

September 26, 1972

Time

October 6 - 9:30 a.m. - 5:00 p.m.
October 7 - 9:00 a.m. - 1:00 p.m.

Place

Vacation Village Hotel
Cleopatra Room
Mission Bay
San Diego 92109

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

San Diego

October 6-7, 1972

1. Minutes of September 7-9, 1972, Meeting (sent 9/14/72)
2. Administrative Matters

Schedule for Consideration of Topics

Memorandum 72-58 (sent 9/22/72)

3. Study 39.30 - Wage Garnishment and Related Matters

Memorandum 72-59 (sent 9/22/72)

Preliminary Portion of Recommendation (attached to Memorandum)

4. Study 36 - Condemnation Law and Procedure

Approval of Portions of Comprehensive Statute for Printing

Note. Chapter 4 (white pages, commencing with Section 1240.010 in your blue binder containing the eminent domain statute) is to be approved at the October 6-7 meeting for sending to the printer).

Memorandum 72-61 (enclosed)

First Supplement to Memorandum 72-61 (to be sent)

Comprehensive Eminent Domain Statute (blue covered binder only)

5. Study 39.80 - Civil Arrest

Memorandum 72-60 (sent 9/22/72)

6. Study 72 - Liquidated Damages

Memorandum 72-62 (sent 9/14/72)

Summary and Analysis of Background Study (attached to Memorandum)

Background Study (attached to Memorandum)

MINUTES OF MEETING

of

CALIFORNIA LAW REVISION COMMISSION

October 6, 1972

San Diego

A meeting of the California Law Revision Commission was held in San Diego on October 6, 1972.

Present: John D. Miller, Chairman
Marc W. Sandstrom, Vice Chairman
John J. Balluff
Noble K. Gregory
John N. McLaurin
Thomas E. Stanton, Jr.
Howard R. Williams

Absent: Alfred H. Song, Member of Senate
Carlos J. Moorhead, Member of Assembly
George H. Murphy, ex officio

Messrs. John H. DeMouilly, Jack I. Horton, Nathaniel Sterling, Stan G. Ulrich, and Bruce Donald, members of the Commission's staff, also were present. Paul E. Overton, Commission consultant on condemnation law and procedure, also was present.

The following persons were present as observers:

Dr. Manfred Beschel, University of Erlangen-Nürnberg (Germany)
John M. Morrison, Attorney General's Office, Sacramento
Charles E. Spencer, Department of Public Works, Los Angeles

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ADMINISTRATIVE MATTERS

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The Minutes of the September 7-9, 1972, meeting were approved after the following correction was made: On page 6, last two lines, substitute "or bad faith." for ", bad faith, or gross abuse of discretion."

Schedule for Future Meetings

The schedule set out below was adopted for future meetings (changes are in place of meetings).

November

November 9 - 7:00 p.m. - 10:00 p.m.	Santa Barbara
November 10 - 9:00 a.m. - 5:00 p.m.	
November 11 - 9:00 a.m. - 1:00 p.m.	

November-December

November 30 - 7:00 p.m. - 10:00 p.m.	San Francisco
December 1 - 9:00 a.m. - 5:00 p.m.	
December 2 - 9:00 a.m. - 1:00 p.m.	

Schedule for Consideration of Projects

The Schedule for Consideration of Projects (set out as Exhibit I of Memorandum 72-58) was approved except that the Commission determined that the entire tentative recommendation on prejudgment attachment (preliminary portion and statute with Comments) should be submitted for approval for printing at the November 9-11 meeting. The goal is to approve this tentative recommendation for printing at the November 9-11 meeting or, if this is not possible because of substantial changes, at the November 30-December 1-2, meeting. Necessary modifications in the schedule to reflect this

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decision should be made in preparing the agenda for the November 9-11 meeting. The schedule reflects the major topics to be considered but does not preclude consideration of other matters that are in need of immediate attention.

The Executive Secretary reported that he had revised the Annual Report to reflect the fact that one topic--Escheat; Unclaimed Property--will not be dropped. This topic is continued on the agenda of topics because there is a possibility that the Commission will give additional consideration to recent developments in connection with this topic.

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STUDY 36.400 - CONDEMNATION LAW AND PROCEDURE (APPROVAL OF
PORTIONS OF COMPREHENSIVE STATUTE FOR PRINTING)

The Commission considered Memorandum 72-61 presenting the right to take portion of the comprehensive eminent domain statute for approval for printing along with the First Supplement to Memorandum 72-61 containing a rough draft of the right to take part of the preliminary portion of the recommendation. The Commission made the following determinations:

- (1) A version of the preliminary portion of the recommendation should be distributed for comment whenever the statute is distributed for comment.
- (2) The present numbering scheme for the comprehensive statute should be retained.
- (3) The Commission reaffirmed its prior decision to restrict condemnation by private persons generally.

The Commission approved for printing the right to take portion of the comprehensive eminent domain statute in its present form with such technical changes as are suggested by the Commissioners or are made by the staff in the printing preparation process, and including the substantive changes proposed in Memorandum 72-61 with the following exceptions:

- (1) The introductory phrase of Section 1240.040 was revised to read: "Subject to any other statutory provision relating to the acquisition of property,".
- (2) Section 1240.070 was not approved.

Charles Spencer volunteered to produce within a reasonable time for the Commission's consideration the draft of a statute that specifies what property must be taken along with the realty in an eminent domain proceeding. Consideration will be given to including furnishings and commercial equipment

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among the property that must be taken and to avoiding use of general real property terms such as "fixtures."

The staff will prepare a memorandum relating to the acquisition of a whole building where only a part is located on property to be taken. The memorandum should include the letter from the City of Los Angeles speaking of the need for such a provision, should consider practical as well as theoretical aspects of this problem, and should, if possible, mention the ways other public entities handle the problem. Among the specific considerations that should be developed in the memorandum are the possible location of such a provision in the excess condemnation chapter, the standard for permitting an acquisition of the whole building, the effect of the resolution of necessity, the need to provide an easement for removal purposes, and the right of the property owner to keep the whole building or to compel the taking of the whole building.

(3) The introductory phrase of Section 1240.080 was revised to read: "Subject to any other statutory provision relating to the acquisition of property,".

(4) The word "remnant" should not appear in the caption to Section 1240.420 unless it also appears in the statute. The Comment to Section 1240.420 should be consistent with the statute.

(5) The indemnity provisions set out in Memorandum 72-61 were not added to Sections 1240.530 and 1240.630. The Commission requested a staff study on this matter that should include the social policies involved in indemnity in joint use situations and the law relating to negligence by both parties. Consideration should be given to provide for an undertaking to indemnify and to include costs of defense as well as damages.

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(6) Section 1240.710 was deleted. A reference to the general declaratory relief preference should be inserted in the Comments to the procedural provisions to which Section 1240.710 related.

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STUDY 39.30 - WAGE GARNISHMENT AND RELATED MATTERS

The Commission considered Memorandum 72-59 and the preliminary portion of the recommendation on wage garnishment and related matters (attached to memorandum).

Preliminary portion of recommendation. The preliminary portion of the recommendation was approved except that the withholding tables should be based on \$1.60 minimum wage. Various members of the Commission submitted suggested revisions to be considered in preparing the recommendation for printing.

Section 723.051. The suggested addition (last sentence) to Section 723.051 was discussed. The question was raised whether the granting of a claim of exemption in a support order case would permit another creditor to obtain an earnings withholding order to enforce an ordinary judgment. The staff is to review the language proposed and to make sure that it does not have the effect of permitting the creditor with an ordinary judgment to enforce an earnings withholding order if a hardship exemption has been granted where the prior order is an earnings withholding order for support. Perhaps a clear statement could be included in the Comment if the statutory language is retained without change.

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STUDY 39.80 - CIVIL ARREST

The Commission considered Memorandum 72-60 which forwarded the comments of the State Bar Committee on the Recommendation Relating to Civil Arrest. After discussion, the Commission decided not to make any change in the previously approved recommendation.

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STUDY 72 - LIQUIDATED DAMAGES

The Commission considered Memorandum 72-62 and the attached background study. It was generally agreed that a standard of reasonableness at the time of contract should be used to scrutinize such clauses and that the burden should be on the person seeking to invalidate the clause.

The Commission tentatively approved the substance of the following:

A contractual stipulation of damages for breach of contract is valid unless the party seeking to invalidate the stipulation establishes that it was manifestly unreasonable as between the parties in the circumstances of the case at the time of contract.

In preparing a draft statute, the staff should consider the necessity of drafting special provisions covering some cases such as loan and repayment contracts and land sales deposit agreements.

APPROVED

Date

Chairman

Executive Secretary