

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION

APRIL 11, 1980

LOS ANGELES

A meeting of the California Law Revision Commission was held in Los Angeles on April 11, 1980.

Law Revision Commission

<u>Present:</u>	Beatrice P. Lawson, Chairperson	Robert J. Berton
	Jean C. Love, Vice Chairperson	George Y. Chinn
	Judith Meisels Ashmann	Thomas S. Loo
<u>Absent:</u>	Omer L. Rains, Senate Member	Warren M. Stanton
	Alister McAlister, Assembly Member	Bion M. Gregory, <u>Ex Officio</u>

Staff Members Present:

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

Also Present:

Robert Klotz, Orange County Legal Aid Society, Santa Ana

ADMINISTRATIVE MATTERS

MINUTES OF FEBRUARY 1980 MEETING

The Minutes of the February 1980 meeting were approved without change.

1980 LEGISLATIVE PROGRAM

The Commission considered Memorandum 80-27 and the First and Second Supplements to that memorandum.

AB 2115 - Agreements for Entry of Paternity and Support Judgments

The Commission discussed the First Supplement to Memorandum 80-27 and AB 2115 (agreements for entry of paternity and support judgments) and the amendments made by the Assembly Judiciary Committee. The Commission decided not to recommend any further amendments to the bill as approved by the Assembly Judiciary Committee.

AB 2121 - Application of Evidence Code Property Valuation Rules in Non-condemnation Cases

The Commission considered the Second Supplement to Memorandum 80-27 relating to amendments to the Commission's recommendation to apply the

Evidence Code property valuation rules uniformly to all property valuation cases. The Commission approved the amendments set out in the supplement and in the attached copy of AB 2121, with the following changes:

Evidence Code § 813. Subdivision (a)(3), which states that a married person's spouse may testify as to value of community property or the separate property of the married person, should be deleted and subdivision (a)(2) should be revised to refer simply to opinions of the owner "or spouse of the owner" of property.

Evidence Code § 822. Section 822 should be revised to make the reference to eminent domain and inverse condemnation cases the introductory clause of subdivision (a) and to make the reference to other cases the introductory clause of subdivision (b). Editorial changes should be made in the Comment.

CONFLICT OF INTEREST CODE

The Commission discussed Memorandum 80-25 which reported on the Fair Political Practices Commission's denial of the Commission's request for an exemption from the requirement of filing a conflict of interest code. The staff was directed to explore the development of a limited disclosure standard with the staff of the Fair Political Practices Commission and prepare a draft conflict of interest code for consideration at the May meeting.

RESEARCH CONSULTANT CONTRACT

The Commission considered Memorandum 80-26. The Commission approved, and directed the Executive Secretary to execute on behalf of the Commission, a contract with Brigitte M. Bodenheimer of the Law School, UC at Davis, to submit her recommendations concerning the following:

(1) The Uniform Adoption Act as it will be revised by the Uniform Laws Commissioners.

(2) The Model State Adoption Act and Model State Adoption Procedures being prepared by the Department of Health, Education, and Welfare.

(3) The Model Act to Free Children for Permanent Placement prepared for National Center for Child Advocacy, U.S. Children's Bureau, March 1978.

(4) Other significant legislative and judicial developments that have occurred since 1975.

The consultant's report should include a discussion of the different methods provided in the Uniform and model acts for treating the significant problems in adoption law and the consultant's recommendations as to the best methods of dealing with those problems.

The contract is to be for \$2,500 for the preparation of the report, plus \$1,000 for travel in attending Commission meetings when the adoption study is under consideration. The contract should provide a May 15, 1982, deadline for delivery of the contractor's report.

ANTICIPATED STAFF VACANCIES

The Commission considered Memorandum 80-37 relating to anticipated staff vacancies. The procedure for filling the anticipated vacancy in the position of Assistant Executive Secretary was discussed. It was agreed that this position is a key legal position and must be filled by a person who can produce a substantial amount of high-quality work in a form that does not require significant revision.

The Executive Secretary indicated his feeling that it would be difficult to obtain a qualified person by transfer from some other agency in the state service. He indicated that it was his belief that the position of Assistant Executive Secretary (being comparable to the level of Attorney III in the offices of the Attorney General and Legislative Counsel) does not have a salary level that would induce an outstanding person to transfer to the Law Revision Commission. He stated that he believed that persons with outstanding qualifications are routinely promoted to the level equivalent to the Assistant Executive Secretary in the other state agencies. A Commissioner suggested that there no doubt are lawyers in the office of the Attorney General who would be interested in moving to another agency, and these persons may be interested in the position on the Commission's legal staff.

The following table, which was not available at the time of the meeting, shows the relationship between the Assistant Executive Secretary position and the levels of positions in the offices of the Legislative Counsel and Attorney General.

<u>Number of Positions</u>	<u>Legislative Counsel</u>	<u>Attorney General</u>
Above Asst. Exec. Sec.....	18	96
Same Level as Asst. Exec. Sec.....	22	153
Below Level of Asst. Exec. Sec....	13	215

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The Commission determined that a maximum effort should be made to attract qualified candidates for the position of Assistant Executive Secretary within the state service and, if possible, by recruitment outside the state service, but that the existing members of the Law Revision Commission staff should be eligible to compete in the examination and be considered for promotion to the position.

MOVE OF OFFICE

The Executive Secretary reported that Stanford University has terminated the Commission's lease of office space on the campus because of the need for use of the space for academic purposes. The staff is investigating the available space in the area adjacent to Stanford, and it appears likely that the Commission can relocate at Cubberley High School which is available for leasing. It is expected that the rent at Cubberley High School will not be significantly in excess of the amount budgeted for rent in the Commission's 1980-81 budget as recommended by the Governor.

MODEL STATE ADOPTION ACT

The Commission considered Memorandum 80-38, which included a staff draft of a letter to the Children's Bureau commenting on the Model State Adoption Act. The letter was approved in substance for submission to the federal agency, but the staff is to prepare the letter for the Chairperson's signature.

FUTURE MEETING SCHEDULE

The schedule for future meetings is as follows:

May 1980

May 16 (Friday) - 10:00 a.m. - 5:00 p.m. San Francisco

June 1980

June 13 (Friday) - 10:00 a.m. - 5:00 p.m. Los Angeles

June 14 (Saturday) - 9:00 a.m. - 12:00 noon

July 1980

July 18 (Friday) - 10:00 a.m. - 5:00 p.m. San Francisco

July 19 (Saturday) - 9:00 a.m. - 12:00 noon

August 1980

No meeting.

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STUDY D-312 - CREDITORS' REMEDIES (LIABILITY OF PROPERTY
OF MARRIED PERSONS)

The Commission considered Memorandum 80-28, relating to issues not previously resolved concerning liability of marital property for the debts of a married judgment debtor, and Memorandum 80-29, relating to exemptions for marital property from the debts of a married judgment debtor. The Commission made the following decisions concerning these matters:

Priority of application of property and reimbursement. The Commission decided that for purposes of creditors' remedies there should be no priorities scheme or requirement that a creditor exhaust one class of marital property before proceeding to the next class. The Commission reserved the question whether there should be reimbursement rights as between spouses where one class of marital property is used to satisfy a judgment in preference to other classes of marital property that would be liable to satisfy the judgment. This question should be referred to Professor Bruch as consultant on general community property matters for early treatment so that the Commission can recommend any necessary reimbursement rules in connection with repeal of existing priority schemes. Professor Bruch should also be asked to deal with Probate Code Section 980, which is discussed in Professor Reppy's study.

Liability for debts incurred after separation. The Commission determined to preserve the existing rule that community property is liable for debts incurred after separation and before a property division to the same extent as if the spouses were still living together. When the Commission considers reimbursement rights between the spouses, it will give special consideration to possible reimbursement rights for debts incurred after separation.

With respect to liability of the separate property of the nondebtor spouse for necessities debts of the other spouse, the Commission adopted the position that the separate property remains liable for debts for common necessities incurred after marriage unless the support obligation is waived in a written agreement by the parties.

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Liability of property after interspousal transfer. The statute should make clear that the Uniform Fraudulent Conveyance Act governs interspousal transfers of property. The Commission decided not to recommend any writing and recording requirement in order for the transmutation of property to affect creditors. The staff was instructed to request Professor Bruch, as part of the general community property study, to consider whether there should be any formalities required as a condition of a transfer between the spouses.

Joint tenancy property acquired with community funds. The Commission felt that property that is acquired with community funds but title to which is taken as joint tenancy does not present a major problem for creditors since a creditor can obtain the signatures of both spouses before extending credit. The Commission decided to recommend no new presumptions or other provisions converting joint tenancy to community property.

Liability of property after division. The Commission requested additional staff research concerning whether a creditor can trace former community assets in the hands of the nondebtor spouse following dissolution. The staff should bring this matter back to the Commission for further consideration in the light of the staff research.

Liability of property after judgment of nullity. The Commission adopted the position that the property of putative spouses whose marriage is annulled should be treated as marital property of a valid marriage for purposes of liability to creditors.

Marvin relationships. The Commission decided not to attempt to deal with "Marvin" relationships for the purposes of creditors' remedies.

Bankruptcy. The nonliability provisions in the statute should be phrased in terms of liability rather than in terms of exemptions. This will be consistent with the new Bankruptcy Code reference to community claims for which community property is liable.

Draft statute. The staff should incorporate editorial and drafting changes in the draft statute that appear to be desirable. The staff should consider defining "debt" for the purposes of the statute and

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should consider whether to add a provision specifying when a debt is incurred.

Exemptions. The staff was instructed to attempt to resolve drafting problems in the exemption provisions and to bring back a redrafted statute for Commission approval. The Commission determined that if spouses are unable to agree which property to claim an exemption for, the creditor should be permitted to choose. The Commission adopted the principle that if an exemption is to be applied first to property not levied on and then to property levied on, it should be applied first to all marital property of that type whether or not liable for the satisfaction of the judgment.

The staff was instructed to compare Section 703.010(b) with the new Bankruptcy Code to ascertain whether they are consistent. The staff should recommend revised treatment of Section 703.010(b) in light of the fact that the provision may be of little practical benefit to creditors because of the difficulty in obtaining enforcement and in light of the fact that the creditor may be able to obtain a security interest in the property.

The staff should revise the wording to Section 704.040 and Comment to make clear that the exemption for jewelry and heirlooms depends on a weighing of equities between the rights of the creditor and the sentimental and psychological value of the property to the debtor.

The reference to right of first refusal in Section 704.840 should be elaborated to indicate that the right is to purchase the property in the amount of the highest bid on the terms and conditions that would be applicable if the person exercising the right were the highest bidder. The language of the comparable provision of the Bankruptcy Code should be examined to determine whether it is useful.

APPROVED AS SUBMITTED _____

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

Date

Chairperson

Executive Secretary