

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION
FEBRUARY 9, 1979
San Francisco

A meeting of the California Law Revision Commission was held in San Francisco on February 9, 1979.

Law Revision Commission

Present: Howard R. Williams, Chairperson Ernest M. Hiroshige
Beatrice P. Lawson, V. Chairperson Jean C. Love
Judith Meisels Ashmann Laurence N. Walker

Absent: Alister McAlister, Assembly Member Bion M. Gregory, Ex Officio
George Y. Chinn

Staff Members Present

John H. DeMouilly Stan G. Ulrich
Nathaniel Sterling

Also Present

Rudolfo C. Aros, Western Center on Law and Poverty, Sacramento

ADMINISTRATIVE MATTERS

Minutes

The Minutes of the December 8, 1978, Meeting were approved as submitted by the staff.

Schedule for Future Meetings

The following schedule for future meetings was adopted:

March

March 29 - 7:00 p.m. - 10:00 p.m. Asilomar (Pacific Grove)
March 30 - 9:00 a.m. - 5:00 p.m.
March 31 - 9:00 a.m. - 12:00 noon

April

No meeting

May

May 11 - 10:00 a.m. - 5:00 p.m. San Francisco
May 12 - 9:00 a.m. - 1:00 p.m.

June

June 8 - 10:00 a.m. - 5:00 p.m. Los Angeles

July

July 26 - 7:00 p.m. - 10:00 p.m. San Francisco
July 27 - 9:00 a.m. - 5:00 p.m.
July 28 - 9:00 a.m. - 12:00 noon

August

No meeting

Legislative Program

The Executive Secretary made the following report on the 1979 legislative program:

1979 LEGISLATIVE PROGRAM

APPROVED BY POLICY COMMITTEE IN FIRST HOUSE

AB 11 (Wage garnishment procedure)

Approved "do pass as amended" by Assembly Judiciary Committee on February 7. Will be referred to Assembly Ways and Means Committee.

AB 135 (Ad valorem taxes when property taken for public use)

Approved "do pass as amended" by Assembly Judiciary Committee on January 24. Will be referred to Assembly Ways and Means Committee.

ACR 8 (Continues authority to study existing topics, authorizes dropping of one topic, authorizes study of two new topics)

Approved "do pass as amended" by Assembly Judiciary Committee on January 24. Set for hearing by Assembly Rules Committee on February 12. Then will be heard by Assembly Ways and Means Committee.

ACR 5 (Authorizes study of two new topics)

Substance added to ACR 8 by amendment.

HEARD BY POLICY COMMITTEE IN FIRST HOUSE BUT ACTION DEFERRED

AB 145 (Undertaking for costs)

Heard by Assembly Judiciary Committee on January 24. Bill not approved at hearing but put over to March 21 for further hearing along with AB 478 (McAlister) which will be heard at same time. AB 478 is the substance of the prior Commission recommendation which would revitalize the unconstitutional statutes.

SET FOR HEARING IN POLICY COMMITTEE IN FIRST HOUSE

AB 261 (Guardianship-conservatorship revision)

Set for hearing by Assembly Judiciary Committee on March 28.

AB 167 (Conforming revisions to guardianship-conservatorship revision)

Set for hearing by Assembly Judiciary Committee on March 28.

AB 212 (Probate Code construction)

Set for hearing by Assembly Judiciary Committee on March 28.

STUDY D-200 - ATTACHMENT (CONFORMING TO NEW BANKRUPTCY ACT)

The Commission considered Memorandum 79-7 and the attached draft of a recommendation to conform Chapter 13 of the Attachment Law to the new bankruptcy act. The Commission approved the recommendation for introduction in the Legislature, but the staff should not attempt to procure enactment of it until the recommendation has been reviewed by experts on the new bankruptcy legislation.

STUDY D-300 - ENFORCEMENT OF JUDGMENTS

The Commission considered Memorandum 79-4 and the attached staff draft of the Tentative Recommendation Relating to Enforcement of Judgments. The tentative recommendation was approved to be distributed for comment subject to the decisions made at the meeting and necessary technical and editorial revisions.

§ 702.160. Forms

The bracketed language in this section permitting the Judicial Council to supersede statutory writs was approved. The staff was directed to draft forms for writs and any other essential papers to be included in a new Chapter 12.

§§ 703.120, 708.110, 709.110, 710.110. Issuance of writs

The authority for the judgment creditor's attorney to issue writs should be placed in brackets and comments should be solicited on this proposal when the tentative recommendation is distributed.

§ 703.260. Garnishment by registered process server

Subdivision (b) should require the registered process server to file proof of service with the levying officer. It should also be made clear that the judgment creditor is not entitled to recover the cost of service by the registered process server.

§ 703.640. Notice of sale of real property

Subdivision (c)(1) should specify the address to which the notice to the judgment debtor is to be mailed. Subdivision (c)(2) should provide that notice of sale to an interest holder of record should be mailed to the address shown by the records of the tax assessor, if the interest is taxable, and otherwise to the address used by the county

recorder. Subdivision (d) should be revised to make clear that notice is to be served on an occupant only if one can be found at the time service is attempted.

§ 703.740. Minimum bid

This section should be redrafted for clarity.

§ 703.760. Sales absolute

This section should be deleted. The material in the first and third paragraphs of the Comment should be retained in some other Comment.

§ 703.810. Distribution of proceeds of sale or collection

The reference to voluntary encumbrances in subdivision (b) should be clarified. The reasoning behind subdivision (b) should be explained in the Comment.

§ 707.820. Exempt interest in dwelling

Subdivision (e) should be revised to define dependent as a linial relative of any degree or a collateral relative within the fourth degree of the judgment debtor or of the judgment debtor's spouse or a deceased spouse.

STUDY D-310 - HOMESTEAD PROPERTY

The Commission considered Memorandum 79-1 and the attached staff draft of provisions to eliminate the declared homestead in reliance on the probate homestead and the Family Law Act protections against disposition of community property. The Commission determined to repeal Probate Code Section 735 which requires liens and encumbrances on the homestead property to be paid out of general estate assets; the present provision is limited to the declared homestead and should not be extended. The Commission also requested the staff to submit a separate memorandum on the ability of a spouse to declare a homestead on, and thus restrain alienation of, separate property of the other spouse. If there is a good indication of legislative intent to do this, or if there appears a strong policy in favor of this, the staff should prepare a draft of a provision to restrain alienation of separate property on which a spouse resides.

STUDY D-500 - CONFESSION OF JUDGMENT PROCEDURES

The Commission considered Memorandum 79-5 and the First Supplement thereto analyzing the questionnaire responses on confessions of judgment. The Commission was also informed by Rudolfo Aros of the Western Center on Law and Poverty that the Western Center sponsored legislation last session to require advice of attorney for all confessions of judgment, but that the legislation was vetoed by the Governor upon opposition by the district attorneys. Mr. Aros reported that the Western Center would probably be willing to support similar legislation this session.

After discussing the need for a confession of judgment procedure and the available options, the Commission determined to submit a recommendation to require advice of attorney in all cases. The staff should have a bill introduced to this effect and should prepare a draft of a recommendation, but should not attempt to procure enactment of the bill until the Commission has had an opportunity to review the recommendation and proposed legislation. Because the next Commission meeting is not for two months, the staff should circulate the draft proposals among the Commissioners by mail with an early return requirement.

STUDY D-900 - WAGE GARNISHMENT PROCEDURE

The Commission considered Memorandum 79-2 and the First Supplement thereto containing comments on the tentative recommendation to authorize use of first-class mail and eliminate the functions of the levying officer. In view of the negative comments received the Commission determined not to recommend the suggested changes.

STUDY E-200 - SPECIAL ASSESSMENT LIENS
WHEN PROPERTY ACQUIRED FOR PUBLIC USE

The Commission considered Memorandum 79-3 and the attached staff draft of a tentative recommendation relating to the treatment of assessment liens on property taken for public use. The Commission approved the tentative recommendation to distribute for comment, subject to editorial revisions submitted by the Commissioners.

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STUDY F-100 - GUARDIANSHIP-CONSERVATORSHIP REVISION

The Commission considered Memorandum 79-6 and the attached staff draft of suggested revisions to proposed Sections 2111, 2551, and 2553 of the guardianship-conservatorship recommendation. The Commission approved the staff recommendations without change.

APPROVED AS SUBMITTED _____

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

Date

Chairperson

Executive Secretary