

January 22, 1975

Time

Place

February 6 - 7:00 p.m. - 10:00 p.m.
February 7 - 9:00 a.m. - 4:45 p.m.

Airport-Marina Hotel
8601 Lincoln Blvd.
Los Angeles

TENTATIVE AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Los Angeles

February 6-7, 1975

1. Minutes of January 16-18, 1975, Meeting (~~to be~~ ^{1/28/75} sent)
2. Administrative Matters
3. 1975 Legislative Program
4. Study 63.50 - Admissibility of Copies of Business Records
Memorandum 75-14 (to be sent)
Draft of Recommendation (attached to Memorandum)
5. Study 39.70 - Prejudgment Attachment
Memorandum 75-15 (to be sent)
Memorandum 75-16 (to be sent)
Draft of Recommendation (attached to Memorandum 75-16)
Memorandum 75-17
6. Study 39.120 - Enforcement of Judgments
Memorandum 75-7 (sent 1/3/75; another copy enclosed)
Draft of Statute (attached to Memorandum)
First Supplement to Memorandum 75-7 (enclosed)

MINUTES OF MEETING

of

CALIFORNIA LAW REVISION COMMISSION

FEBRUARY 6 AND 7, 1975

Los Angeles

A meeting of the California Law Revision Commission was held in Los Angeles on February 6 and 7, 1975.

Present: Marc Sandstrom, Chairman
John N. McLaurin, Vice Chairman, February 7
John J. Balluff
John D. Miller
Thomas E. Stanton, Jr.
Howard R. Williams

Absent: Robert S. Stevens, Member of Senate
Alister McAlister, Member of Assembly
George H. Murphy, ex officio

Members of Staff Present:

John H. DeMouilly	Nathaniel Sterling
Stan G. Ulrich	Jo Anne Friedenthal

Commission Consultants Present:

Professor Stefan A. Riesenfeld (creditors' remedies)
February 6 and 7
Professor William D. Warren (creditors' remedies)
February 6 and 7

The following persons were present as observers on days indicated:

February 6

David Howard Battin, The State Bar of California, Los Angeles
Michael G. Fletcher, U.S.C. L. Rev., Los Angeles
Kenneth L. Wolf, Van Nuys

February 7

David Howard Battin, The State Bar of California, Los Angeles
Ted Boxer, Coskey, Coskey & Boxer, Los Angeles
Michael G. Fletcher, U.S.C. L. Rev., Los Angeles

ADMINISTRATIVE MATTERS

Minutes of January 16, 17, and 18, 1975, Meeting

The Minutes of the January 16, 17, and 18, 1975, Meeting, were approved as submitted.

1975 Legislative Program

The Executive Secretary made the following report on the 1975 legislative program:

MEASURES PASSED BY FIRST HOUSE

AB 74 - Modification of Contracts--Commercial Code Revision

Plan to set for hearing by Senate Judiciary Committee on February 11.

ACR 17 - Continues Authority to Study Previously Authorized Topics and to Study Five New Topics

Plan to set for hearing by Senate Judiciary Committee on February 11.

MEASURES APPROVED BY POLICY COMMITTEE FIRST HOUSE

AB 192 - Escheat--Travelers Checks and Money Orders

Heard by Assembly Judiciary Committee on January 30; sent to Assembly floor with technical amendments.

MEASURES HEARD BY POLICY COMMITTEE FIRST HOUSE
BUT STILL UNDER COMMITTEE CONSIDERATION

AB 73 - Good Cause Exception to Physician-Patient Privilege

Heard by Assembly Committee on Judiciary on January 9. Bill not approved because exception to physician-patient privilege considered too broad. Author to attempt to draft narrower privilege.

AB 90 - Wage Garnishment Exemptions

Heard by Assembly Judiciary Committee on January 30; not enough votes to pass out bill in present form.

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BILLS YET TO BE HEARD BY POLICY COMMITTEE IN FIRST HOUSE

Eminent Domain Bills

AB 11 - General Eminent Domain Statute
AB 266 - State Agency Condemnation
AB 278 - General Conforming Changes
AB 124-131 - Special District Acts

SB 294 - Out-of-Court Views by Judge or Jury

BILLS NOT YET INTRODUCED

Payment of Judgments Against Local Public Entities

DEAD BILLS

AB 75 - Oral Modification of Contracts--General Provisions

ADDITIONAL BILLS FOR 1975-76 SESSION

Partition of Real and Personal Property (Approved for printing.)

Prejudgment Attachment (To be considered at February meeting.)

Admissibility of Copies of Business Records in Evidence (To be considered at February meeting.)

Admissibility of Duplicates in Evidence (Jo Anne will have draft of recommendation for March meeting.)

Liquidated Damages (Stan is working on this.)

Wage Garnishment Procedure (Stan will do this.)

Inverse Condemnation--Claims Presentation Requirement (Kanner is working on this.)

Garageman's Lien (Stan will do this.)

STUDY 39.30 - ASSEMBLY BILL 90 (WAGE GARNISHMENT EXEMPTIONS)

The Executive Secretary made an oral report to the Commission indicating that the bill would not be reported out of the Assembly Judiciary Committee without certain requested amendments. The Commission approved the proposal that subdivision (b) of Section 690.6 be amended to add paragraphs (1), (2), and (3).

Subdivision (b) as amended will read as follows:

690.6. (a)

* * * * *

(b) The portion of his earnings which the debtor proves is necessary for the support of the debtor or the debtor's family is exempt from execution unless the debt is incurred for personal services rendered by any employee or former employee of the debtor. Neither the debtor's accustomed standard of living nor a standard of living appropriate to his station in life is a criterion for measuring the debtor's claim for exemption under this subdivision. *debtor's family supported in whole or in part by the debtor is exempt from execution unless the execution is upon a judgment for any of the following:*

(1) *Delinquent amounts payable under a judgment for the support of a child, or spouse or former spouse of the debtor, or both, including reasonable attorney's fees allowed in connection with the obtaining of such judgment.*

(2) *A debt incurred for food.*

(3) *Delinquent rental payments for a dwelling of the debtor or his family.*

(4) *A debt incurred for personal services rendered by any employee or former employee of the debtor.*

Neither the debtor's accustomed standard of living nor a standard of living appropriate to his station in life is a criterion for measuring the debtor's claim for exemption under this subdivision.

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STUDY 39.70 - PREJUDGMENT ATTACHMENT

The Commission considered Memoranda 75-16 and 75-17 concerning amendments to the Attachment Law and discussed two recent cases--North Georgia Finishing v. Di-Chem, ___ U.S. ___ (43 U.S.L.W. 4192, January 22, 1975), attached to Memorandum 75-15, and Advance Transformer Co. v. Superior Court, 44 Cal. App.3d 127 (1974), distributed at the meeting. The Commission made the following decisions which will be incorporated into a recommendation relating to amendments to the Attachment Law to be prepared for consideration at the March meeting:

Code of Civil Procedure § 483.010. Actions in which attachment authorized.

After a lengthy discussion, the Commission tentatively decided to recommend the second alternative presented in Memorandum 75-17 which would add "when the claim arose" after "engaged" in the first sentence of subdivision (a) of Section 483.010. The effect of this amendment would be to make clear that a person who is no longer engaged in a trade, business, or profession is subject to attachment in cases arising when he was so engaged. The Comment should say that the question of whether guarantors are subject to attachment depends upon whether they are found to be engaged in a "trade or business" and refer to Advance Transformer Co. v. Superior Court. The Comment should say further that, where the subject of the contract is not used primarily for personal, family, or household purposes, the question whether an individual is "engaged in a trade, business, or profession" is left to the courts, but that attachment in such cases is not necessarily limited to sole proprietors and independent contractors. The Commission directed the staff to obtain the Los Angeles County Superior Court policy memorandum on attachment and to request the views

of the Los Angeles County court commissioners on the alternatives presented in Memorandum 75-17, particularly on the second alternative section and its Comment containing the above discussion.

§ 486.050. Temporary protective order effect on transfers. Section 486.050 should be amended to read as follows:

486.050. (a) ~~Except as otherwise provided in subdivision (b) and in Sections 486.040 and 486.060, the~~ The temporary protective order may prohibit any transfer by the defendant of any of his the defendant's property in this state subject to the levy of a writ of attachment. The temporary protective order shall describe the property in a manner reasonably adequate to permit the defendant to identify the property subject to the order.

(b) If Notwithstanding subdivision (a), if the property is farm products held for sale or is inventory, the temporary protective order may not prohibit the defendant from transferring the property in the ordinary course of business, but the temporary protective order may impose appropriate restrictions on the disposition of the proceeds from such transfer.

The Comment should make specific reference to Section 486.040 which provides that the temporary protective order shall contain provisions in the interest of justice and equity to the parties. The Comment should say that the description of property should be specific in the case of an individual defendant. Where all corporate property is made subject to the temporary protective order, a reference to "all corporate property which is subject to attachment pursuant to subdivision (a) of Code of Civil Procedure Section 487.010" will satisfy the requirement of Section 486.050. Where all partnership property is made subject to the temporary protective order, a reference to "all partnership property which is subject to attachment pursuant to subdivision (b) of Code of Civil Procedure Section 487.010" will satisfy the requirement of Section 486.050. Where less than all corporate or partnership property is subject to the temporary protective order, the order may refer, for example, to

"inventory" or to some part thereof. The Comment should also state that the temporary protective order should only restrain the transfer of an amount of property which is reasonably necessary to protect the plaintiff; where too much property is subject to the order, the plaintiff may be liable (citing abuse of process cases).

§ 486.060. Effect of temporary protective order on deposit accounts.

This section and its Comment were approved as presented in the draft bill attached to Memorandum 75-16.

§ 487.020. Property exempt from attachment. This section and its Comment were approved as presented in the draft bill attached to Memorandum 75-16.

§ 488.010. Writ of attachment. This section was approved as presented in the draft bill attached to Memorandum 75-16. The Comment should state that no substantive change is intended.

§ 488.080. Inventory. Section 488.080(b) should be redrafted to avoid using "third person" and to make explicit the duty of the person, other than the defendant, to give the memorandum to the levying officer.

§ 488.310. Levy on real property. Subdivision (b) of Section 488.310 should be amended substantially as follows:

(b) Where, on the date of recording, the property stands upon the records of the county in the name of a ~~third~~ person other than the defendant, either alone or together with the defendant, the recorder shall index such attachment when recorded in the names of both the defendant and such ~~third~~ person named in the writ.

Subdivision (c) should be amended to conform with subdivision (b). Subdivision (d) should be amended to provide that service on the occupants of real property may be made by posting rather than by personal service where there are more than one occupant.

§ 488.360. Levy on farm products and inventory. The amendments to this section were approved as set out in the draft bill attached to Memorandum 75-16. This section should also be conformed to the changes to be made in Section 488.310.

§ 488.430. Interest in personal property of estate of decedent. This section and its Comment were approved as presented in the draft bill attached to Memorandum 75-16.

§ 489.230. Notice to defendant of right to object to undertaking. This section and its Comment were approved as presented in the draft bill attached to Memorandum 75-16 except that, in subdivision (b), the word "temporary" should be added before "protective order."

§ 489.310. Undertaking for release of attachment. The substance of the amendment of subdivision (a) of this section presented in the draft bill attached to Memorandum 75-16 was approved but, for clarity, two sentences should be made out of the sentence in the draft bill.

§ 490.010. Acts constituting wrongful attachment. This section and its Comment were approved as presented in the draft bill attached to Memorandum 75-16. The Commission directed the staff to draft amendments for consideration at the next meeting to provide a procedure where the defendant could be required to specify property of other persons in his possession at the noticed hearing for a writ of attachment. If the defendant does not provide this information, or gives incomplete or inaccurate information, and property of a person other than the defendant is attached, the defendant rather than the plaintiff should be liable for attorney's fees in any wrongful attachment proceedings under Chapter 10.

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§ 491.010. Examination of third person indebted to defendant. This section and its Comment were approved as presented in the draft bill attached to Memorandum 75-16 except that the last sentence of subdivision (a) providing that the affidavit may be on information and belief and should be deleted.

STUDY 39.120 - ENFORCEMENT OF JUDGMENTS

The Commission began its consideration of the draft statute on enforcement of judgments (attached to Memorandum 75-7) and considered the oral comments and a memorandum (attached to the First Supplement to Memorandum 75-7) of Professor Stefan A. Riesenfeld, the Commission's consultant on creditors' remedies. The Commission made the following decisions:

Property against which judgment may be enforced. At the beginning of the chapter containing general provisions, there should be a section providing that three categories of property are subject to the enforcement of judgments: property owned at the time of levy of writ of execution or the commencement of supplementary proceedings; real property no longer owned but subject to a judgment lien; and property no longer owned but attached when owned.

Judgment. "Judgment" should be defined to mean a judgment of a court of this state.

Judgment creditor. "Judgment creditor" should be defined to include the assignee or successor in interest of a judgment creditor.

§§ 701.070-701.080. Time for enforcement; extension of time; installment judgments. The Commission reaffirmed the policy of Sections 701.070 and 701.080 allowing enforcement of a judgment for 10 years with an additional 10-year period available if application is made during the tenth year of the first 10-year period; however, this provision should apply only to money judgments and should be redrafted to make its meaning clearer. The Comment should attempt to summarize the law regarding the time within which nonmoney judgments may be enforced. The staff was directed to do further research into the meaning of "installment judgments" and to draft a separate provision

concerning the time within which installment judgments may be enforced. It was suggested that it would be impractical to require a person wishing to extend the enforceability of amounts due under an installment judgment to apply during the tenth year after each unpaid installment has fallen due. Instead, a procedure should be drafted whereby the judgment creditor may renew all due and unpaid installments at one time. In subdivision (a) of Section 701.080, it should be made clear that the name of the original judgment creditor must be stated in the application for renewal, but then the original judgment creditor or his assignee or successor in interest may apply for the renewal. Subdivision (b) of Section 701.080 should provide that the clerk shall file the statement in the file of the action and enter the extension in the same manner as is provided for entry of judgments in that court.

§ 701.090. Stay of enforcement without bond. This section should be redrafted to make subdivision (b) (limited stay where enforcement would be stayed on appeal only if a bond were given) the general rule. The unlimited stay provision of subdivision (a) should be stated as an exception to the general rule and the Comment should indicate that the unlimited stay is appropriate, for example, where the court stays enforcement of the judgment against assets which were not attached in a quasi in rem action. The staff should also check the intended meaning of the phrase "judgment or order issued thereon" in subdivision (a).

§ 701.100. Enforcement after death of judgment creditor. The staff should determine whether an out-of-state executor or administrator may take advantage of this section without first qualifying in California.

§ 701.110. Enforcement after death of judgment debtor. The Comment to this section should be expanded to more fully explain the effect of its provisions. In particular, the Comment should state its relationship to Probate Code Section 732.

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§ 701.120. Contribution among joint judgment debtors. It should be made clear that Section 701.120 is an exception to the joint tortfeasors act. The staff should determine whether the section should be applicable to "judgment debtors jointly and severably liable" rather than "joint judgment debtors." In subdivision (a), "satisfies" should be substituted for "pays," and the Comment should make clear that "satisfies" includes both voluntary and involuntary satisfaction of the judgment. The Commission decided that the second alternative subdivision (c), was preferable to the first alternative. The staff was directed to determine how a judgment debtor entitled to contribution would reach a dead judgment debtor.

§ 703.010. Application for writ of execution. "Judgment creditor" should be substituted for "party in whose favor the judgment is given" in subdivision (a). The staff should devote further research on the permissibility of and liability for excessive levy, particularly where writs are issued to more than one county.

§ 703.020. Form of writ of execution. The bracketed matter regarding the form and content of the writ should be left to the Judicial Council. The section should provide that the writ shall require the officer to satisfy the judgment out of property no longer owned by the judgment debtor but subject to an attachment lien as well as from property of the judgment debtor and real property no longer owned by the judgment debtor but subject to a judgment lien. In the Comment, the sentence reading "presumably he will go after the most liquid assets first, and the sheriff must comply with this request" should be deleted.

§ 703.030. Entry of writ of amount of interest and costs. Subdivision (a) of this section should be drafted to make clear that the clerk issues

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the writ and that the writ is to show the costs. This change will ratify the existing practice where the judgment creditor's attorney fills in the costs. Interest will be treated similarly.

§ 704.050. Manner of levy. Professor Riesenfeld pointed out that the note to this section on page 23 does not accurately reflect his views.

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STUDY 63.50 - ADMISSIBILITY OF COPIES OF BUSINESS RECORDS

The Commission considered Memorandum 75-14 and the attached tentative recommendation. The Commission discussed the question of whether Section 1562.4 should be changed to include a requirement of a showing of good cause for the granting of an order under this section. It was determined that the standard set out in the section requiring voluminous records or numerous parties provided the "cause" necessary for the court to act. The Commission determined not to insert an additional requirement of a showing of good cause.

It was suggested that a requirement that the copy served on the party be legible be added to the statute. The Commission decided that it was not necessary to add this requirement to the statute. The statute contemplates that any copy must necessarily be legible in order to apprise the party of the contents of the record which will be introduced into evidence. If an illegible copy was served, the court would clearly have the authority to require that the party be supplied with a legible copy before the record was admitted into evidence.

The Commission approved the recommendation and the proposed statute for printing subject to editorial changes.

APPROVED

Date

Chairman

Executive Secretary