

4/28/77

Memorandum 77-28

Subject: Schedule for Work on Topics

This appears to be an appropriate time to review the various topics on the Commission's agenda and to plan our work for the next few years.

It should be recognized that any schedule must be tentative since it is difficult to predict the amount of time that will be required to prepare a recommendation on any particular topic. In addition, priorities may require revision in light of requests or suggestions from legislative committees.

General Comment Concerning Schedule

Exhibit 1 sets out a suggested schedule for recommendations to the 1978, 1979, 1980, and 1981 legislative sessions. You will note that the recommendation on the comprehensive statute on enforcement of judgments is tentatively scheduled for the 1979 legislative session. Exhibit 2 sets out the schedule that would need to be met in order to submit this recommendation to the 1979 session. It is an ambitious schedule and one that the Commission may be unable to meet.

The schedule set out in Exhibit 1 disposes of the various topics on the Commission's present agenda except for those on which work is deferred in order to avoid possible duplication of the work of the Joint Legislative Committee on Tort Liability. See pages 1621-1626 of the attached Annual Report for a listing of topics on the agenda. You will note that many topics are retained even though recommendations relating to the topic have been submitted; we do not anticipate any additional recommendations on these topics unless defects in the legislation enacted upon Commission recommendation are called to our attention.

For a summary of the status of the background studies on various topics, see Exhibit 4.

Nonprofit Corporation Study

We cannot now anticipate what additional work will be required on the nonprofit corporation study. In view of the Commission's decision at the last meeting to proceed with its bill rather than to work with

the State Bar Committee on a joint bill, it would appear that it would be best to consider nonprofit corporation law again in November 1977 when we have substantially completed the work on our 1978 legislative program. At that time, the State Bar Committee should have put together a draft of a bill, and we should have received whatever comments we will receive on our printed recommendation and the bills introduced to effectuate that recommendation. It is absolutely necessary that we make our nonprofit corporation bills two-year bills so, assuming they pass the Senate, they will not be considered in the Assembly until April or May 1978.

Selected Aspects of Inverse Condemnation Law

Exhibit 3, prepared by Mr. Sterling, sets out a number of areas of inverse condemnation law that the Commission might wish to study. Please refer to that exhibit; we plan to discuss the exhibit at the meeting.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EXHIBIT 1

POSSIBLE RECOMMENDATIONS FOR 1978 LEGISLATIVE SESSION

(1) Tentative Recommendation Relating to the Attachment Law
Performance of Judicial Duties by Court Commissioners

We have received two letters commenting adversely on this tentative recommendation and objecting to the use of court commissioners under the Attachment Law.

(2) Tentative Recommendation Relating to Evidence of Market Value of Property

You will recall that the Chairman of the Commission prepared a letter objecting to changes in the existing law proposed by this tentative recommendation. We have received letters expressing the view that the tentative recommendation does not go far enough in proposing changes in existing law. We have received quite a number of requests for copies of this tentative recommendation.

(3) Elimination of Overlap Between Guardianship and Conservatorship Laws

The staff expects to produce a tentative recommendation on this subject for the July 1977 meeting. If the tentative recommendation can be approved for distribution for comment after that meeting, it is possible that a recommendation on this subject could be submitted to the 1978 session.

(4) Psychotherapist-Patient Privilege Revisions

The staff expects to produce a tentative recommendation on this subject for the July 1977 meeting. Since the basic policy decisions already have been made at a previous meeting, the Commission should be in a position to approve the tentative recommendation for distribution for comment after the July meeting, and it is likely that a recommendation on this subject could be submitted to the 1978 session.

(5) Attachment - Security Interests in Attached Property

The staff expects to produce a tentative recommendation on this subject for the May 1977 meeting. Since the basic policy decisions already have been made at the April meeting, the Commission should be in a position to approve the tentative recommendation for distribution for comment after the May meeting and a recommendation on this subject could be submitted to the 1978 session.

(6) Recommendation Relating to Resolutions of Necessity

This tentative recommendation has been distributed for comment. If the Commission finds, after reviewing the comments, that the recommendation is one that it wishes to submit to the 1978 Legislature, this could be included as part of the 1978 Legislative Program.

POSSIBLE RECOMMENDATIONS FOR 1979 LEGISLATIVE SESSION

- (1) Retroactivity of exemptions from execution
- (2) Homestead exemption
- (3) Comprehensive statute on enforcement of judgments
- (4) Selected aspects of inverse condemnation law
- (5) General assignments for benefit of creditors

POSSIBLE RECOMMENDATIONS FOR 1980 LEGISLATIVE SESSION

- (1) Comprehensive statute on enforcement of judgments if not completed for 1979
- (2) Revisions of Evidence Code
- (3) Adoption and Child Custody
- (4) Marketable Title Act and Related Matters

POSSIBLE RECOMMENDATIONS FOR 1981 LEGISLATIVE SESSION

- (1) Class Actions
- (2) Parol Evidence Rule
- (3) Discovery in Civil Cases

EXHIBIT 2

SUGGESTED SCHEDULE FOR COMPLETION OF RECOMMENDATION FOR
COMPREHENSIVE STATUTE ON ENFORCEMENT OF JUDGMENTS

November 1977 - Approve draft of tentative recommendation for distribution for comment in mimeographed form

February 1978 - Tentative recommendation revised to reflect decisions made at November 1977 meeting and prepared and sent out to Professor Riesenfeld, levying officers, court clerks, State Bar Committee, and other interested groups

September and October 1978 Meetings - Review comments on tentative recommendation and revise same

October 1978 - Approve recommendation for printing

January 1979 - Recommended legislation introduced

March 1979 - Recommendation available in printed form

EXHIBIT 3

SELECTED ASPECTS OF INVERSE CONDEMNATION LAW

The Commission has previously expressed an interest in doing further work in the inverse condemnation area.

Procedural Aspects

We have found in the past that work on procedural aspects of inverse condemnation has been more feasible than work on substantive aspects. The series of articles on inverse condemnation prepared for the Commission by Professor Van Alstyne contemplated a concluding article on inverse condemnation procedure which was never produced. Some aspects of procedure that could be studied are:

(1) Statute of limitations. There has been a continuing problem concerning the time a cause of action in inverse accrues. This problem has been somewhat ameliorated by abolition of the six-month claim-filing requirement. Nonetheless, statutory standards to determine when the cause of action accrues for different types of damage might be useful. The problem in this area, of course, is that the fact situations vary so that it may be difficult to pinpoint types of occurrences that will be said to trigger a 'taking' or 'damaging'.

(2) Suspension of tax liability. There is some uncertainty in the law concerning the abrogation of property tax liability where a taking or damaging occurs--does the tax liability abate immediately, or does it continue until judgment? The Commission previously expressed an interest in investigating this area in connection with overall reform of Revenue and Taxation Code Section 4986. Now might be an appropriate time to undertake work on the suspension of taxes problem.

(3) Functions of judge and jury. The staff has spoken with Professor Kanner, who has suggested that it would be well worth the Commission's time to study the problems that are created in inverse condemnation proceedings by the procedure of the judge making findings of fact as to the elements of the inverse cause of action, with the jury relegated to determination of damages. As a result of the judges' findings constituting the record on appeal, the inverse condemnation

field is filled with cases that appear to reach different results on basically the same fact situations, thereby causing an undue amount of uncertainty in the law.

Substantive Aspects

Professor Kanner also indicated a number of areas of substantive law where the law is not clear and statutory standards would be useful:

(1) Airport noise. The Commission at one time devoted substantial time to a study of airport noise and finally abandoned the area at the suggestion of lawyers who practice in this area.

(2) Impairment of access.

(3) Condemnation blight.

One other area of substantive law that is of great importance at present is taking by regulation (down-zoning, and the like). Assemblyman McAlister has suggested to the staff that this would be a worthwhile area for the Commission to work in. Assemblyman McAlister has a bill in the current legislative session that is of a fairly limited character, to provide a property owner reimbursement for expenses actually incurred as a prelude to development of property which are rendered useless by local agency action that has the effect of precluding further development. The State Bar Committee on Condemnation, and others, are presently at work developing legislation in this area to prescribe when a compensable taking or damaging occurs.

Conclusion

The aspects of inverse condemnation mentioned above are merely identified to obtain an expression of Commission interest. The staff believes that, before the Commission activates a study on any of these aspects, the views of the State Bar Committee should be obtained, and the prospects for the study should be further investigated by the staff.

EXHIBIT 4

BACKGROUND STUDIES

The following is a report on the background studies that are in progress or anticipated on the various topics on our agenda.

The background studies on the possible recommendations to the 1978 session have already been prepared or work on them is well underway. See Exhibit 1 for additional information.

With respect to the possible recommendations to subsequent sessions, the following is the situation with respect to each such recommendation:

Retroactivity of exemptions from execution. I am seeking to persuade the Pacific Law Journal to write a student note on this problem.

Homestead exemption. The Commission has determined to retain a research consultant to prepare a background study on this topic.

Comprehensive statute on enforcement of judgments. The staff, in consultation with Professor Riesenfeld, will prepare any necessary background studies.

Selected aspects of inverse condemnation. The Commission may wish to retain an expert consultant to prepare a background study on one or more of the aspects of inverse condemnation law referred to in Exhibit 3. The staff might prepare a background study on some of the matters listed in Exhibit 3. In the course of the Commission's consideration of Exhibit 3, consideration might be given not only to which aspects of inverse condemnation law the Commission will study but also to whether an expert consultant will be needed to prepare the background study on that aspect. We might be able to find as much as \$3,000 in the current budget to cover a background study on some aspect of inverse condemnation.

General assignments for benefit of creditors. The staff will soon commence work on a background study on this topic.

Revisions of the Evidence Code. We have on hand a background study comparing the California Evidence Code with the new Federal Rules of Evidence. The staff will prepare any additional needed background studies on this topic.

Adoption and child custody. Two background studies on this topic already have been published in law reviews. Additional background studies may be needed and the staff believes that such studies should be prepared by expert consultants. When we have finished the creditors' remedies study, the Commission will be in a position to devote a major portion of its time to this topic and can then determine whether any additional background studies are necessary.

Marketable Title Act and related matters. The California Land Title Association is reviewing the provisions of the Uniform Act that relate to this topic and will submit a report to the Law Revision Commission concerning the changes it recommends be made in the Uniform Act if those provisions are to be recommended for enactment in California. The report should be in our hands before the end of the year.

Class actions. Some time ago the Commission determined that Professor Jack Friedenthal of Stanford Law School should be our consultant on this topic. However, it was also determined that work on this topic should be delayed pending development of the Uniform Act on this subject and development of a body of case law on the subject.

Parol evidence rule. This topic has been on our inactive agenda. We have received a working paper from the English Law Reform Commission recommending that the parol evidence rule be repealed in England. We are awaiting with interest a report from that body indicating what recommendation it ultimately will make.

Discovery in civil cases. This topic has been on our inactive agenda. The State Bar has been active in this field. Within the next few years, the staff will make a preliminary study to determine whether there is a need to retain an expert consultant on this topic.