.)		10:00 am – 5:00 pm
March 25 (Fri.)		9:00 am – 4:00 pm
April 1994	<i>New</i>	Los Angeles
Apr. 14 (Thur.)		10:00 am – 6:00 pm
Apr. 15 (Fri.)		9:00 am – 4:00 pm
May 1994	<i>Tentative</i>	Sacramento
May 12 (Thur.)		10:00 am – 5:00 pm

May 13 (Fri.)		9:00 am – 4:00 pm
June 1994	<i>New</i>	San Francisco
June 9 (Thur.)		10:00 am – 6:00 pm
June 10 (Fri.)		9:00 am – 4:00 pm
July 1994	<i>Tentative</i>	Los Angeles
July 14 (Thur.)		10:00 am – 6:00 pm
July 15 (Fri.)		9:00 am – 4:00 pm
September 1994	<i>Tentative</i>	Sacramento
Sep. 22 (Thur.)		10:00 am – 5:00 pm
Sep. 23 (Fri.)		9:00 am – 4:00 pm
November 1994	<i>Tentative</i>	Los Angeles
Nov. 10 (Thur.)		10:00 am – 6:00 pm
Nov. 11 (Fri.)		9:00 am – 4:00 pm

Respectfully submitted,

Nathaniel Sterling
Executive Secretary