

1/20/70

Memorandum 70-10

Subject: Study 44 - Fictitious Business Names

Attached is a copy of the page proofs of the Fictitious Business Names Recommendation. We expect that the printed pamphlet will be delivered soon.

Attached as Exhibit I is a letter from Maurice D. L. Fuller, Sr., Chairman of the Uniform Commercial Code Committee of the State Bar of California. The letter forwards a proposed report of the Committee to the Board of Governors.

General reaction. The State Bar Committee believes that the proposed revision is generally preferable to the existing law, but the Committee still would prefer to eliminate publication and to have a central filing as initially proposed in the staff background study. This point has been considered by the Commission on numerous occasions and the suggested scheme has not been adopted because it would not be politically acceptable.

Section 17919. A majority of the Committee suggests that Section 17919 should permit the execution, filing, etc., by an assignee. This appears to be a good suggestion. The staff suggests that Section 17919 be amended to add a new subdivision (c), to read:

(c) A fictitious business name statement may be executed, filed, and published by an assignee or purchaser of the business or of the accounts receivable at any time after the assignment or sale where a failure to comply with the provisions of this chapter would otherwise preclude the maintenance of an action to recover any sums due to the assignee or purchaser by reason of the assignment or sale.

Section 17930. The Committee notes that Section 17930 may not be as practical as may be desired to enforce compliance with the requirement of

filing. Section 17930 is not intended to serve this purpose; the section is designed to provide a penalty for making a false statement and serves in lieu of the affidavit which was formerly required to be included in the certificate and which has been eliminated in the recommended legislation. The sanction to enforce compliance with the filing requirement is found in Section 17918, which retains existing law. The staff concludes that no change is needed in Section 17930.

Renewal procedure. The Committee suggests that the substance of the renewal certificate provided under present Civil Code Section 2469.2 be retained insofar as publication is concerned. This procedure has been retained in Section 17917(c) which provides that the new statement need not be published unless there has been a change in the information required in the expired statement. Accordingly, we have retained the substance of the former procedure, but avoid the need to have two types of certificates--an "original certificate" and a "renewal certificate."

Section 8 (pages 631-632). Section 8 requires all persons subject to the existing fictitious business name statute to make a new filing between January 1, 1971, and July 1, 1971. The State Bar Committee has identified what the staff believes is a defect in this section. The section appears to require publication even though there has been no change in the information contained in the fictitious business name certificate filed under the existing statute. Although the vast majority of the statements to be filed initially under the new statute will need to be republished because there has been a change in the information required in the certificate now on file, the Committee and the staff believes that there should be no need to publish the statement if there has been no change in the information required in the

certificate now on file. Accordingly, the staff recommends that Section 8 be amended to read:

Sec. 8. (a) This act becomes operative on July 1, 1971, except that at any time after January 1, 1971, a fictitious business name statement may be filed and published as provided in Chapter 5 (commencing with Section 17900) of Part 3 of Division 7 of the Business and Professions Code, and the certificate statement so filed shall be deemed to have been filed on July 1, 1971. A person filing an initial statement under Chapter 5 (commencing with Section 17900) of Part 3 of Division 7 of the Business and Professions Code need not publish such statement if he has a certificate on file under Chapter 2 (commencing with Section 2466) of Title 10 of Part 4 of Division 3 of the Civil Code unless there has been a change in the information required in that certificate, in which event the statement shall be published as provided in Section 17917 of the Business and Professions Code.

(b) [No change.]

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EXHIBIT I

LAW OFFICES OF
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January 5, 1970

California Law Revision Commission Recommendation Relating to Fictitious Business Names

Gentlemen:

Herewith a draft of a proposed report by the members of the Uniform Commercial Code Committee of the State Bar of California to the Board of Governors.

Unless I hear from the members of the Committee to the contrary, I propose to release it to the Board of Governors on January 23, 1970. If it appears to me that there are to be any substantial changes, I will refer them to the Committee before sending in the report. On the other hand, I assume that it will be in order for me to file the report as is, or with minor changes.

Very truly yours,



Maurice D. L. Fuller, Sr.

Enc.

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January 5, 1970

California Law Revision Commission Recommendation Relating to Fictitious Business Names

TO THE BOARD OF GOVERNORS OF THE
STATE BAR OF CALIFORNIA.

By your letter of May 14, 1969, you referred the tentative recommendation of the Law Revision Commission re fictitious names to this Committee for consideration. As a result of such consideration various suggestions were made and some adopted by the Commission in its revised recommendation of October 1969.

This revision has been further considered by your Committee and this is a report of its recommendations relating thereto.

1. It is the consensus of this Committee that the revision is generally preferable to existing law.

2. The Commission on page 8 of its revised report states that in view of the controversial nature of the publication requirement, the Commission does not recommend any change in the number of publications.

All of the members of this Committee except one doubt that publication serves any practical purpose, and would prefer that the requirement of publication be deleted and that instead the revision require a listing with the Secretary of State of California, in addition to the filing with the local County Clerk, so that the necessary information could be obtained from the Secretary of State in the same manner as financing statements under the Uniform Commercial Code.

3. The majority of the Committee suggest that if section 17918 be adopted, section 17919 should also permit the execution, filing, etc. by an assignee.

4. It is the consensus of the Committee that the provisions of section 17930 may not be as practical as may be desired to enforce compliance with the requirement of filing. It is doubted that its provisions will result in many actions by district attorneys.

5. It is also suggested: Under section 8, every person in compliance with C.C. 2466-2471 on June 30, 1971, must refile and republish by July 1, 1970, and every person in compliance with the new sections must refile and republish every five years, since the renewal certificate procedure of section 2469.2 has been eliminated. These results are unreasonably burdensome. Provision should be made for transition comparable to U.C.C. Division 10 by allowing a person in compliance with C.C. 2466-2471 to file a short transition continuation certificate upon the expiration of his certificate under present C.C. 2469.2 and for the continuation of compliance with the new sections by filing a renewal certificate upon the expiration of five years in a manner similar to present C.C. 2469.2.

Respectfully,

Maurice D. L. Fuller, Sr., Chairman
Paul L. Davies
John G. Eliot
Almon B. McCallum
Robert L. Hunt
Arlo D. Poe
Harold Marsh, Jr.
Thomas E. Montgomery
Martin Gendel

cc-David K. Robinson, Esq.
John H. DeMouly, Esq.