

Memorandum 91-27

Subject: Procedure for Circulation of Family Code Drafts for Comment

The Family Code project will involve production of a substantial volume of material. The initial draft of the first portion of the code prepared by the staff consists of about 320 pages of material.

Ordinarily on a Commission project, the Commission will review staff-prepared materials at Commission meetings, make policy decisions, review drafts and redrafts, and eventually prepare a tentative recommendation which is circulated widely for comment before a final recommendation is prepared. Because of the bulk of the Family Code material, and its largely technical nature, we do not believe it would be feasible or productive for the Commission to follow its standard procedure on this project. The staff proposal, elaborated in the First Supplement to Memorandum 91-27, is to give copies of the staff draft to the State Bar Family Law Section for careful review before the Commission devotes meeting time to the project.

The question remains, how widely should the staff draft be made available to other interested persons for review? In answering this question, the Commission should be aware that there are in excess of 900 persons on the Commission's mailing list who have asked to receive materials on this project. The Commission is also aware that, although the Commission received a one-year budget augmentation for this project, the budget has since been reduced as an economy measure resulting from the state's precarious fiscal situation.

The staff has calculated the cost to the Commission of producing and distributing the 320 page staff draft using a number of different techniques. If we were to use our standard method of in-house production of material, the cost per volume, including staff time, paper, binding, copier depreciation, etc., is about \$10.00. We could have Department of General Services photocopy it for us at about \$5.00 per volume, but there would be an additional cost for collating, binding, shipping back to us, etc., which is an uncertain amount. By

comparison, private production at a local photocopy shop would be \$20.67 per volume. In addition to production costs, we are also faced with handling and shipping costs from our office to interested persons at about \$5.00 per volume.

We have also investigated other means of producing and making available the staff draft, but have rejected them for various reasons. Other means we considered include having a preprint bill prepared along with photocopied Comments, making the draft available on diskette, providing interested persons with only a summary and table of contents, requiring interested persons to provide a self-addressed stamped envelope, and sending copies to county law libraries where they would be available for reviewing or photocopying by interested persons.

Figuring a cost of \$15.00 per volume to produce and ship, a general distribution to all interested persons on our mailing list would cost the Commission \$13,500. This is far in excess of what our budget can handle. In addition, due to the nature of the draft being distributed (voluminous and nonsubstantive), it is highly unlikely that we would receive any substantial comments on the draft. Even on substantive drafts circulated for review, our rate of return is somewhere around 5%.

The staff has reluctantly come to the conclusion that we must charge for copies of the draft requested by interested persons. We would make a limited number available free of charge to the State Bar Committees committed to reviewing the draft, and impose a charge of \$15 per volume for other interested persons. Unfortunately, any money received will not be credited to the Commission's budget, but will go to the state's General Fund. (There may be a way for the Commission to receive reimbursement to a limited extent for some expenses incurred, and the staff is pursuing this possibility.) The main effect of imposing a charge will be to discourage people from requesting copies of the draft unless they are seriously interested in it. The staff considered the possibility of imposing a higher charge for this purpose, e.g., \$50.00 per volume, but believes as a matter of fairness and public access we cannot charge more than the reasonable cost of producing and shipping the material.

The staff has some qualms about imposing a charge for material that we traditionally have provided free of charge, particularly since we are asking interested persons to review and comment on it. The circulation for comment is more for our benefit than for the benefit of interested persons. But we see no other practical way out of the dilemma. The legislature and other state agencies typically charge for their publications, and the Commission has always charged for its bound volumes and occasionally for softbound printed reports. With state finances poor, and the likelihood of further reductions in the Commission's budget in the near future, we may have to charge for our publications on a more regular basis, or cease publication altogether. However, this is not a decision we are faced with now, and we are treating the Family Code draft as a one-time special situation.

If the Commission approves the approach outlined in this memorandum, we will proceed accordingly and inform the persons on our mailing list of the availability for review of the staff draft of a portion of the Family Code at a cost of \$15.00. The staff would also exercise discretion to provide a few copies free of charge to organizations in addition to the State Bar that appear to be seriously committed to reviewing carefully and commenting on the staff draft.

Respectfully submitted,

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