

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION
MAY 4 AND 5, 1978
San Francisco

A meeting of the California Law Revision Commission was held in San Francisco on May 4 and 5, 1978.

Present: Howard R. Williams, Chairman
Beatrice P. Lawson, Vice Chairman
Judith Ashmann
Jean C. Love, May 5
John D. Miller
Thomas E. Stanton, Jr.
Laurence N. Walker

Absent: George Deukmejian, Member of Senate
Alister McAlister, Member of Assembly
Bion M. Gregory, Ex Officio

Members of Staff Present:

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

Consultant Present:

Garrett H. Elmore, Guardianship-Conservatorship, May 4

ADMINISTRATIVE MATTERS

Minutes of April Meeting

The Minutes of the April 6 and 7, 1978, Meeting were approved as submitted by the staff.

New Topics--Revision of Real Property Lease Law

The Commission suggested that the staff bring this matter back with background information in September for consideration when the Annual Report is considered.

Assembly Bill 2282 - Evidence of Value of Property

The Commission, reacting to the concern expressed by the State Bar about the application of this bill to other than eminent domain and inverse condemnation proceedings, decided to recommend to Assemblyman McAlister that this bill be amended to limit its application to eminent domain and inverse condemnation proceedings. The Comment should note that, while the provisions of the statute apply only to eminent domain

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and inverse condemnation proceedings, the courts may nevertheless follow the provisions in other types of proceedings (citing the case on this point).

Research Contracts

Research contract on liability of community to third-party creditors and exemptions allowed married persons. The Commission considered Memorandum 78-27. The staff, in consultation with the Chairman and Professor Love, is to search for a consultant on this topic and to recommend to the Commission at the next meeting a consultant on this topic. The compensation is to be \$5,000 plus \$500 for travel expenses. If there is more than one person who is available and would be a good choice, consideration might be given to obtaining some reaction from Commissioners prior to the meeting.

Marketable title study. The Commission considered Memorandum 78-27. After considerable discussion, the Commission concluded that what is needed initially is an analysis that presents a detailed outline of the matters that are embraced within this topic. The outline should indicate the possible scope of the study of this topic if the study is given the broadest possible scope, a somewhat narrower scope, or the narrowest possible scope. The initial analysis should contain a detailed description or outline of each of the areas the consultant believes should be covered by the study and a fairly detailed statement of the problems that would be dealt with in each such area. The initial analysis should indicate areas covered by Uniform Acts. After receiving the initial analysis, the Commission should be in a position to know what the study involves and have sufficient information to determine the scope of the study and the manner in which the study would be conducted. The Commission authorized and directed the Executive Secretary on behalf of the Commission to enter into a contract with Professor James L. Blawie, Santa Clara Law School, to prepare the initial analysis. The compensation for the initial analysis should be \$3,000 and travel expenses (which are to be limited to not to exceed \$200). The contract should be in the usual form of Law Revision Commission research contracts.

STUDY F-30.300 - GUARDIANSHIP-CONSERVATORSHIP

Notice of Application for Appointment of Guardian Ad Litem

The Commission considered Memorandum 78-16 and the attached draft of a section to be added to the Code of Civil Procedure to require notice to the guardian or conservator of an estate of any application for appointment of a guardian ad litem. The section was not approved. The Commission concluded that the section covered a matter beyond the scope of the project to revise the Probate Code guardianship-conservatorship provisions.

Compromise of Claims By or Against Minor or Incompetent Person

The Commission considered Memorandum 78-24 and the attached exhibits concerning compromise of claims by or against a minor or incompetent person. The Commission made the following decisions:

(1) When a ward or conservatee is a party to a pending action or proceeding, court approval of any compromise shall be by the court in which the action or proceeding is pending and not by the guardianship or conservatorship court.

(2) Where there is no pending action or proceeding, the guardian of the estate should have the same power as the conservator of the estate under proposed Section 2533 to settle claims without court approval.

(3) Concern was expressed that proposed Section 3200 appears to permit a parent to compromise a minor's claim even though the minor has a guardian of the estate. The staff was directed to determine whether the parent has this power under existing Section 1431 and to report back to the Commission the results of the staff research with staff recommendations for dealing with the matter.

Will Provision Modifying Powers and Duties of Testamentary Guardian

The Commission considered memorandum 78-25 concerning the power of a testator to modify by will the powers and duties of a testamentary guardian. The Commission decided to continue the substantive effect of Section 1484. The staff is to present further analysis and suggested language in a memorandum prepared for a future meeting.

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Powers and Duties of Guardian or Conservator of Nonresident

The Commission considered Memorandum 78-26 concerning powers and duties of a guardian or conservator of a nonresident. The Commission approved proposed Section 2107 after it was revised to read:

2107. (a) Except to the extent limited by court order, a guardian or conservator of the person of a nonresident has the same powers and duties while the nonresident is physically in this state as a guardian or conservator of the person of a resident.

(b) A guardian or conservator of the estate of a nonresident has, with respect to the nonresident's estate within this state, the same powers and duties as a guardian or conservator of the estate of a resident. The responsibility of such a guardian or conservator with regard to inventory, accounting, and disposal of the estate is confined to such estate as comes into the hands of the guardian or conservator in this state.

The Comment to proposed Section 2107 should note that this section deals only with the powers and duties of a California guardian or conservator, and not with the powers of a guardian appointed in another state.

STUDY D-39.200 - ENFORCEMENT OF JUDGMENTS
(COMPREHENSIVE STATUTE--THIRD-PARTY CLAIMS, EXEMPTIONS)

The Commission considered Memorandum 78-22 and the draft of Chapter 6 relating to third-party claims and Memorandum 78-23 and the draft of Chapter 7 relating to exemptions for enforcement of money judgments. The Commission made the following decisions:

Chapter 6. Third-Party Claims

Preliminary Text

The discussion concerning the third person's undertaking to release property on page 4 should be expanded. Several editorial changes were made.

§ 706.110. Application of chapter

This section should be revised substantially as follows:

706.110. Pursuant to this chapter, a third person may claim an interest in personal property if the interest is superior to the judgment creditor's lien on the property; A third-party claim of an interest in personal property sought to be applied to the satisfaction of a judgment may be asserted and determined pursuant to this chapter where enforcement of the judgment is sought by levy under or service of any of the following:

- (a) A writ of attachment.
- (b) A writ of execution.
- (c) A prejudgment or postjudgment writ of possession.
- (d) A writ of sale.
- (e) Process issued by the state or a local public entity to enforce a tax liability.

§ 706.130. Third-party claims to property seized to satisfy tax liability

The staff should investigate whether there is any policy reason for conducting third-party claim proceedings in superior court and not in municipal court in cases involving enforcement of a tax liability. The place where the claim is to be filed should be spelled out in more detail in subdivision (c) or in the Comment.

§ 706.140. Duty to mail notice and copy of claim

This section should be revised to read substantially as follows:

706.140. The levying officer shall mail the notice and copy of the verified third-party claim to the judgment creditor pursuant to Section 706.220 or 706.320 notwithstanding any defect, informality, or insufficiency of the claim.

§ 706.150. Liability of levying officer

This provision should be replaced by a general provision protecting the levying officer from liability for performing the duties prescribed in the enforcement of judgments title, to be added to Chapter 2 (General Provisions). The staff should consider expanding this provision to cover other persons who perform the duties of a levying officer, such as tax collectors.

§ 706.210. Claim of title or right to possession

This section should provide that only superior interests may be claimed.

§ 706.230. Release for failure to file undertaking

This section should be revised substantially as follows:

706.230. (a) ~~If, within 10 days after the notice is mailed pursuant to Section 706.220, Subject to subdivision (b), if~~ the judgment creditor does not file with the levying officer an undertaking that satisfies the requirements of Section 706.250 within 10 days after the levying officer mails notice pursuant to Section 706.220, the levying officer shall release the property in the manner provided by Section 703.290 unless it is to be held under another lien or unless otherwise ordered by the court.

(b) ~~Notwithstanding Section 703.290, if~~ If property which has been taken into custody is to be released to the judgment debtor and the judgment debtor has not claimed the property within 10 days after notice was mailed pursuant to Section 703.290, the levying officer shall release the property to the third person making the claim.

§ 706.310. Claim of security interest

This section should provide that only superior interests may be claimed. Subdivision (b)(1) should require a detailed description of the security interest. Subdivision (b)(2) should require that the interest rate under the security agreement be stated in the claim.

§ 706.330. Release for failure to make deposit or file undertaking and statement

This section should be revised in the same manner as Section 706.230.

§ 706.350. Payment to secured party

Subdivision (a) should refer to a personal check. The levying officer should be required to pay over or tender the deposit to the secured party promptly rather than within five days.

§ 706.370. Verified statement concerning security interest

The judgment creditor should also be able to provide a verified statement alleging that secured party's claim demands payment of an amount in excess of that to which the secured party is entitled under the security agreement.

§ 706.410. Application for hearing; setting for hearing

The first sentence of subdivision (c) should be revised as follows:

(c) ~~The court has original jurisdiction and shall set the matter~~ The matter shall be set for hearing within 20 days after the filing of the petition.

§ 706.460. Burden of proof

The staff should consider putting the burden of proof on the judgment creditor if the levy disturbed the possession of the third person. It should also be noted somewhere in a Comment or in the preliminary text that a garnishee may resist the levy, thereby forcing the judgment creditor to take further action, and is not relegated to submitting to the levy and making a third-party claim.

§ 706.520. Relevy; additional writs

This section should be revised. It was suggested that it might be best to provide that, if property has been released, it may not be levied upon or otherwise applied to the satisfaction of the judgment unless the final judgment in the hearing on the third-party claim determines that the judgment debtor has an interest in the property which may be applied toward the satisfaction of the judgment. Since other enforcement procedures may be selected by the judgment creditor,

the section should not only refer to levy. The last sentence pertaining to issuance of a new writ if the first writ has been returned is unnecessary in light of the general provisions pertaining to issuance of writs.

§ 706.620. Prohibition of release, sale, or other disposition

The last clause of the Comment should be deleted because the release procedure referred to does not apply to claims by secured parties.

§ 706.710. Third-party undertaking to release property

This procedure should be available where the third person claims title or right to possession, but not where an unsecured creditor claims only a lien. Consequently, the words "or an interest other than a security interest" should be deleted.

§§ 706.740, 706.750. Release of property; objections to undertaking

These sections should be revised to ensure that the property will not be released pursuant to the third person's undertaking before the time afforded the judgment creditor for making objections to the undertaking has expired.

Chapter 7. Property Subject to Enforcement of
Money Judgments and Exemptions

Preliminary Text

The last sentence in footnote 5 on page 1 should be deleted. The last sentence of the first full paragraph on page 2 should be revised to refer to income and property needed for the subsistence of the judgment debtor and the judgment debtor's family. The first sentence in the last paragraph on page 2 should give examples of specific exempt items, such as a table, refrigerator, stove, etc., and of general categories of exemptions, such as household furnishings. The discussion relating to the Unemployment Insurance Code exception to existing Section 690.18(c) should be deleted from footnote 46 on page 10 and added to the Comment to the repeal of existing law. The phrase "more pernicious" in the last sentence of footnote 72 should be change to "potentially more detrimental." Other editorial changes were also made.

§ 707.140. Applicability of exemptions

Subdivision (c), which provides that "exemptions shall be determined as of the date the judgment debtor makes an exemption claim", is unclear and should be redrafted.

§ 707.160. Exemption rights of married persons

The Commission decided to defer further consideration of the exemption rights of married persons until it has received a consultant's study on the liability of property of married persons to the satisfaction of money judgments. See the discussion under Research Contracts above. Treatment of this problem should be deleted from the draft statute and Comments. The preliminary text should outline the problem and possible solutions so that persons to whom the tentative recommendation is eventually sent will be alerted to the problem and perhaps offer their suggestions.

§ 707.180. Tracing exempt amounts

A subdivision should be added to this section providing that tracing is to be accomplished by the method of the lowest intervening balance unless the judgment debtor or judgment creditor shows that some other method would be more appropriate under the circumstances of the case.

§ 707.210. Exemptions from tax liability

Subdivision (c) should provide that the claim of exemption is filed with the public entity rather than with the court.

§ 707.320. Claim of exemption

Paragraphs (3) and (4) of subdivision (b) should also require the debtor to state the amount of funds or sources of income.

§ 707.330. Notice of claim of exemption

The notice of claim of exemption should also state the date on which it was mailed. The staff should consider adding a general provision to this title requiring all such notices to state the date of mailing.

§ 707.340. Opposition to exemption claim

This section should be revised substantially as follows:

707.340. In order to contest the claim of exemption, the judgment creditor shall, within ~~Within~~ 10 days after the date of the mailing of the notice of claim of exemption, ~~a judgment creditor who opposes the claim of exemption shall~~ ~~(1)~~ file with the levying officer a notice of opposition to the claim of exemption and ~~(2)~~ file with the court a notice of motion for an order determining the claim of exemption.

§ 707.380. Hearing and order

The reference to the provision in existing law regarding jury trials should be deleted from the Comment to this section but retained in the Comment to the repeal of existing Section 690.50.

§ 707.390. Extension of time

The provision of existing Section 690.50(1), requiring notice to be given the opposing party when time is extended, should be continued in this section.

§ 707.580. Deposit accounts and money

This exemption should remain at \$2,000.

§ 707.590. Deposit account in which social security payments are directly deposited

Subdivision (e) should be revised to eliminate the requirement that the judgment debtor file a counteraffidavit to protect excess social security payments in accounts in which social security payments are directly deposited. This change will conform to the intent of the 1976 bill that enacted Section 690.30. Adjustments will have to be made in this section and in Article 2 to resolve conflicts between this procedure and the general procedure for claiming exemptions.

§ 707.600. Life insurance, endowment, annuity policies; death benefits

The Comment to this section should indicate the proper procedure for reaching the nonexempt loan value of an unmaturing policy.

§ 707.610. Retirement benefits

This section should be revised to conform to the language in A.B. 1969 if it passes. Subdivision (a) should be revised to include retirement plans of trusts.

§ 707.620. Unemployment benefits and contributions; strike benefits

Subdivision (b)(8) should be revised to exempt strike benefits paid to persons who are not union members.

§ 707.640. Damages for personal injury

The Comment to this section should state that a cause of action for personal injury is not subject to execution and that, after an action is commenced, the cause of action may only be reached by the lien procedure provided by Article 5 (commencing with Section 705.510) of Chapter 5 which will supersede a portion of existing Section 688.1.

APPROVED AS SUBMITTED _____

APPROVED AS CORRECTED _____ (for corrections, see Minutes of next meeting)

Date

Chairman

Executive Secretary