

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION

JUNE 13, 1980

LOS ANGELES

A meeting of the California Law Revision Commission was held in Los Angeles on June 13, 1980.

Law Revision Commission

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

ADMINISTRATIVE MATTERS

MINUTES OF MAY 1980 MEETING

The Minutes of the May 16, 1980, meeting were approved without change.

CONFLICT OF INTEREST CODE

The Commission considered Memorandum 80-49 and the staff draft of a proposed conflict of interest code attached thereto. The proposed conflict of interest code was approved for submission to the Fair Political Practices Commission.

CERTIFICATE OF DISTINGUISHED SERVICE FOR SENATOR RAINS

The Commission awarded to Senator Rains a certificate of distinguished service as a member of the Commission in recognition of his outstanding service to the Commission at the 1980 session as the author of Commission bills and in carrying Assembly bills recommended by the Commission on the Senate Floor.

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The Executive Secretary is to have the certificate of distinguished service prepared and framed and to present it to Senator Rains.

STUDY D-300 - ENFORCEMENT OF JUDGMENTS
(JUDGMENT LIENS ON REAL PROPERTY)

The Commission considered Memorandum 80-31, the staff draft of the statute concerning judgment liens on real property, and the First Supplement to the memorandum. The Commission approved the draft statute but reserved until the amount of the dwelling exemption is determined the question of whether a procedure for discharging judgment liens should be provided. It was also noted that certain provisions will require revision when the Legislature has acted in response to American Bank & Trust Co. v. Community Hospital, 104 Cal. App.3d 219 (1980), holding unconstitutional the provision for periodic payment of future damages against health care providers.

STUDY D-300 - ENFORCEMENT OF JUDGMENTS (PROCEDURE AND EXEMPTIONS
IN ENFORCEMENT OF SUPPORT JUDGMENTS AND TAX LIABILITY)

The Commission considered Memorandum 80-30 and the First Supplement thereto concerning (1) the availability of a writ of execution to enforce final support orders without prior court approval, (2) the grant of court authority to order otherwise exempt property to be applied to the satisfaction of support obligations in an equitable manner, and (3) the retention of existing law governing the application of exemptions in tax collection cases. The Commission approved the staff recommendation.

STUDY D-300 - ENFORCEMENT OF JUDGMENTS
(GENERAL EXECUTION PROVISIONS)

The Commission considered Memorandum 80-33, the staff draft of the statute concerning general provisions relating to execution, and the First Supplement to the memorandum. The Commission approved the staff draft subject to the following changes:

§ 699.010. Execution lien. It should be made clear in this section or elsewhere that a judgment creditor may replevy on a type of property that is to be collected rather than sold (such as an accounts

receivable or chattel paper) before the expiration of an execution lien and thereby continue the priority of the lien.

Preference for collection. The portion of the proposed law providing that certain types of property are to be collected rather than sold unless the judgment creditor obtains a court order permitting sale should be revised. The revised statute should retain the preference for collection, but permit the judgment creditor to give the debtor a notice of intended sale. The judgment debtor would then have the opportunity to obtain a court order precluding sale or making the sale subject to conditions. If the judgment debtor did not respond to the notice within the time allowed, the judgment creditor would be able to sell the property at an execution sale without the necessity of making an application to the court.

STUDY D-300 - ENFORCEMENT OF JUDGMENTS
(THIRD-PARTY CLAIMS)

The Commission considered Memorandum 80-53 and the staff draft of provisions concerning third-party claims and related procedures. The draft was approved subject to the following decisions:

§ 706.160. Effect and contents of creditor's undertaking. In subdivision (a)(1), the language "unless the court otherwise orders" should be deleted since it may be thought to give the court independent authority to prevent execution of the writ after the creditor files an undertaking. Subdivision (b)(1), which permits the judgment creditor to give an undertaking in twice the value of the interest claimed by the third person, should be deleted; the judgment creditor should be required to give an undertaking in an amount not less than the flat amount.

§ 706.260. Effect of undertaking or deposit; contents of undertaking. Section 706.260 should be revised in the same manner as Section 706.160.

§ 706.530. Contents of demand for claim. The statement informing the person served with a demand for a third-party claim of the consequences of failure to make a claim should be expanded. The third person

should be informed that as a junior lienholder, it will be entitled to share in any excess proceeds at the execution sale, and that if no sale is held, the third person assumes its former position of priority.

§ 706.770. Hearing on objection to undertaking. Subdivision (f) should be revised to provide that the court may also decrease the amount of the undertaking if the beneficiary objects to the amount of the undertaking.

Value, market value, fair market value. The staff should review the statute to make consistent the references to value.

Revision of Attachment Law. The Commission approved the staff suggestion that the portions of the Attachment Law concerned with wrongful attachment of property of a third person be repealed and that third persons whose property is wrongfully attached be left to the general third-party claim remedies.

STUDY D-300 - ENFORCEMENT OF JUDGMENTS (CREDITOR'S SUIT)

The Commission considered Memorandum 80-36 and the attached staff redraft of the provisions of the proposed enforcement of judgments recommendation relating to creditor's suit. The Commission made the following decisions:

§ 708.220. Joinder of judgment debtor

A statement should be put in the Comment to Section 708.220 to indicate that, except as provided in Section 708.220, the general rules of venue apply in a creditor's suit. See *Holstein v. Superior Court*, 275 Cal. App.2d 708, 710, 80 Cal. Rptr. 301, 302 (1969).

§ 708.257. Jury trial

The Commission decided not to create a new right to jury trial in a creditor's suit. Accordingly, Section 708.257 should be revised to provide that there is no right to a jury trial in a creditor's suit.

Examination Proceedings

The Commission decided that since there will no right to jury trial in a creditor's suit, the comparable provision in examination proceedings (Section 708.180: third person may prevent adjudication of disputed

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claim of interest in property in third person's possession if third person would be entitled to jury trial in an independent action) should be deleted.

STUDY D-300 - ENFORCEMENT OF JUDGMENTS
(CHARGING ORDERS)

The Commission considered Memorandum 80-35 and the staff draft of the statute concerning charging orders to reach a judgment debtor's interest in a partnership. The draft statute was approved without change.

STUDY D-300 - ENFORCEMENT OF JUDGMENTS (RECEIVERS)

The Commission considered Memorandum 80-34 and the staff draft of the statute concerning receivers. The Commission approved the draft and agreed with the staff recommendation that Section 708.640 providing for a receiver's lien be deleted.

STUDY D-312 - CREDITORS' REMEDIES--LIABILITY OF PROPERTY
OF MARRIED PERSONS (APPROVAL TO DISTRIBUTE FOR COMMENT)

The Commission considered Memorandum 80-50 and the attached draft of the tentative recommendation relating to the liability of marital property for debts. The Commission approved the draft to distribute for comment, subject to the following decisions:

Liability of property after division. In the division of property on dissolution of marriage, the debts should be divided between the spouses and the creditor should be permitted to collect from the property of the spouse to whom the debt was assigned, whether or not the property was formerly community property of the marriage.

Marriage settlement contracts. The provisions relating to marriage settlement contracts should be revised so that a written, signed, dated, and notarized agreement is required for a transmutation of property before or during marriage; recording should not be required in order for

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the agreement to bind the spouses or creditors. The agreement should not affect creditors unless the agreement satisfies these requirements and is not fraudulent as to creditors.

STUDY L-500 - NONPROBATE TRANSFERS

The Commission considered Memorandum 80-51, relating to Article VI of the Uniform Probate Code. The Commission approved the distribution of Article VI to interested persons and organizations for review and comment on whether California should enact the substance of Article VI.

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

Date

Chairperson

Executive Secretary