

Admin.

NS62
06/12/91

Memorandum 91-31

Subject: 1991 Legislative Program

Attached to this memorandum is a status report on the Commission's 1991 legislative program. As we have noted previously, the passage of Proposition 140, with its 38% cut in legislative operating budget, has made it difficult to obtain bill authors this session. However, we remain hopeful of placing the remainder of our bills next session.

Also attached to this memorandum is a provision we have asked Senator Mello to add to the Probate Code urgency bill which had been inadvertently omitted, along with additional explanatory Comments for the Commission's report on the bill.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

AMENDMENTS TO SENATE BILL NO. 896 (MELLO)

10811. (a) Subject to the provisions of this part, in addition to the compensation provided by Section 10810, the court may allow additional compensation for extraordinary services by the attorney for the personal representative in an amount the court determines is just and reasonable.

(b) Extraordinary services by the attorney for which the court may allow compensation include services by a paralegal performing the extraordinary services under the direction and supervision of an attorney. The petition for compensation shall set forth the hours spent and services performed by the paralegal.

REVISED LAW REVISION COMMISSION COMMENTS

§ 7622 (amended). Manner of administration; compensation of public administrator

Comment. Section 7622 is amended to add the second sentence to subdivision (b). This restores the substance of a portion of the first sentence of subdivision (b) of former Section 7622 of the repealed Probate Code.

The reference in subdivision (b) to the "same compensation" as is granted by this division to personal representatives and attorneys for personal representatives generally, includes allowances of compensation. See Part 7 (commencing with Section 10800) (compensation of personal representative and estate attorney), particularly Chapter 2 (commencing with Section 10830) (allowance of compensation by court).

§ 8547 (unchanged). Compensation of special administrator

Comment. Section 8547 (enacted as part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. 710 § 22. The section as amended continues Section 8547 of the repealed Probate Code without substantive change.

Under subdivision (d), compensation of an attorney for extraordinary services to a special administrator is made on the same basis as compensation for extraordinary services to a general personal representative. This includes services by a paralegal performing the extraordinary services under the direction and supervision of an attorney. See Section 10811 (additional compensation for extraordinary services).

§ 10811 (added). Additional compensation for extraordinary services

Comment. Section 10811 is new. It continues the substance of the last portion of the first sentence, and all of the second and third sentences, of former Section 910 of the repealed Probate Code.

1991 LEGISLATIVE PROGRAM
CALIFORNIA LAW REVISION COMMISSION

ENACTED

SENATE CONCURRENT RESOLUTION 4 (SENATOR LOCKYER) - Continues Authority of California Law Revision Commission to Study Topics Previously Authorized for Study
1991 Cal. Res. Ch. 33 (May 10).

PASSED SECOND HOUSE

SENATE BILL 256 (SENATOR BEVERLY) - Commercial Real Property Leases; Remedies for Breach of Assignment or Sublease Covenant; Use Restrictions
Approved by Assembly on June 4.

PASSED FIRST HOUSE

ASSEMBLY BILL 793 (ASSEMBLY MEMBER POLANCO) - Elimination of 7-Year Limit for Durable Power of Attorney for Health Care
Set for hearing in Senate Judiciary Committee on June 18.

ASSEMBLY BILL 1577 (ASSEMBLY MEMBER SHER) - Uniform Statutory Rule Against Perpetuities

Recommendation on Application of Marketable Title Statute to Executory Interests, approved at the January 1991 meeting, was amended into AB 1577 on April 9. Author's amendment at hearing in Assembly Subcommittee on Administration of Justice on April 30, making Section 21209 prospective only, to deal with objection. Set for hearing in Senate Judiciary Committee on June 18.

SENATE BILL 896 (SENATOR MELLO) - Urgency Probate Bill

This bill makes only technical, noncontroversial corrections in the new Probate Code. Set for hearing in Assembly Judiciary Committee on June 19.

PASSED FISCAL COMMITTEE IN FIRST HOUSE

SENATE BILL 271 (SENATOR KOPP) - Omnibus Probate Bill

This bill includes several State Bar probate proposals, as well as the following Law Revision Commission proposals:

- TOD-Beneficiary Designation for Vehicles and Certain Other State-Registered Property
- Debts That Are Contingent, Disputed, or Not Due
- Remedies of Creditor Where PR Fails to Give Notice
- Repeal of Civil Code Section 704 (U. S. Bonds)
- Disposition of Small Estate Without Probate
- Gifts in View of Impending Death
- Access to Decedent's Safe Deposit Box
- Technical and Minor Substantive Revisions
- Right of Surviving Spouse to Dispose of Community Property

If any of the general probate recommendations proves to be controversial and cannot be simply resolved, it will be dropped from the omnibus bill so as not to jeopardize enactment of the rest of the bill. Approved by Senate Appropriations Committee on May 31.

LEFT OVER FOR NEXT SESSION

(1) Litigation Involving Decedents

This bill would have gone into the omnibus probate bill, but Legislative Counsel determined that it had too many diverse subjects to fit with the rest of the bill.

(2) Compensation in Guardianship and Conservatorship Proceedings

This bill would have gone into the omnibus probate bill, but Legislative Counsel determined that it went beyond the scope of the omnibus bill, which deals with disposition of property at death.

(3) Form for Certificate of Acknowledgment of Power of Attorney

This was approved too late to incorporate in other bills this session. It relates to the Civil Code Section 2476 revision of the certificate of acknowledgment of a notary public in a statutory form power of attorney; it will be incorporated in comprehensive legislation for next session.

(4) Powers of Fiduciaries

Recognition of Trustee's Powers

Recognition of Agent's Authority Under Statutory Form Power of Attorney

We are working to eliminate banking and title insurance industry opposition.

(5) Repeal of In-Law Inheritance

This proposal is now supported by the Estate Planning, Trust and Probate Law Section of the State Bar, the Probate and Trust Law Section of the Los Angeles County Bar Association, the Probate, Trust & Estate Planning Section of the Beverly Hills Bar Association, the California Association of Public Administrators, Public Guardians, and Public Conservators, and a number of individual lawyers.

(6) Relocation of Powers of Appointment from Civil Code to Probate Code

This proposal was approved too late to incorporate in legislation this session. Assembly Member Horcher has agreed to include it in AB 1722, a two-year bill, and is requesting the Commission to include in its recommendation a review of the power of appointment problem addressed by AB 1722.