

Memorandum 86-20

Subject: Study L - Schedule for Work on New Estates and Trusts Code

The Chairperson has suggested that it would be useful to review briefly the schedule for work on the new Estates and Trusts Code.

Schedule for Work on New Estates and Trusts Code

Attached to the Agenda for the February meeting is a revised schedule for work on the new code.

The staff plans to revise the schedule after each meeting and attach the revised schedule to the agenda for the next meeting. The Commission can then briefly discuss at the start of each meeting where we are and what we need to accomplish to keep the project on schedule.

The schedule attached to the Agenda is exceedingly ambitious, but I believe that it would be possible to meet this schedule. We need to substantially meet this schedule if we are to have a new code ready for consideration by the Legislature in 1987.

Procedure for Preparation of New Code

The procedure we plan to follow in preparing portions of the new code involves several steps:

(1) Prepare draft statute. The first step is for the staff to prepare a draft statute of a portion of the new code for review by the Commission and the Executive Committee of the State Bar Section. Sometimes there will not be time for the Executive Committee to review the draft with care prior to the meeting at which it is first considered, but the Executive Committee will have a number of subsequent opportunities to give the Commission the benefit of its comments and suggestions.

(2) Prepare Tentative Recommendation. The next step is for the Commission and the staff to develop a Tentative Recommendation relating to that portion of the new code (with a draft statute and Comment to each statute section and a preliminary part that discusses the existing law and the changes recommended by the Commission). This step may take only one meeting or several meetings. This tentative recommendation

should accurately reflect the views of the Commission at the time it is approved by the Commission for distribution to interested persons and organizations for review and comment. More than 400 persons and organizations have requested that they be sent copies of these tentative recommendations, including the Probate and Trust Sections of a number of local bar associations.

(3) Distribute Tentative Recommendation for review and comment. The next step is to distribute the Tentative Recommendation to interested persons for review and comment, allowing them several months to review the Tentative Recommendation and to submit their comments and suggestions to the Commission.

(4) Review comments received. When the time for submitting comments and suggestions on a particular Tentative Recommendation has expired and the Commission's schedule permits, the Commission will review the comments and suggestions received, make any needed revisions in the draft statute, and approve that portion of the draft statute for inclusion in the new Code. This step may be accomplished at only one meeting or several meetings may be required to revise the Tentative Recommendation to make the changes the Commission desires to make.

(4) Approve text of new code for introduction as a bill. When all of the Tentative Recommendations have been revised in light of the comments received and a draft of the entire new code has been prepared, the staff and the State Bar Section and hopefully others will go through the draft with a view to making the entire draft consistent and discovering and correcting any substantive and technical defects. This task is a substantial undertaking. The Commission will then consider the revised draft of the new code and approve the text of the new code for introduction as a bill.

(5) Prepare printed Recommendation. The staff will then review and revise the preliminary portion of the Commission's recommendation (the part that discusses the changes made in existing law and the reason for making the changes) and the Comment to each section of the new code, and the Comments to the repealed sections of the existing Probate Code. The staff is counting on the members of the Executive Committee to review the Comments with great care and to raise any matters of concern so that an appropriate revision can be made to correct the Comment or so that the Commission can determine any issue that involves policy.

(6) Print Recommendation. The last step in the process is to print the Commission's Recommendation. The printed Recommendation will contain the preliminary portion, the text of the statute with Comments, and Comments to repealed sections and disposition tables. Perhaps it will be necessary to omit the text of the statute from the printed Recommendation because of

the cost of printing the Recommendation. The Commission should be aware that this last step requires time and that the schedule must allow sufficient time to perform this step. The printed Recommendation must be available to legislative staff and interested persons and organizations within sufficient time before the legislative hearings to permit analysis of the bill.

Preparing the first draft of portions of the new code takes a substantial amount of time, both for the staff and the Commission. And the Commission can work on the new code only to the extent that the staff produces material for Commission consideration. The analysis of the comments and suggestions received on drafts of portions of the new code will take less staff time and perhaps less Commission time.

Requirements to Keep Project on Schedule

The staff has discussed what will be required of the staff, the Commission, and others in order that there will be a reasonable chance that the Commission will be able to meet the schedule. We believe that the following are required if we are to keep this project on schedule:

Minimum amount of vacation time for legal staff during 1986. I have requested that the members of the legal staff take a minimum of vacation time during 1986 and work the maximum amount of excess time that the situation of each permits. I believe that this is essential if we are to keep the project on schedule.

I request that the Commission authorize the legal staff to carry over into 1987 excess vacation hours that otherwise would be lost on December 31, 1986, if not taken before then. It should be recognized that this is, in effect, borrowing on the future, because the deferred vacation time will need to be taken from time to time after the recommendation proposing the new code is prepared. (Bob Murphy, who works on a three-fourths time basis, plans to take a one month vacation toward the end of 1986, but he plans to work more than three-fourths time until then.)

The legislative program will require some staff time. In addition to attending the legislative hearings on Commission

recommended bills, the staff must prepare material for the staff of the legislative committees, answer inquiries concerning the bills, and draft amendments for Commission consideration to deal with problems that arise in connection with the bills.

The Commission also should be aware that our administrative assistant, Juan Rogers, has cancer. He plans to work half-time in February and then to retire. The person who occupies this position performs many duties that the legal staff otherwise is required to perform. This position is one that requires about three years of experience before the person performing the duties of the position is fully able to perform all the tasks required with a minimum of supervision.

Employment of two law students during summer of 1986. I plan to hire two law students who have completed their first or second year of law school to work for the Commission during the summer. There is a great deal of spot research that we need to have completed before the end of the summer. More important, the draft of the portion of the new code relating to administration of estates must be completed by the first part of July if we are to maintain our schedule, and the statute sections and Comments to this portion of the new code need to be carefully checked this summer. We need this check to be sure that we have not lost something from existing law or inadvertently changed existing law. We need to be sure that we have accurately explained just how each section compares with existing law.

We plan to finance the employment of the two students during the summer from funds available for temporary help and from unused moneys available for expert consultants.

Extra Commission meeting time. To maintain our schedule, the Commission itself must be willing to meet as much time as necessary in order to cover the staff produced meeting materials as they are produced. We will have to start our meetings on time and meet for the time scheduled if necessary to consider all the material prepared for the meeting. And to maintain the quality of our work, meeting materials must be considered at meetings with the same care and

attention as during the past few months. There is a possibility that the Commission may have to hold one or two three-day meetings during 1986.

Task of Executive Committee of State Bar Section. The Executive Committee of the State Bar Section already has made a substantial contribution in assisting the Commission in its work in the field of probate law and procedure. The Executive Committee will have a heavy burden to consider with care the staff produced materials and to suggest technical and substantive revisions. Perhaps the most important aspect of their contribution, however, will be to check with great care Tentative Recommendations when they are sent out generally for review and comment and to suggest technical corrections and to raise policy issues for final resolution when the comments received from interested persons and organizations are reviewed by the Commission.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

Staff Draft

CHAPTER 7. PUBLIC ADMINISTRATORS

Article 1. General Provisions

§ 7600. Notice of death

7600. (a) Whenever a person dies in this state without known heirs, the person in possession of the premises in which the decedent died or any person having knowledge of the facts shall give immediate notice of the facts to the public administrator of the county in which the decedent died.

(b) A person who fails to comply with this section is liable for any damage that results from the failure. The liability may be enforced by the public administrator or any interested person.

Comment. Section 7600 restates former Section 1145 with changes to apply it to persons who die testate as well as intestate, to persons without known heirs outside as well as within California, and to persons who die in their own homes as well as in the house or premises of another.

CROSS-REFERENCES

Definitions

Interested person § 48

§ 7601. Assistant or deputy public administrator

7601. An assistant or deputy public administrator or other subordinate officer may be appointed to act and has the powers and may perform the duties of the office of the public administrator to the extent provided in Article 7 (commencing with Section 1190) of Chapter 1 of Division 4 of Title 1 of the Government Code.

Comment. Section 7601 replaces former Section 1142.5 with a reference to the general Government Code provisions governing assistants and deputies.

NOTE. We have replaced the special provisions of existing law authorizing appointment and stating the authority of assistants and deputies because we see no reason to spell out these matters when perfectly adequate general law provisions governing the same subject exist. The situation of the public administrator does not appear to us so unique and special that special provisions are called for.