

August 24, 1976

<u>Time</u>	<u>Place</u>
September 9 - 7:00 p.m. - 10:00 p.m.	State Bar Building
September 10 - 9:00 a.m. - 5:00 p.m.	601 McAllister Street
September 11 - 9:00 a.m. - 4:00 p.m.	San Francisco 94102

FINAL AGENDA
for meeting of
CALIFORNIA LAW REVISION COMMISSION

San Francisco

September 9-11, 1976

September 9

1. Minutes of June 17-19, 1976, Meeting (sent 8/2/76)
2. 1976 Legislative Program
Memorandum 76-81 (to be sent)
3. Study 77.230 - Nonprofit Corporations (Transitional Provisions)
Memorandum 76-78 (enclosed)
Bring to meeting: Tentative Recommendation Relating to Nonprofit Corporation Law (Parts I and II)(July 26, 1976). We will discuss this only in connection with the transitional provisions.

If time permits, the Commission also will consider the Administrative Matters listed under Item 6, infra.

September 10

4. Study 39.33 - Comprehensive Wage Garnishment Statute
Memorandum 76-79 (enclosed)
Printed Recommendations (attached to Memorandum)
5. Study 63.70 - Evidence (Eminent Domain and Inverse Condemnation)
Memorandum 76-6 (sent 8/17/76)
Memorandum 76-80 (sent 8/17/76)

If time permits, the Commission also will consider the Administrative Matters listed under Item 6, infra, and Item 8, infra.

September 11

6. Administrative Matters
Budget for 1977-78
Memorandum 76-75 (enclosed)
Statutes Held Unconstitutional or Impliedly Repealed
Memorandum 76-76 (enclosed)

August 24, 1976

Schedule for Consideration of Topics

Memorandum 76-77 (sent 8/17/76)

New Topics

Memorandum 76-74 (sent 8/17/76)

Annual Report

Memorandum 76-73 (enclosed)

7. Study 39 - Creditors' Remedies

39.230 - Supplementary Procedure

Memorandum 75-70 (sent 8/17/76)

Note: We will continue our consideration of this memorandum by starting with Section 705.210 in Exhibit I.

39.240 - Third-Party Claims

Memorandum 76-72 (enclosed)

39.260 - Enforcement of Nonmoney Judgments

Memorandum 75-71 (sent 8/17/76)

8. Study 30.300 - Conservatorship-Guardianship

Memorandum 76-82 (to be sent)

MINUTES OF MEETING

of

CALIFORNIA LAW REVISION COMMISSION

SEPTEMBER 9 AND 10, 1976

San Francisco

A meeting of the California Law Revision Commission was held in San Francisco on September 9 and 10, 1976.

Present: Howard R. Williams, Vice Chairman
John J. Balluff
John D. Miller
Thomas E. Stanton, Jr.

Absent: John N. McLaurin, Chairman
Robert S. Stevens, Member of Senate
Alister McAlister, Member of Assembly
Marc Sandstrom
George H. Murphy, ex officio

Members of Staff Present:

John H. DeMouilly	Nathaniel Sterling
Stan G. Ulrich	Robert J. Murphy III

Consultants Present:

Thomas M. Dankert, Condemnation, September 10

The following persons were present as observers on days indicated:

September 9

Virgil P. Anderson, California State Automobile Ass'n, Sacramento
Edward L. Butterworth, Fedco, Inc., Los Angeles
W. A. Hutchins, California State Automobile Ass'n, San Francisco

September 10

Lawrence Cassidy, California Ass'n of Collectors, Sacramento
Norval Fairman, Dept. of Transportation, San Francisco

ADMINISTRATIVE MATTERS

Minutes of June 17, 18, and 19, 1976, Meeting

The Minutes of the June 17, 18, and 19, 1976, Meeting were approved as submitted by the staff.

Future Meetings

Future meetings were scheduled as follows:

October Meeting

October 21 - 7:00 p.m. - 10:00 p.m.	Los Angeles
October 22 - 9:00 a.m. - 5:00 p.m.	
October 23 - 9:00 a.m. - 4:30 p.m.	

November Meeting

November 11 - 7:00 p.m. - 10:00 p.m.	San Francisco
November 12 - 9:00 a.m. - 5:00 p.m.	
November 13 - 9:00 a.m. - 12:00 noon	

December Meeting

December 2 - 7:00 p.m. - 10:00 p.m.	Los Angeles
December 3 - 9:00 a.m. - 5:00 p.m.	
December 4 - 9:00 a.m. - 12:00 noon	

Contract With Mr. Elmore on Guardianship-Conservatorship

The Commission authorized the Executive Secretary to discuss with Mr. Garrett H. Elmore the possibility of his serving as an expert consultant to the Commission on the topic of guardianship-conservatorship and the terms of a contract covering his services. The staff is to submit its recommendations concerning the contract with Mr. Elmore for this study at the October meeting.

1976 Legislative Program

The Commission considered Memorandum 76-81 which had attached the following report concerning the 1976 Legislative Program:

1976 LEGISLATIVE PROGRAM
CALIFORNIA LAW REVISION COMMISSIONENACTEDStatutes of 1976

- Chapter 22 - Operative Date of Eminent Domain Law (AB 2583)
 Chapter 73 - Partition of Real and Personal Property (AB 1671)
 Chapter 109 - Modification of Contracts (AB 2581)
 Chapter 143 - Relocation Assistance (AB 2761)
 Chapter 144 - Transfer of Out-of-State Trusts to California (AB 2855)
 Chapter 145 - Claim and Delivery Statute--Turnover Orders (AB 2895)
 Chapter 437 - Prejudgment Attachment (AB 2864)
 Res. Ch. 30 - Continues Authority to Study Topics (ACR 130)
 ACR 170 - Authorizes study by Law Revision Commission of various aspects of tort liability but does not provide any additional funds. This ACR has been amended to make the Joint Legislative Committee the vehicle to carry on this study; Law Revision Commission no longer involved except that Joint Legislative Committee may make contracts with various groups, including Law Revision Commission, if Joint Legislative Committee so desires.

SENT TO GOVERNOR

- AB 2582 - Byroads and Utility Easements (with byroads eliminated and resolution of local legislative body required){signed by Governor]
 AB 3128 - Service of Process on Unincorporated Associations [signed by Governor]
 AB 3169 - Liquidated Damages [not yet acted on by Governor]

DEAD MEASURES

- AB 2580 - Admissibility of Duplicates (died in Assembly Judiciary Committee)
 AB 2847 - Undertakings for Costs (died in Assembly Judiciary Committee)

Note: The Commission decided not to request the introduction at the 1977 legislative session of the two recommended measures (AB 2580, AB 2847) which were not enacted at the 1976 session.

Budget for 1977-78

The Commission considered Memorandum 76-75 and the attached draft of the budget for 1977-78 which the staff had submitted to the Department of Finance in order to meet the deadline established by that department. The budget was approved as submitted to the Department of Finance.

Observers at Meeting of State Bar Committee on Corporations

The staff reported that the State Bar Committee on Corporations had invited observers from the Commission to attend its meeting to be held on September 13 and that Mr. Sterling and Commissioner Stanton were planning to attend. The Commission approved this decision.

Schedule for Consideration of Topics

The Commission considered Memorandum 76-77; the following decisions were made.

Topics to be dropped from agenda. Two topics were approved for dropping from the agenda: Oral modification of contracts; out-of-state trusts.

1977 Legislative Program. The following was approved as the 1977 legislative program:

- (1) Nonprofit corporation law
- (2) Damages in action for breach of lease
- (3) Sister state money judgments
- (4) Wage garnishment

Recommendations not enacted in 1976. The Commission determined not to submit bills in 1977 on the two recommendations not enacted in 1976.

Study of cooperative corporations law. The Commission determined that the Vice Chairman, after consulting with the Chairman, should send a letter to Assemblyman McAlister requesting that Assemblyman McAlister write a letter to Assemblyman Knox along the lines of the letter attached as Exhibit V to Memorandum 76-77.

Study of governmental tort liability. The Commission decided not to undertake a study of governmental tort liability since this is a matter within the scope of the work of the Joint Legislative Committee on Tort Liability.

Recommendations to 1978 and subsequent sessions. The Commission decided to give priority to the following topics:

(1) Evidence to Determine Fair Market Value. This would be the subject of a recommendation to the 1978 legislative session.

(2) Cooperative Corporations. If the Commission undertakes this study, it would be given a top priority with a view to submitting a recommendation to the 1978 Legislature. This would be at the expense of other topics listed for priority. However, the Commission would undertake study of this subject only if such study would not duplicate a study that is or would be undertaken by an Assembly Select Committee.

(3) Inverse Condemnation. When the work on the nonprofit corporation recommendation is completed and the recommendation sent to the printer, the staff will prepare a memorandum outlining the various areas of inverse condemnation that might be studied so the Commission can determine the aspect or aspects of this topic it will study. The topic will be given some priority.

(4) Creditors' Remedies. The Commission determined that this topic should be given priority with a view to completing work on a comprehensive recommendation for submission to the Legislature.

(5) Guardianship, Child Custody, and Related Matters. The staff is to commence work on this study so that material will be ready for consideration by the Commission at a future time. The first phase of the study will be a study of guardianship-conservatorship with a view to eliminating the overlap between the guardianship and conservatorship statutes in the case of an adult and providing appropriate standards for guardianship in the case of a minor. The second phase of the study will be a study of adoption and child custody generally with a view to providing a uniform standard for determining who is entitled to custody. The topic would be worked into the agenda as time permits.

(6) Revision of the Evidence Code. This topic would be worked into the agenda as time permits. Included in the topic would be the psychotherapist-patient privilege.

(7) Discovery and Class Actions would be deferred for the time being.

(8) Marketable Title Act and Related Matters. The staff should contact the California Land Title Association and request that that organization commence a review of the Uniform Simplification of Land Transfers Act. Commission consideration of the topic is deferred.

(9) Arbitration. The staff was requested to determine what the Judicial Council and State Bar have done on this topic and report the results of the investigation at a future meeting.

New Topics

The Commission considered Memorandum 76-74 relating to new topics. The following decisions were made.

(1) Living probate. The Commission decided not to study the concept of living probate.

(2) Discovery. The suggestion of Mr. Warren is to be considered when the discovery study is taken up.

(3) Dismissal sections of Code of Civil Procedure. The Executive Secretary is to write to the State Bar Committee on the Administration of Justice and request the views of the committee whether a study of the dismissal sections of the Code of Civil Procedure is needed and whether that committee is willing to undertake the study, and, if not, whether the committee believes the Law Revision Commission should make such a study. The response of the State Bar Committee will be brought to the attention of the Commission.

(4) Fictitious business names. This matter should be brought to the attention of Assemblyman McAlister to determine whether he wishes to introduce legislation to deal with the problem noted by the Los Angeles County Clerk.

Annual Report

The Commission considered the draft of the Annual Report as submitted by the staff. The draft will be revised to reflect the decisions made by the Commission with respect to priorities to be given to topics and to topics to be dropped from the agenda.

On page 1, the fourth paragraph was revised to read in substance:

During 1976, the Commission plans to devote the major portion of its time and resources to the study of creditors' remedies, inverse condemnation, evidence, and child custody, adoption, guardianship, and related matters. Other topics may be considered if time permits.

On page 6, the preliminary portion of the second paragraph of the discussion of the bill on partition was revised to read.

A number of amendments were made to this bill upon recommendation of the Commission as a result of the Commission's continuing study of the topic after the bill was introduced:

The detailed listing of the amendments should be in smaller type than the preceding text of the Annual Report.

Conforming changes (like that made for partition) should be made in the discussion of the amendments to the prejudgment attachment bill, the relocation assistance bill, the byroads and utility easements bill, and the liquidated damages bill. The changes made by the Legislature (as distinguished from the Commission) should be noted.

Report on Statutes Repealed by Implication or Held Unconstitutional

The Commission considered Memorandum 76-76 and Exhibit I thereto (Report on Statutes Repealed by Implication or Held Unconstitutional). The Commission suggested that the case of T. M. Cobb Co. v. County of Los Angeles, 16 Cal.3d 606, 547 P.2d 431, 128 Cal. Rptr. 655 (1976), be eliminated from the text and placed in a footnote instead since the constitutional discussion in the case was dictum. With that change, the draft of the "Report on Statutes Repealed by Implication or Held Unconstitutional" was approved for inclusion in the Annual Report.

968/993

Minutes

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STUDY 30.300 - GUARDIANSHIP-CONSERVATORSHIP

The Commission considered Memorandum 76-82 relating to the proposed study of guardianship and conservatorship law. The Commission approved the staff recommendation that guardianship and conservatorship law be revised to eliminate the overlap between them by limiting guardianships to minors (whether for the person or for property) and retaining the present application of the conservatorship statute (i.e., for adults, whether for the person or for property).

968/9

~~Minutes~~

STUDY 39.33 - WAGE GARNISHMENT (COMPREHENSIVE STATUTE)

The Commission considered Memorandum 76-79 and the report of the State Bar Committee on Relations of Debtor and Creditor relating to wage garnishment.

The Commission noted that those bills have been introduced in past sessions of the Legislature to effectuate Commission recommendations on this subject, but all of them have been rejected on the ground they were too favorable to debtors. Nevertheless, the Commission decided to prepare a revised wage garnishment statute for the 1977 session of the Legislature.

With the past history of legislative proposals on this subject in mind, the Commission made the following decisions in response to the report of the State Bar Committee:

Gender

The recommendation should be revised to eliminate the exclusive use of pronouns in the masculine gender.

Code Civ. Proc. § 723.011(b). Definition of employee

Subdivision (b) of Section 723.011 should be changed to read as follows:

(b) "Employee" means a public officer and any individual who performs services subject to the right of the employer to control of an employer as to both what shall be done and how it shall be done.

§ 723.023. Priority of earnings withholding orders

The reference to "this chapter" in the introductory phrase of this section should be retained. Listing specific sections should be avoided where possible so that later amendments and renumbering will not result in erroneous references. It was noted that the Comment refers to the provisions that State Bar Committee would list, with the exception of Section 723.031 which is not an earnings withholding order and so should not be specified in the statute. However, the Comment should be revised to refer to the relationship between earnings withholding orders and wage assignments for support.

§ 723.024. Employer's service charge for withholding

The one-dollar employer's service charge for withholding should be retained. While the Commission recognizes that this amount does not cover the actual expenses to the employer for withholding, the one-dollar charge will help defray this expense and is therefore better than nothing. A provision implementing the State Bar Committee's suggestion that such charges should be limited to five dollars per indebtedness per month should be added to this section. The Comment should state that the five-dollar maximum would apply to those employees who are paid more frequently than weekly.

§ 723.025. Payment to levying officer

The employer should be permitted to pay withheld amounts to the levying officer more frequently than once a month. If the employer pays monthly, he shall do so as provided in the existing draft. However, if the employer chooses to pay more frequently than monthly, he shall do so within 10 days from the end of the pay period. The language suggested by the State Bar Committee to the effect that payment should be made "as of the close of" shorter pay periods seems unclear and would not afford the employer time to comply.

§ 723.027. Duty of creditor to notify levying officer when judgment satisfied

The Commission is sensitive to the problems that may arise where the creditor does not follow the procedure for terminating the withholding of earnings upon satisfaction of the judgment. However, in order to provide an effective penalty for failure to notify the levying officer that the judgment has been satisfied, a specific time limit would have to be provided within which the creditor would have to give proper notice. If the time limit is short, innocent judgment creditors could be unfairly penalized, such as, for example, where the creditor himself did not know that the judgment had been satisfied by another levy. If the time limit were made longer, it would not prevent the damage caused by the extra withholding. Under the draft, the debtor may resort to the abuse of process remedy in the exceptional case where a creditor did not

perform his duty under this section. The staff was directed to devote further thought and research to this problem and to consider putting a statement about abuse of process in the Comment to Section 723.027.

968/680

§ 723.028. Withholding order for costs and interest

The following sentence, suggested by the State Bar Committee, should be added to this section: "Any supplemental withholding order granted pursuant to this section shall be considered as part of the same indebtedness."

§ 723.030. Withholding order for support

The Commission concurred in the State Bar Committee's recommendation that reasonable attorney's fees allowed in connection with collection of delinquent support should not be included in the priority granted the withholding order for support. The employer should be required to give notice to the levying officer or, in the case of a withholding order for taxes, the taxing authority, that a supervening order has been served and is in effect. Sections 723.030, 723.031, and 723.126 should be amended to accomplish this result.

The Commission does not believe that this recommendation is the proper place to attempt a reexamination of the strong policy that child and spousal support orders have priority over earnings withholding orders in favor of general creditors.

§ 723.050. Standard exemption

The Commission declined to propose, as urged by the State Bar Committee, that "sums paid for a regular policy of health insurance" be deducted in the calculation of available earnings because (1) it is unclear what is a "regular" policy, (2) it would make the calculation of how much to deduct more complex and so would defeat one purpose of the withholding tables, (3) it would be unfair to employees who do not rely on payroll deductions to pay for health insurance, and (4) such amounts could be claimed as exempt through the exemption procedures where the debtor is truly hard-pressed.

The Commission decided not to recommend that 40, rather than 30, times the federal minimum wage be deducted in the calculation of available earnings in recognition of the practical impossibility of getting a bill significantly more favorable to debtors through the Legislature, based on the Commission's past experience.

968/681

§ 723.051. Exemption of additional amounts necessary for support

The State Bar Committee suggested that the standard for exemption of additional earnings be changed to read: "The portion of earnings necessary for the use of the debtor's family supported in whole or in part by the debtor is exempt." The Commission reaffirmed its recommendation to word the standard as follows: "The portion of earnings which a judgment debtor proves is necessary for the support of the debtor or the debtor's family supported in whole or in part by the debtor is exempt." The purpose of the Commission's changes in existing language is to eliminate the station in life test and also to make clear that a judgment debtor without dependents may claim an exemption. (It was noted that this latter change was enacted in the 1976 legislative session. Cal. Stats. 1976, Ch. 317, amending Section 690.6.)

§ 723.072. Withholding order for taxes; notice and opportunity for review before order issued

The substance of the State Bar Committee's recommendations concerning subdivision (b)(2) should be adopted; this provision would read as follows:

(2) The state tax liability has been assessed or determined, as provided in the Revenue and Taxation Code or Unemployment Insurance Code, and the taxpayer had notice of the proposed assessment or determination and had available an opportunity to have the proposed assessment or determination reviewed by appropriate administrative procedures ; ~~whether or not he took advantage of that opportunity~~ . If the taxpayer requests review of the assessment or determination, the state shall not issue the withholding order for taxes until the administrative review procedure is completed. If the taxpayer is given notice of the proposed assessment or determination but does not make a timely request for review, the state may issue the withholding order for taxes.

The Commission decided that a uniform 30-day period within which the taxpayer could request review might conflict with the procedures developed by the tax agencies. The Comment to this section should state that the time for making a request for review of an assessment or determination will depend on the appropriate procedures applicable to a particular agency.

The tax authorities should not be required to use certified or registered mail, as suggested by the State Bar Committee. The Commission is not aware of any problems associated with the use of first class mail under existing law. Moreover, representatives of the Franchise Tax Board were strongly opposed to the use of certified or registered mail.

968/611

§ 723.074. Agency issued withholding order for taxes

The Commission agreed with the State Bar Committee that the state should be permitted to issue withholding orders for taxes only for the same amount as may be withheld from an employee's earnings under a withholding order obtained by a general creditor rather than twice such amount. Accordingly, subdivision (c) of Section 723.074 should read:

(c) Unless a lesser amount is specified in the order, the amount to be withheld pursuant to an order issued under this section is the maximum amount that may be withheld under Section 723.050.

§ 723.075. Notice to taxpayer; reduction in amount withheld

In view of the reduction of the amount that the state may withhold where it issues a withholding order for taxes, the agency hearing on the hardship exemption should be final. A sentence should be added at the end of subdivision (c) reading:

The determination of the state pursuant to this subdivision is final and not subject to court review.

Subdivision (d) should be deleted.

§ 723.076. Court issued withholding order for taxes

The court issued withholding order for taxes permitting the withholding of a greater amount than would be withheld under a state issued order

should be retained. This order is particularly useful in higher income brackets where the taxpayer has no trouble supporting himself or his family. The Commission does not agree that the state should be treated as a general creditor.

§ 723.077. Priority of orders

This section should be amended to provide that the employer should notify the state if there is a prior withholding order for taxes in effect.

405/124

§ 723.078. Jeopardy withholding order for taxes; withholding period

The jeopardy withholding order for taxes and the unlimited withholding period should be retained. The view was expressed that the content of the recommendation insofar as the tax authorities are concerned represents a series of compromises; if the balance is shifted too much in favor of delinquent taxpayers and against the tax authorities, they would oppose the bill.

§ 723.079. When receipt required

The Commission concurred in the State Bar Committee's recommendation that the state be required to send a receipt for amounts withheld in every case unless the taxpayer requests that a receipt not be sent. It was noted that representatives of the Franchise Tax Board had opposed such a requirement.

§ 723.080. Service

Withholding orders for taxes should continue to be served by first class mail, rather than certified or registered mail.

§ 723.083. Refund of employer's service charge

The Commission concurred in the State Bar Committee's suggestion that the state be required to refund the employer's service charge where a withholding order for taxes is erroneously issued.

§ 723.084. Warrant or notice deemed withholding order for taxes

The Commission retained this section which prevents the technicality of whether the taxpayer is an employee or an independent contractor from voiding the collection process. It was noted that the warrant or notice must provide on its face that it is to be treated as a withholding order for taxes. However, Section 723.084 should be revised to provide that a warrant or notice will be deemed a withholding order for taxes only if it contains all the information required in a withholding order for taxes.

§ 723.101. Service

The introductory clause of subdivision (a) should read:

(a) An earnings withholding order shall be served by the levying officer upon the employer by delivery of the order to any of the following: . . .

The staff should examine the relationship between Sections 723.080 and 723.101 and suggest any further clarifications that are needed.

968/991

§ 723.103. Service of order and information on employer

The Commission rejected the State Bar Committee's suggestion that blank exemption and financial statement forms be served on the employer because of the expense and waste that would be involved. It was noted that the notice to the debtor informs him that exemption and financial statement forms may be obtained from the levying officer and that the officer's address is on the earnings withholding order. See Sections 723.122(d) and 723.125(j).

§ 723.105. Judgment debtor's claim of exemption

The Commission reaffirmed the time limits in the exemption procedure since they represent a compromise in the past among the representatives of various groups involved. If the times were shortened, as suggested by the State Bar Committee, the process would become too compressed and result in more technical failures in the process. The

Commission retained the word "promptly" in subdivision (f) because it gives the levying officer a minimum of flexibility and because it is believed that the levying officers are conscientious in carrying out this duty.

The last sentence of subdivision (g) should be revised to read as follows:

(g) If the court determines that any amount withheld pursuant to the earnings withholding order shall be paid to the judgment debtor, the court ~~may~~ shall make an order directing the person who holds such amount to pay it promptly to the judgment debtor.

The Commission felt that the five-day requirement suggested by the State Bar Committee would be too short and rigid. The specific time would be left to the judge in a contempt hearing.

405/439

§ 723.120. Judicial Council to prescribe forms

The Judicial Council should be provided with authority to approve forms in languages other than English. The Commission decided upon this course rather than providing that the notice to the employee under Section 723.122 should be in English and Spanish and providing authority to the levying officer to give notice in some other language in his discretion.

§ 723.121. Application for earnings withholding order

The Commission approved the State Bar Committee's suggestion that the introductory clause of Section 723.121 be revised as follows:

723.121. The "application for issuance of earnings withholding order" shall be executed under oath or by declaration under penalty of perjury and shall include all of the following: . . .

§ 723.123. Form of claim of exemption

Section 723.123 should be revised to read:

723.123. The "judgment debtor's claim of exemption" shall be executed under oath or by declaration under penalty of perjury. The claim of exemption shall indicate how much the judgment debtor believes should be withheld from his earnings each pay period by his employer pursuant to the earnings withholding order and shall state the judgment debtor's present mailing address .

The Commission considered adding "not necessarily his residence address" at the end of the section, as suggested by the State Bar Committee, but concluded that it would be preferable to make this point in the Comment.

§ 723.125. Earnings withholding order

The Commission rejected the State Bar Committee's suggestion concerning blank forms for the reasons stated under Section 723.103, supra.

§ 723.126. Employer's return

This section will have to be amended to accomplish the policy of requiring the employer to give notice to the levying officer when a supervening order has been served. See decision regarding Section 723.030, supra.

968/993

Prelevy Notice

The State Bar Committee proposed a procedure whereby a judgment debtor would be required to receive 20 days' notice before an earnings withholding order could be issued. The Commission rejected this proposal because it appeared too burdensome in light of the probable number of cases in which it would result in successful exemption claims. It is the Commission's view that the increased amounts which would be exempt under the Commission's recommendation would tend to reduce the need for hardship exemption claims. It is neither constitutionally required nor sound policy to delay the collection of judgments against wages for such a period in every case.

Civil Code § 4701. Assignment of wages for support

The State Bar Committee proposed treating wage assignments for the support of spouses like wage assignments for support of children. The Commission does not believe that this recommendation is the place to reexamine the policies reflected in recently enacted Civil Code Section 4701.

Labor Code § 300. Wage assignments

The State Bar Committee proposed eliminating the requirement in Labor Code Section 300 that the spouse of the wage earner consent in

writing to an assignment of wages. The Commission is not convinced that this would be a good policy, noting that this section was not revised when the community property laws were revised and that the consent of both spouses is required for the transfer of various other types of property, e.g., furniture, wearing apparel, and real property. In addition, it was observed that the wage garnishment recommendation is not the proper occasion to make substantive revisions in the community property and wage assignment laws.

Labor Code § 2929. Discharge from employment for wage garnishment

The Commission did not accept the State Bar Committee's proposal that discharging an employee for wage garnishment be forbidden unless financial responsibility is a qualification for the job. The Commission submitted recommended legislation to increase the protection of wage earners in this regard in the past and has found it unacceptable in the Legislature. If increased protection is desired in this area, it should be a separate recommendation.

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STUDY 39.230 - ENFORCEMENT OF JUDGMENTS
(SUPPLEMENTARY PROCEDURES)

The Commission continued its consideration of Memorandum 75-70 concerning supplementary procedures for the enforcement of money judgments. The Commission made the following decisions:

Code Civ. Proc. § 705.210. Receiver to enforce judgment

The article on receivers to enforce money judgments should be drafted to continue existing law. The judgment creditor should be required to show (1) that a writ of execution has been issued and returned unsatisfied or that the judgment debtor refuses to apply his property to the satisfaction of the judgment and (2) that there is a need for a receiver to obtain satisfaction of the judgment. The staff draft of Section 705.210 as it appears in Memorandum 75-70 and the note following it should be sent to Professor Stefan Riesenfeld, the Commission's consultant on creditors' remedies, for his comments.

§ 705.220. Receiver to transfer alcoholic beverage license

This section was approved but should be sent to the Department of Alcoholic Beverage Control for their comments.

§ 705.310. Installment payment order

The proposed installment payment order procedure was disapproved. It was noted in the discussion that the installment payment order could be used to collect earnings in the hands of a wage earner inconsistent with the policies expressed in the Commission's wage garnishment recommendations.

§§ 705.410-705.440. Collection of judgment where judgment debtor is creditor of public entity

These sections, which continue existing law, were approved. Section 705.430 should be divided into a number of shorter sections. The Commission decided not to attempt to extend the procedures in Section 705.440 to the collection of a judgment where the judgment debtor is a contractor on a private project.

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§ 705.510. Charging orders

Corporations Code Section 15028 should be left where it is and
Section 705.510 should be drafted as a cross-reference to that section.

STUDY 63.70 - EVIDENCE (EMINENT DOMAIN AND INVERSE CONDEMNATION)

The Commission considered Memorandum 76-6 and the attached Highway Research Board Report and Consultant's Comments, and Memorandum 76-80, relating to evidence in eminent domain and inverse condemnation. The Commission directed the staff to prepare for its review a tentative recommendation that embodies the Commission's prior decisions as set out in the Minutes of the January 1976 meeting (Exhibit I of Memorandum 76-80), and that also makes the following changes:

§ 810. Article applies only to condemnation proceedings

This section should be revised so that the valuation provisions are not limited to eminent domain and inverse condemnation cases, but should apply to any case in which the fair market value of property is in issue.

§ 817. Leases of subject property

This section was revised as follows:

- 817. (a) When Subject to subdivision (b), when relevant
- (b) A witness may take

Comment. Section 817 is amended to make clear that subdivision (b) is a limitation on subdivision (a). It should be noted that Section 817 applies only to the determination of the value of property and not to such matters as loss of goodwill. See Section 811 and Comment thereto and Code of Civil Procedure Section 1263.510 and Comment thereto.

§ 819. Capitalization of income

The staff was directed to draft a provision for further Commission review that would permit capitalization of a hypothetical improvement or other method of valuation that is fair and equitable in cases where there is no market data or no relevant market.

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§ 822. Matter upon which opinion may not be based

The staff was directed to draft language to clarify the relation between Section 822(c) and Revenue and Taxation Code Section 4986(2)(b), relating to the mention of assessed valuation and unpaid taxes in the eminent domain proceeding. In this connection, the staff is to prepare a proposed revision of Revenue and Taxation Code Section 4986 that would simplify the structure of the section and that would suspend taxes on property taken by eminent domain as of the date of possession rather than as of the date of judgment.

A new subdivision (g) was added to Section 822 as follows:

(g) A transaction involving the trade or exchange of any property including the property being valued.

Comment. Subdivision (g) is added to Section 822 to make clear that transactions involving a trade or exchange of property are not a proper basis for an opinion since use of such transactions requires valuation of property other than the property being valued. See subdivision (d). Cf. People v. Reardon, 4 Cal.3d 507, 483 P.2d 20, 93 Cal. Rptr. 852 (1971). It should be noted, however, that subdivision (d) does not prohibit a witness from testifying to adjustments made in sales of comparable property used as a basis for his opinion. Cf. Merced Irr. Dist. v. Woolstenhulme, 4 Cal.3d 478, 483 P.2d 1, 93 Cal. Rptr. 833 (1971).

The following Comment was also added to Section 822:

Comment. Section 822 does not prohibit cross-examination of a witness on any matter precluded from admission as evidence if such cross-examination is for the limited purpose of determining whether a witness based his opinion in whole or in part on matter that is not a proper basis for an opinion; such cross-examination may not, however, serve as a means of placing improper matters before the jury. Cf. Evid. Code §§ 721, 802, 803.

STUDY 77.230 - NONPROFIT CORPORATIONS (TRANSITION PROVISIONS)

The Commission considered Memorandum 76-78 relating to transition provisions for the Nonprofit Corporation Law. The Commission tentatively approved the transition provisions attached as Exhibit I to the memorandum with the following changes:

§ 5102. Scope of division

Section 5102 was revised to read:

(a) Except as otherwise provided in this section and in Chapter 18 (commencing with Section 6810), this division applies on the operative date to every nonprofit corporation ~~heretofore or hereafter formed~~.

The Comment should note that the division applies to nonprofit corporations heretofore or hereafter formed.

§ 5410. Members

Section 5410 was revised to reverse the presumption against nonnatural persons as members and group memberships. Nonnatural persons and group memberships should be permitted unless the bylaws provide otherwise. The Comment should alert persons to the problems that may be created if nonnatural persons and group memberships are not precluded.

§ 5611. Annual meeting

Section 5611 was revised to add that, if no date is fixed for the annual meeting, the statutory date of existing law applies.

§ 6810. Definitions

Subdivision (b) of Section 6810 was revised to read:

(b) "Operative date" means the ~~operative date of~~ on which this division becomes operative.

§ 6811. Application of division to acts taken before operative date

The word "officers" was added to the phrase "directors or members" in Section 6811(a).

§ 6813. Application of provisions relating to number of directors

This section was deleted.

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§ Proxies

A section should be added to provide that a proxy lawfully executed prior to the operative date is effective according to its terms for a period of not more than three years after the operative date unless earlier terminated.

Operative date

The Commission determined that the operative date of the entire Nonprofit Corporation Law should be January 1, 1979 for newly-formed corporations and January 1, 1980 for corporations formed prior to January 1, 1979. In addition, any corporation formed prior to January 1, 1979, should be permitted to elect to be governed by the new law prior to the operative date by amending its articles (in the same manner as other amendments to the articles) to so state.

APPROVED

_____ Date

_____ Chairman

_____ Executive Secretary