

June 23, 1975

Time

June 26 - 7:00 p.m. - 10:00 p.m.  
June 27 - 9:00 a.m. - 4:45 p.m.

Place

International Hotel - Rm. 1232  
6211 W. Century Blvd.  
Los Angeles 90045

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Los Angeles

June 26-27, 1975

SUGGESTED SCHEDULE FOR FUTURE MEETINGS

July

July 17 - 7:00 p.m. - 10:00 p.m.  
July 18 - 9:00 a.m. - 5:00 p.m.  
July 19 - 9:00 a.m. - 1:00 p.m.

San Francisco

August

No meeting

September

September 11 - 7:00 p.m. - 10:00 p.m.  
September 12 - 9:00 a.m. - 4:00 p.m.  
September 13 - 9:00 a.m. - 3:00 p.m.

San Diego (now scheduled  
for Los Angeles)

October

October 9 - 7:00 p.m. - 10:00 p.m.  
October 10 - 9:00 a.m. - 5:00 p.m.  
October 11 - 9:00 a.m. - 11:00 a.m.

Stanford

November

November 20 - 7:00 p.m. - 10:00 p.m.  
November 21 - 9:00 a.m. - 4:45 p.m.

Los Angeles

December

No meeting

June 23, 1975

JUNE 26-27 MEETING

June 26

1. Minutes of May 8-9, 1975, Meeting (sent 5/15/75)
2. Administrative Matters

Approval of Lease

Memorandum 75-44 (sent 6/20/75)

1975 Legislative Program

Memorandum 75-29 (sent 6/20/75)

3. Study 36.300 - Eminent Domain (AB 11 and Related Bills)

Litigation Expenses

Memorandum 75-40 (sent 5/30/75)

Byroads and Utility Easements

Memorandum 75-45 (sent 5/30/75)

Open Space

Memorandum 75-46 (sent 5/30/75)

First Supplement to Memorandum 75-46 (sent 6/12/75)

Settlement Offers

Memorandum 75-47 (sent 5/30/75)

Options

Memorandum 75-49 (sent 6/20/75)

Bring to Meeting:

Printed Recommendation (you have this)

AB 11 as amended (sent 5/23/75)

Report revising Comments to AB 11 as amended (sent 5/23/75)

4. Study 81 - Transfer of Out-of-State Trusts to California

Memorandum 75-41 (sent 6/12/75)

Draft of Tentative Recommendation (attached to Memorandum)

5. Study 23 - Partition of Real and Personal Property

Memorandum 75-43 (sent 6/12/75)

First Supplement to Memorandum 75-43 (sent 6/19/75)

AB 1671 (sent 6/5/75) None on hand

Recommendation (attached to Memorandum 75-36 distributed for last meeting)--See May, 1975, Minutes Book

June 23, 1975

June 27

6. Study 39.70 - Prejudgment Attachment

Memorandum 75-42 (sent 6/5/75)  
Tentative Recommendation (attached to Memorandum)

Bring to Meeting:

Selected Legislation Relating to Creditors'  
Remedies (you have this)

7. Study 39.90 - Claim and Delivery

Memorandum 75-48 (sent 6/5/75)

8. Study 39.120 - Enforcement of Judgments

Memorandum 75-26 (sent 6/5/75)  
Memorandum 74-25 (Third-Party Claims; originally attached  
to Memorandum 75-7; another copy sent 6/5/75)  
Draft of Title 9 - Enforcement of Judgments (originally  
attached to Memorandum 75-7; another copy sent 6/5/75)  
First Supplement to Memorandum 75-7 (previously sent;  
another copy sent 6/5/75)

MINUTES OF MEETING  
of  
CALIFORNIA LAW REVISION COMMISSION

JUNE 26 AND 27, 1975

Los Angeles

A meeting of the California Law Revision Commission was held in  
Los Angeles on June 26 and 27, 1975.

Present: Marc Sandstrom, Chairman, June 27  
John N. McLaurin, Vice Chairman  
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. DeMouly	Nathaniel Sterling
Stan G. Ulrich	Jo Anne Friedenthal

Commission Consultants Present:

Thomas M. Dankert (condemnation), June 26  
Professor Gideon Kanner (condemnation), June 26  
Garrett H. Elmore (partition), June 26 and 27

The following persons were present as observers on days indicated:

June 26

S. Robert Ambrose, County Counsel, Los Angeles  
Norman L. Roberts, City Attorney, Los Angeles  
Anthony J. Ruffolo, Department of Transportation, Los Angeles

June 27

John MacIntyre, Marshal's Association of California, Ventura

Minutes  
June 26 and 27, 1975

ADMINISTRATIVE MATTERS

Minutes

The Minutes of the May 8 and 9, 1975, meeting of the Law Revision Commission were approved as submitted.

Schedule for Future Meetings

The following schedule was adopted for future meetings.

July

July 17 - 7:00 p.m. - 10:00 p.m.                    San Francisco  
July 18 - 9:00 a.m. - 5:00 p.m.

August

No meeting

September

September 11 - 7:00 p.m. - 10:00 p.m.                    San Diego  
September 12 - 9:00 a.m. - 3:00 p.m.  
September 13 - 9:00 a.m. - 12:00 noon

October

October 9 - 7:00 p.m. - 10:00 p.m.                    Stanford  
October 10 - 9:00 a.m. - 5:00 p.m.  
October 11 - 9:00 a.m. - 11:00 a.m.

November

November 20 - 7:00 p.m. - 10:00 p.m.                    Los Angeles  
November 21 - 9:00 a.m. - 4:45 p.m.

Minutes  
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1975 Legislative Program

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

ENACTED

- AB 74 (Ch. 7, Statutes of 1975) - Modification of Contracts--Commercial Code Revision
- AB 192 (Ch. 25, Statutes of 1975) - Escheat--Travelers Checks and Money Orders
- AB 919 (Ch. 200, Statutes of 1975) - Defers attachment law for one year
- ACR 17 (Res. Ch. 15, Statutes of 1975) - Authority to study topics

SENT TO FLOOR "DO PASS"--SECOND HOUSE

- SB 294 - Out-of-Court Views by Judge or Jury
- SB 607 - Payment of Judgments in Installments
- AB 73 - Good Cause Exception to Physician-Patient Privilege

SENT TO FINANCE COMMITTEE "DO PASS"--SECOND HOUSE

- ACR 39 - Authorizes Commission study of marketable title act

PASSED FIRST HOUSE

- AB 11 - General Eminent Domain Statute
- AB 90 - Wage Garnishment Exemptions
- AB 124 - Conforming changes - eminent domain
- AB 125 - Conforming changes - eminent domain
- AB 126 - Conforming changes - eminent domain
- AB 127 - Conforming changes - eminent domain
- AB 128 - Conforming changes - eminent domain
- AB 129 - Conforming changes - eminent domain
- AB 130 - Conforming changes - eminent domain
- AB 131 - Conforming changes - eminent domain
- AB 266 - State Agency Condemnation
- AB 278 - Conforming Changes - codified provisions - eminent domain

TO BE SET FOR HEARING JANUARY 1976

- AB 1671 - Partition of Real and Personal Property

NOT YET INTRODUCED

- Liquidated Damages
- Wage Garnishment Procedure - Senate Preprint Bill No. 3

DEAD

- AB 75 - Oral Modification of Contracts--General Provisions
- AB 974 - Admissibility of Copies of Business Records in Evidence (possibly will be referred for interim study)

Resolution Regarding Lease of Office Space

Upon motion made and duly seconded, the following resolution was adopted by the Law Revision Commission:

RESOLUTION

The California Law Revision Commission authorizes the leasing of the building commonly known as Owen House, 553 Salvatierra, on the Stanford University campus, consisting of approximately 1,980 net square feet (approximately 3,340 gross square feet) of office and storage space. The rent for such space is to be Five Hundred Fifty Dollars (\$550) per month and, in addition, as a part of the rent, the State will reimburse Lessor for real property taxes (estimated at approximately \$50 per month) paid by Lessor because the premises described in the lease are not being entirely used for the Lessor's educational purposes. The rent covers utility services (other than telephone installation and telephone service) and, in addition, the Lessor will move all personal property of the Commission from its existing quarters to the new quarters without additional charge and will disassemble, move, and reassemble various built-in cabinets and built-in shelving. The term of the lease is five years, beginning October 1, 1975. Either party may terminate the lease upon 60 days' notice but, if the State terminates the lease, a schedule of payments by the State shall be provided for the exercise of this privilege as set out in the lease negotiated by the Executive Secretary with Stanford.

John H. DeMouilly, the Commission's Executive Secretary, is authorized and directed to execute any documents necessary in connection with the new lease on behalf of the California Law Revision Commission.

CERTIFIED COPY:

\_\_\_\_\_  
Nathaniel Sterling  
Assistant Executive Secretary  
California Law Revision Commission

The following Commissioners were present at the meeting on June 26, 1975, and voted in favor of the proposed lease:

John N. McLaurin, Vice Chairman	John J. Balluff
John D. Miller	Thomas E. Stanton, Jr.

The following Commissioner was present but abstained from voting on the proposed lease:

Professor Howard R. Williams

The following Commissioners were not present:

Marc Sandstrom, Chairman	Robert S. Stevens, Member of Senate
George H. Murphy, ex officio	Alister McAlister, Member of Assembly

Four voting members of the Commission constitute a quorum and must be present before the Commission may attend to any business. Minutes of Commission, April 1963.

STUDY 23 - PARTITION OF REAL AND PERSONAL PROPERTY

The Commission considered Memorandum 75-43 and the First Supplement thereto relating to changes in AB 1671, the Commission's partition bill. The Commission made the following determinations with respect to the bill:

§ 872.010. Definitions

The Commission amended subdivision (d) of Section 872.010 to revise the definition of "property" to delete the words, "and any right, title, estate, lien, or other interest therein."

The Commission amended subdivision (f) of Section 872.010 to revise the definition of "title report" to substitute the word "includes" for the word "means."

§ 872.110. Superior court

The Commission determined to add the following provisions relating to venue to Section 872.110:

§ 872.110. Superior court Jurisdiction and venue

872.110. (a) The superior court has jurisdiction of actions under this title.

(b) The proper county for the trial of actions under this title is:

(1) Where the subject of the action is real property or real property and personal property, the county in which the real property, or some part, is situated.

(2) Where the subject of the action is personal property, the county in which the personal property is principally located or in which the defendants, or any of them, reside at the commencement of the action.

(c) Upon motion, the court may change the place of trial to another county which is a proper county for trial, for the convenience of witnesses or the expeditious determination of the action.



Comment. Subdivision (a) of Section 872.110 continues a portion of former Section 755. Subdivision (b)(1) continues language formerly found in Section 392 as to real property and broadens it to apply to cases involving real and personal property. Subdivision (b)(2) is new. Compare Section 395 (venue). Subdivision (c) limits the grounds for venue change as well as the counties to which venue may be changed. Compare Section 392 et seq. (transfer of actions).

The following conforming amendment should be made in Section 392:

Code of Civil Procedure § 392

392. (1) Subject to the power of the court to transfer actions and proceedings as provided in this title, the county in which the real property, which is the subject of the action, or some part thereof, is situated, is the proper county for the trial of the following actions:

(a) For the recovery of real property, or an estate or interest therein, or for the determination in any form, of such right or interest, and injuries to real property;

~~(b)--For-partition-of-real-property;~~

~~(e)~~ (b) For the foreclosure of all liens and mortgages on real property.

(2) The proper court for the trial of any such action, in the county hereinabove designated as the proper county, shall be determined as follows:

If there is a municipal or justice court, having jurisdiction of the subject matter of the action, established in the city and county or judicial district in which the real property which is the subject of the action, or some part thereof, is situated, such court is the proper court for the trial of such action; otherwise any court in such county having jurisdiction of the subject matter of the action, is a proper court for the trial thereof.

Comment. The provision formerly found in subdivision (1)(b) of Section 392 is continued in Section 872.110(b)(1)(partition).

§ 872.210. Persons authorized to commence partition action

The Commission determined to leave this section unchanged pending preparation by the staff of a memorandum that covers the following subjects: (1) effect of right to partition community property on concurrently pending dissolution proceeding; (2) effect of right to partition community property

on homestead exemption; (3) right to partition successive interests in personal property; and (4) relation between partition and dissolution of partnership with respect to partnership property. The Commission's consultant, Mr. Elmore, disagreed with the foregoing decision.

The Commission revised the second paragraph of the Comment to Section 872.210 to read:

Subdivision (b) supersedes the first portion of former Section 752 relating to real property. Under subdivision (b), an owner may seek partition whether or not he is a joint tenant or tenant in common. He may, for example, be a sole life tenant seeking partition as against the remaindermen or vice versa. Contrast Akagi v. Ishioka, Cal. App.3d \_\_\_\_\_, Cal. Rptr. (1975) (remainderman may not obtain partition against life tenant). Or he may be a spouse seeking partition of community property. Contrast Jacquemart v. Jacquemart, 142 Cal. App.2d 794, 299 P.2d 281 (1956); see also Civil Code Section 5127 ("either spouse has the management and control" of community property). It should be noted, however, that ~~neither a cotenant, nor a person seeking partition as between successive estates is entitled to partition as a matter of right~~ partition as to concurrent interests is subject to the doctrine of waiver and that partition as to successive interests is subject to equitable considerations. See Section 872.710.

The third paragraph of the Comment should be revised to refer to relevant authorities.

§ 872.310. Summons

The Commission added to the end of subdivision (b) of Section 872.310, "and the provisions of this article."

§ 872.430. Claim for affirmative relief (new)

The Commission added the following provision:

§ 872.430. Claim for affirmative relief

872.430. The answer may set forth any claim the defendant has for contribution or other compensatory adjustment.

Comment. Section 872.430 is new. It avoids the need of the defendant to file a cross-complaint for affirmative relief. Compare Section 431.30(c) (affirmative relief may not be claimed in the answer).

§ 872.510. Joinder of defendants

Section 872.510 was revised to read:

872.510. The plaintiff shall join as defendants in the action all persons having or claiming interests of record or actually known to the plaintiff or reasonably apparent from an inspection of the property as to which partition is sought.

§ 872.720. Interlocutory judgment of partition

The Commission amended subdivision (a) of Section 872.720 to read:

872.720. (a) If the court finds that the plaintiff is entitled to partition, it shall make an interlocutory judgment that determines the interests of the parties in the property and orders the partition of the property and, unless it is to be later determined, the manner of partition .

§ 872.850. Sale of whole property or interests (new)

The Commission rejected a section such as proposed Section 872.850 requiring sale of the whole property where sale of the interests to be partitioned would be inequitable. Instead, the Commission requested further staff analysis of the problem of partition of interests, possibly with an indication of the way the problem is handled in other jurisdictions and indicating whether language in the statute or Comment stating the defendant's ability to cross-complain against the other interests is an adequate resolution of the problems.

§ 873.010. Court authority concerning referee

The Commission added a new subdivision (7) to Section 873.010 to provide that the court may, "Appoint a new referee."

The Comment to subdivision (b)(4) was revised to read: "It protects the referee in case of later settlement and dismissal of the action."

§ 873.080. Disposition in accordance with law

The Commission rejected sections providing that the partition must comply with all applicable laws, regulations, and ordinances, and giving the court

continuing jurisdiction over subsequent proceedings to cure the failure of the judgment to so comply. Instead, the Commission directed the staff to draft a section that states that the partition statute does not excuse compliance with any applicable laws, regulations, and ordinances. The Comment should indicate that the applicability of any laws, regulations, or ordinances is governed by their terms, and should cite the case of Pratt v. Adams (partition may not be used to avoid the requirements of the subdivision map act).

§ 873.230. Division involving purported conveyance

The words "prior to the commencement of an action" were inserted in the first line of this section to conform to the Comment.

§ 873.820. Application of proceeds of sale

Subdivision (c) was amended to delete the reference to payment of liens "of parties."

The following language should be added to the Comment:

Subdivision (c) provides for payment of liens on the property (including liens on undivided interests in the property) regardless whether the lienholder is a party unless the property has been sold subject to the lien. In case of a dispute concerning payment of a lien, the proceeds may be deposited in court pursuant to Section 873.810 pending resolution of the dispute.

§ 874.210. Persons bound by judgment

The Commission directed the staff to work on possible approaches to make clear that this section relates to the binding effect of a conveyance or transfer as well as a division, possibly by referring to those terms rather than to "judgment."

The Commission added the following proviso to subdivision (c) of this section: "Except as provided in Section 874.230."

§ 874.230. Unrecorded interests known to plaintiff

Section 874.230 was revised to read:

874.230. ~~Notwithstanding Section 874.210, where~~ Where an occupant ~~or other~~ a person having or claiming an unrecorded interest in the property or part thereof was not a party to the action but ~~the occupancy reasonably should have been known or~~ the existence or claim of the interest was actually known to the plaintiff at any time before entry of the interlocutory judgment or would have been reasonably apparent from an inspection of the property, the judgment does not affect the interest of such ~~occupant or other~~ person in the portion of the property or proceeds of sale thereof allocated to the plaintiff.

Operative date

The Commission amended the operative date section as follows:

(a) This act shall become operative on January 1, 1977.

\* \* \* \* \*

(c) Sections 872.210 and 872.710 of the Code of Civil Procedure do not apply to an action commenced prior to the operative date and the law applicable thereto prior to the operative date applies.

\* \* \* \* \*

(f) An action for partition by the owner or holder of a lien on a parity with that on which the owner's title is based shall be commenced prior to the operative date.

STUDY 36.25 - CONDEMNATION (BYROAD AND UTILITY EASEMENTS)

The Commission considered Memorandum 75-45 and the attached draft of a tentative recommendation relating to condemnation for byroads and utility easements. The Commission determined to distribute the tentative recommendation for comment, subject to editorial changes suggested by the Commissioners on drafts returned to the staff, and subject to the following substantive changes:

(1) Section 1001 was revised to read:

(a) Any owner of real property may, subject to the requirements of Section 1002, acquire by eminent domain an appurtenant easement over private property for which there is a great necessity to provide utility service to, or access to a public road from, the owner's property. The easement that may be taken shall afford the most reasonable service or access to the property to which it is appurtenant consistent with the least damage to the property burdened by the easement. The public shall be entitled, as of right, to use and enjoy the easement which is taken.

(b) This section shall not be utilized for the acquisition of a private or farm crossing over a railroad track, the exclusive remedy of an owner of a landlocked parcel to acquire a private or farm crossing over such track being that provided in Section 7537 of the Public Utilities Code.

(2) A provision should be added to Section 1001 to define utility services as water, gas, electric, drainage, sewerage, and telephone.

(3) The Comment to Section 1001 should indicate that damages caused by the taking include severance damages to the property from which the easement is taken as well as the actual value of the easement.

(4) Section 1002 should be amended to make clear that, where the easement is located in more than one jurisdiction, each jurisdiction must consent to the condemnation. The comparable provision in AB 11 should be adjusted accordingly.

(5) A provision should be added to Section 1002 that the petition of the property owner may be denied with or without a hearing.

(6) Subdivision (c) of Section 1002 should be expanded to provide for deposit or other security for the costs of the legislative body as well as payment.

In addition, the staff was directed to prepare a recommendation for payment of relocation expenses by private condemnors. This recommendation would be directed primarily towards nonprofit hospitals and educational institutions of collegiate grade.

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STUDY 36.43 - EMINENT DOMAIN (AB 278--OPEN SPACE)

The Commission considered Memorandum 75-46 and the First Supplement thereto relating to condemnation for open space. The Commission determined to delete its proposed open space provisions from AB 11 and simply make conforming changes in the Dunlap open space bill attached to Memorandum 75-46 on the assumption that the Dunlap bill will pass. Should the Dunlap bill fail to pass, the staff is to bring the matter before the Commission again.



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STUDY 36.300 - EMINENT DOMAIN (UNEXERCISED OPTIONS)

The Commission considered Memorandum 75-49 relating to the Commission's decision to delete Section 1265.310 (unexercised options) from AB 11. The Commission affirmed its decision to delete Section 1265.310.

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STUDY 36.300 - EMINENT DOMAIN (LITIGATION EXPENSES)

The Commission considered Memorandum 75-40 relating to the definition of litigation expenses and the proposal that the definition in Section 1235.140 be expanded to include expenses incurred in obtaining an abandonment of the proceeding through lobbying activities. The Commission determined to make no change in Section 1235.140.

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STUDY 36.300 - EMINENT DOMAIN (SETTLEMENT OFFERS)

The Commission considered Memorandum 75-47 relating to the Commission's decision to amend Section 1250.410 to provide that the evidence admitted at trial is relevant in the determination that the condemnor's offer was unreasonable and the property owner's demand reasonable. The Commission affirmed its decision to so amend Section 1250.410.

STUDY 39.70 - PREJUDGMENT ATTACHMENT

The Commission considered Memorandum 75-42, the attached staff draft of the Tentative Recommendation Relating to Prejudgment Attachment, and a letter from Michael B. Weisz distributed at the meeting (a copy of which is attached). The Commission approved the tentative recommendation for distribution for comment, subject to the following decisions and editorial changes:

§§ 482.100, 484.050, 484.070, 484.340, 484.350, 484.530, 485.230.

Effect of failure to claim exemptions from attachment within time allowed.

The Comments to sections providing a time limit for claiming exemptions from attachment should state that failure to claim the exemption is a waiver of the exemption for purposes both of attachment and execution unless the defendant can show changed circumstances. Language in the Attachment Law as enacted and in the tentative recommendation is consistent with this interpretation.

§§ 484.020, 484.090, 484.320, 484.370, 484.520, 485.220, 485.520, 484.540.

Amount to be secured by attachment. The sections providing for the application for and the contents of the writ of attachment should provide that, in the court's discretion, the amount to be secured by the attachment may include estimated costs and attorney's fees.

§ 484.070. Claim of exemption; notice of opposition. Subdivision (f) of Section 484.070 should be amended to provide that the temporary protective order expires immediately when all the property sought to be attached is claimed to be exempt and the plaintiff does not file a notice of opposition within the time allowed.

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

Paragraph (3) of subdivision (b) should read substantially as follows:

"Payment of taxes if payment is necessary to avoid penalties which will accrue for any further delay in payment."

§ 488.350. Motor vehicles and vessels. The staff should check the Attachment Law to determine how many provisions require notice to be sent by certified mail. If there are only a few references to certified mail, these should be changed to read "registered or certified." If there are many references, a general provision should be added to the effect that, where the statute requires notice to be sent by certified mail, it may be sent by registered mail.

§ 488.430. Interest in personal property of estate of decedent. The staff should determine whether there is summary administration of estates in California and, if there is, whether there is a problem with this section which requires service on the personal representative and filing with the probate court. The staff was authorized to deal with this problem if it exists.

§ 488.560. Release of attachment. In subdivision (b), the word "released" should be substituted for "delivered" so that the levying officers will not have to return the property to the place where it was seized. The last sentence of subdivision (c), permitting the plaintiff or his attorney to record the release of an attachment of an interest in real property, should be deleted. Subdivision (d) should be reworded to make its meaning clearer.

§ 491.010. Examination of third person indebted to or having property of defendant. The staff should prepare a background memorandum on prejudgment examination and explain why the statute does not permit the plaintiff to examine the defendant. For purposes of distribution for comment, the tentative recommendation should continue existing law.

Study 39.70

EXHIBIT I

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LAW OFFICES OF  
CALIFORNIA RURAL LEGAL ASSISTANCE

818 D STREET

P. O. BOX 1127

MARYSVILLE, CALIFORNIA 95901

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MICHAEL WEISZ  
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SAN FRANCISCO, CALIFORNIA 94108

TELEPHONE: (415) 663-4911

RICHARD SACA  
DIRECTOR

June 17, 1975

Mr. John H. DeMouilly  
Executive Director  
California Law Revision Commission  
Stanford Law School  
Stanford, CA 94305

Dear Mr. DeMouilly:

Pursuant to the letter that you received from Brian Paddock of the Western Center On Law And Poverty dated May 13, 1975, I am writing to indicate my interest in reviewing the new attachment statutes-- Title 6.5, Stats. 1974, c. 1516 Para. 9, operative January 1, 1976-- (CCP 481.010 et seq.).

I would like to receive a copy of the Law Revision Commission's proposed amendments to the attachment statutes, as I wish to study their possible effect on low-income persons.

Coincident with this request, I would appreciate a clarification of CCP Sections 484.060, 484.070, 484.350, 484.530, 485.230, 487.020, and 490.010 regarding the debtors' claim of exemption rights (CCP. 690.50) in the attachment context. These sections provide that the debtor may waive his exemption protections should he fail to file a claim of exemption 5 days prior to the date for the hearing on the creditors' application for a writ of attachment.

Although, I assume that the waiver is effective solely for the purposes of the prejudgment attachment procedure and does not affect the debtors' right to assert a claim of exemption after judgment, the statutes seem unclear on this point.

To avoid confusion and potential misapplication of these provisions, I believe that these new statutes should clearly state that failure to file a claim of exemption at the prejudgment attachment stage does not bar the debtor from asserting his exemption rights after judgment and pursuant to post judgment writs of execution or attachment. Also, it is not clear that CCP Section 484.100 pertaining to the effect of prejudgment attachment determinations resolves this specific problem.

Study 39.70

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**CALIFORNIA RURAL LEGAL ASSISTANCE**

Mr. John H. DeMouilly  
June 17, 1975  
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I hope that you find my comments useful in your evaluation of the attachment statutes.

Thank you for your consideration in this matter.

Sincerely,

  
MICHAEL B. WEISZ  
Directing Attorney

MBW:emo

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STUDY 39.90 - CLAIM AND DELIVERY

The Commission considered Memorandum 75-48 proposing an amendment to Section 512.070 of the claim and delivery statute. The following amendment was approved:

512.070. If a writ of possession is issued, the court may also issue an order directing the defendant to transfer possession of the property to the plaintiff. Such order shall contain a notice to the defendant ~~or the party in possession of such property,~~ that failure to turn over possession of such property to plaintiff may subject the defendant ; ~~or person in possession of such property,~~ to being held in contempt of court ~~or arrest~~ .



STUDY 81 - TRANSFER OF OUT-OF-STATE TRUSTS TO CALIFORNIA

The Commission considered Memorandum 75-41 and the attached draft of the proposed recommendation and statute. The Commission made the following determinations with respect to the proposed statute and instructed the staff to revise the statute and proposed recommendation for reconsideration.

General Considerations

Uniform Probate Code. The Commission requested the staff to summarize briefly the procedure under the Uniform Probate Code and to indicate its applicability to California, the other jurisdictions in which it has been adopted, and the procedure which would be used under the Uniform Code for transfer of trusts from another state.

Charitable trusts and other trusts excluded from the provisions of Probate Code Sections 1138 et seq. The Commission determined that the staff should separately study the question of transfer to this state of charitable trusts and other trusts excluded by Probate Code Section 1138 from administration under Article 2.5. The staff was directed to prepare a memorandum on the procedure for enforcement and supervision of charitable trusts in California under the Uniform Supervision of Trustees for Charitable Purposes Act (Govt. Code § 12580 et seq.), and the procedures for supervision of other trusts excluded by Section 1138 which might reasonably be transferred to this state and to report to the Commission at a future meeting on whether these procedures would be adequate for administration of charitable and other trusts from another jurisdiction.

Conflict of laws. The staff was directed to advise the Commission of the general conflict of laws principles with respect to trusts involving transfer from other jurisdictions. The Commission requested the staff to consider whether there should be a general provision in the statute indicating which law is to be applicable to particular fact situations.

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Future interests. The Commission was advised of the addition of Article 1.5 of Chapter 22 of the Probate Code in 1974 which limits the requirement of notice in certain future interest cases. The Commission instructed the staff to amend Probate Code Section 1215.1 to include a reference to Section 1139.13 under that article.

Proposed Statute

§ 1139.10. The Commission instructed the staff to consider amending this section to provide that this article does not apply to any trust falling within the exclusions of Section 1138, paragraph 2. The Commission determined that this article should apply to trusts "created" in another jurisdiction and not exclusively to trusts which are presently subject to "continuing supervision over administration in another jurisdiction."

§ 1139.11. The Commission instructed the staff to redraft this section along the following lines.

1139.11. A petition for an order accepting transfer of place of administration of a trust from another jurisdiction to this state may be filed by the trustee or a beneficiary of the trust in the superior court of any county:

- (a) Where any beneficiary of the trust resides;
- (b) Where a substantial portion of the assets of the trust are located or will be located; or
- (c) [To be redrafted to be stated in the same form as (a) and (b) supra.]

§ 1139.12. The Commission instructed the staff to revise Section 1139.12(b) to reflect the fact that the trust to be transferred may not in fact have been subject to continuing supervision over administration in another jurisdiction.

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Subdivision (b) would therefore be stated as an optional provision which would depend on the particular fact situation of the case. Subdivision (e) should be redrafted to provide that the petition should contain a copy of the trust instrument in effect at the time the petition is filed including all amendments thereto.

§ 1139.13. Subdivision (b) is to be deleted. The reference to notice under Probate Code Section 328 is applicable only to charitable trusts which are in fact probated in California.

§ 1139.14. The introductory paragraph is to be amended to provide that the court may, in its discretion, grant the petition . . . if after hearing it appears to the court that:

Subdivision (b) is deleted as unnecessary. The staff was instructed to state in the Comment to Section 1139.14 that formal findings are not required.

APPROVED

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Executive Secretary

EXHIBIT I

§ 1215

PROBATE CODE

ARTICLE 17. NOTICE IN TRUST PROCEEDINGS (NEW)

- Sac.
- 1215. Definitions
- 1215.1 Notice in future interests cases
- 1215.2 Conflicts of interest in subject matter
- 1215.3 Additional notice; appointment of parties as amici
- 1215.4 Effect of articles and other notice requirements

*Article 17 was added on 10/15/1975, in 1975, c. 1, § 1.*

§ 1215. Definitions

As used in this article:

- (1) "Notice" means notice of hearing which is to be sent by mail or personally served;
- (2) "Trust proceeding" means a judicial proceeding involving a trust provided for by Chapter 10 (commencing with Section 175) of Division 1, or Chapter 10 (commencing with Section 1120) of this division, including but not limited to proceedings for instructions, for settlement of trustee's accounts or distribution of trust assets upon partial or final termination of the trust.

§ 1215.1 Notice in future interests cases

Subject to other provisions of this article, it is a sufficient compliance with Sections 1120, 1123.5, 1125, 1125.1, 1126, 1138.6 and 1139.7, insofar as they require notice to be given to the beneficiaries of, or persons interested in the trust, or to beneficiaries or remaindermen, including all persons in being who shall or may participate in the corpus or income of the trust, to give notice in the cases hereinafter provided, as follows:

- (1) When an interest has been limited on any future contingency to persons who shall compose a certain class upon happening of a certain event without further limitation, notice shall be given to the persons in being who would constitute the class if such event had happened immediately before the commencement of the proceedings.
- (2) When an interest has been limited to a living person, and the same interest, or a share therein, has been further limited upon the happening of a future event to the surviving spouse or to persons who are, or may be, the distributees, heirs, issue or other kindred of such living person, notice shall be given to such living person.
- (3) Except as otherwise provided in subdivision (2), when an interest has been limited upon the happening of any future event to a person, or a class of persons, or both, and the same interest, or a share of such interest, has been further limited upon the happening of an additional future event to another person, or a class of persons, or both, notice shall be given to the person or persons in being who would take the interest upon the happening of the first such event.

§ 1215.2 Conflicts of interest in subject matter

Notwithstanding the provisions of Section 1215.1, notice shall be given to persons who would not otherwise be entitled to notice under such section, when a conflict of interest involving the subject matter of the trust proceeding exists between a person to whom notice is given and a person to whom notice need not be given under Section 1215.1.

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**§ 1215.3 Additional notice: appointment of guardian ad litem**

(a) The court, upon its own motion or on request of a person interested in the trust, at any stage of the proceeding may do either or both of the following:

(1) Require that additional notice be given pursuant to Section 1209, and prescribe the form and method of such notice;

(2) Appoint a guardian ad litem to represent the interest of a minor, incapacitated, unborn, or unascertained person, or a person whose identity and address are unknown, or a designated class of persons who are not ascertained or are not in being. When not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

(b) For the purposes of this section, a trustee is a person interested in the trust.

**§ 1215.4 Effect of article on other notice requirements**

Nothing in this article affects requirements for notice to a person who has requested special notice or filed notice of appearance pursuant to Article 1 (commencing with Section 1200) of this chapter, or pursuant to any other statute, or for notice to a particular person or entity, or for appointment of a guardian ad litem pursuant to Section 1120 or Section 1138.7, or for delivery or mailing of a copy of the petition pursuant to Section 1120. Without obtaining a court order therefor, the petitioner or other person required to give notice may cause notice to be given to any person interested in the trust.