

0239a  
January 2, 1986

Note. Changes may be made in this Agenda. For meeting information, please call John H. DeMouilly (415) 494-1335.

| <u>Time</u>                                 | <u>Place</u>           |
|---|------------------------|
| Jan. 16 (Thursday) - 3:00 p.m. - 10:00 p.m. | State Capitol          |
| Jan. 17 (Friday) - 9:00 a.m. - 4:00 p.m.    | Room 125<br>Sacramento |

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Sacramento

January 16-17, 1986

1. Minutes of December 5-6 Meeting (sent 12/18/85)
2. Consultant Contracts  
    Memorandum 85-111 (enclosed)
3. Study L-618 - Estates and Trusts Code (Uniform Transfers to Minors Act)  
    Memorandum 85-104 (sent 12/12/85)
4. 1986 Legislative Program  
    Memorandum 86-1 (to be sent)  
    First Supplement to Memorandum 86-1 (to be sent)  
    Second Supplement to Memorandum 86-1 (to be sent)  
    Third Supplement to Memorandum 86-1 (to be sent)  
    Fourth Supplement to Memorandum 86-1 (to be sent)
5. Study L-1020 - Estates and Trusts Code (Court Approval of Certain Mutual Fund Investments)  
    Memorandum 85-110 (sent 12/18/85)
6. Study L-1028 - Estates and Trusts Code (Independent Administration)  
    Memorandum 85-112 (sent 12/12/85)  
    Draft of Tentative Recommendation (attached to Memorandum)  
    Fourth Supplement to Memorandum 85-71 (sent 11/12/85; another copy sent 12/12/85)  
    Sixth Supplement to Memorandum 85-71 (sent 11/25/85; another copy sent 12/12/85)

7. Study L-1010 - Estates and Trusts Code (Opening Estate Administration)  
Memorandum 85-53 (sent 12/31/85)  
Tentative Recommendation (attached to Memorandum)
8. Study L-1029 - Estates and Trusts Code (Distribution and Discharge)  
Memorandum 85-63 (sent 6/7/85; another copy sent 12/12/85)  
Draft Statute (attached to Memorandum)  
First Supplement to Memorandum 85-63 (sent 6/7/85; another copy sent 12/12/85)
9. Study L-1050 - Estates and Trusts Code (Notice in Guardianship and Conservatorship Proceedings)  
Memorandum 85-108 (sent 12/12/85)
10. Study L-1050 - Estates and Trusts Code (Sterilization of Conservatee)  
Memorandum 85-109 (sent 12/18/85)
11. Study L-1033 - Estates and Trusts Code (Establishing Identity of Heirs)  
Memorandum 85-89 (sent 10/17/85; another copy sent 12/12/85)  
Draft Statute (attached to Memorandum)  
First Supplement to Memorandum 85-89 (sent 12/18/85)
12. Study L-1035 - Estates and Trusts Code (Administration of Estates of Missing Persons Presumed Dead)  
Memorandum 85-91 (sent 10/17/85; another copy sent 12/12/85)  
Draft Statute (attached to Memorandum)  
First Supplement to Memorandum 85-91 (sent 12/31/85)
13. Study L - Terminology Used in Comments to Indicate How New Section Compares to Existing Law  
Memorandum 85-113 (to be sent)
14. Handbook of Practices and Procedures  
Memorandum 85-107 (sent 12/12/85)  
Draft of Revised Handbook (attached to Memorandum)

MINUTES OF MEETING  
of  
CALIFORNIA LAW REVISION COMMISSION  
JANUARY 16-17, 1986  
SACRAMENTO

A meeting of the California Law Revision Commission was held in Sacramento on January 16-17, 1986.

Law Revision Commission

|          |                                      |                 |
|----------|--------------------------------------|-----------------|
| Present: | Edwin K. Marzec, Chairperson         | Bion M. Gregory |
|          | Arthur K. Marshall, Vice Chairperson | Tim Paone       |
|          | Roger Arnebergh                      | Ann E. Stodden  |

Absent: Bill Lockyer, Member of Senate  
Alister McAlister, Member of Assembly

Staff Members

|          |                    |                  |
|----------|--------------------|------------------|
| Present: | John H. DeMouilly  | Robert J. Murphy |
|          | Nathaniel Sterling | Stan G. Ulrich   |

Other Persons Present

Hannah Byron, AK Associates/Western Surety, Sacramento,  
Jan. 16  
Nancy E. Ferguson, California Probate Referees, Chico, Jan.  
17  
Irwin D. Goldring, State Bar Estate Planning, Trust and  
Probate Law Section, Los Angeles  
Sandra Kass, Los Angeles County Bar Association, Los Angeles  
James C. Opel, State Bar Estate Planning, Trust and Probate  
Law Section, Los Angeles  
Ralph Palmieri, Beverly Hills Bar Probate Section, Beverly  
Hills  
Gerald L. Scott, California Probate Referees, San Jose,  
Jan. 16  
James A. Willett, State Bar Estate Planning, Trust and  
Probate Law Section, Sacramento  
Linda Wisotsky, State Bar Family Law Section, Executive  
Committee, Beverly Hills, Jan. 16  
Shirley C. Yawitz, California Probate Referees, San  
Francisco, Jan. 17

ADMINISTRATIVE MATTERS

MINUTES OF DECEMBER 5-6, 1985, MEETING

The Minutes of the December 5-6, 1985, Meeting were approved as submitted by the staff.

## SCHEDULE FOR FUTURE MEETINGS

The Commission determined that the February meeting should be held on only Friday, February 14, if it appears that there is not enough material for a two-day meeting.

The following is the schedule for future meetings.

### February 1986

14 (Friday) 9:00 a.m. - 4:00 p.m. San Francisco

### March 1986

13 (Thursday) 3:00 p.m. - 10:00 p.m. Sacramento

14 (Friday) 9:00 a.m. - 6:00 p.m.

### April 1986

10 (Thursday) 3:00 p.m. - 10:00 p.m. Eureka

11 (Friday) 8:30 a.m. - 6:00 p.m.

### May 1986

15 (Thursday) 3:00 p.m. - 10:00 p.m. Sacramento

16 (Friday) 9:00 a.m. - 6:00 p.m.

### June 1986

26 (Thursday) 3:00 p.m. - 10:00 p.m. Monterey

27 (Friday) 9:00 a.m. - 6:00 p.m.

### July 1986

17 (Thursday) 3:00 p.m. - 10:00 p.m. San Diego

18 (Friday) 9:00 a.m. - 6:00 p.m.

### September 1986

4 (Thursday) 3:00 p.m. - 10:00 p.m. Sacramento

5 (Friday) 9:00 a.m. - 6:00 p.m.

### November 1986

13 (Thursday) 3:00 p.m. - 10:00 p.m. Orange County

14 (Friday) 9:00 a.m. - 6:00 p.m.

### December 1986

4 (Thursday) 3:00 p.m. - 10:00 p.m. Los Angeles

5 (Friday) 9:00 a.m. - 6:00 p.m.

## 1986 LEGISLATIVE PROGRAM

The Executive Secretary made the following report concerning the 1986 Legislative Program.

### Approved by Policy Committee in First House

Assembly Bill 625 - Buol case urgency bill (Commission recommended legislation amended into existing bill) (Approved with urgency clause by Assembly Judiciary Committee on January 7, 1986)

### Introduced

Assembly Bill 2625 - Comprehensive Probate Bill (Disposition of Estate Without Administration; Small Estate Set-Aside; Proration of Estate Taxes; Technical and Clarifying Revisions)

Assembly Bill 2626 - Reservation of Legislative Power for Disposition of Property in Marriage Dissolution Cases

Assembly Bill 2652 - Comprehensive Trust Statute

Assembly Concurrent Resolution 93 - Continues Commission Authority to Study Topics Previously Authorized for Study

### Not Yet Introduced

Living Wills - Increases Duration of Living Will From Five to Seven Years - Neither McAllister nor Lockyer are willing to introduce this bill - staff will seek to find author for bill

Probate Clean Up -Definition of Account in Insured Association and other technical revisions in Probate Code. Will not introduce as a separate bill; will amend into AB 2625.

### CONSULTANT CONTRACTS

The Commission considered Memorandum 85-111. The Commission noted the first part of the Memorandum (a report on outstanding contracts and payments made during the last fiscal year on consultant contracts).

Contract with Professor William A. Reppy, Jr. The Commission unanimously adopted a motion directing the Executive Secretary to execute on behalf of the Commission a contract with Professor William A. Reppy, Jr., to prepare a background study on Marriage of Buol, 39 Cal.3d 751 (1985) and the problems that case creates. The study is to be along the lines outlined in the letter from Professor Reppy which is attached to the Memorandum. The compensation for the study is to be \$1,250 (payable when the study is delivered to the Commission's office) and not to exceed \$750 for travel expenses of the consultant in attending Commission meetings, meetings with the staff, and legislative hearings. The contract is to be made with the understanding that Professor Reppy will be requested to attend the Commission meeting when his study is considered. The contract should conform to the standard form of contract used by the Law Revision

Commission for expert consultants. The contract anticipates that the study will be delivered to the Commission not later than the time that will permit the study to be considered by the Commission during the summer of 1986.

Contract with Professor William G. Coskran. The Commission unanimously adopted a motion directing the Executive Secretary to execute on behalf of the Commission a contract with Professor William G. Coskran to prepare a background study covering all aspects of commercial landlord-tenant law, and the problems in residential landlord-tenant law that are comparable to the problems considered in commercial landlord-tenant law. The consultant should be given sufficient time to prepare the study so that it will be one that will be complete and contain the information the Commission will need to prepare comprehensive legislation in this field should the Commission decide to do so. The compensation for the study is to be \$7,500 (payable when the study is delivered to the Commission's office) and not to exceed \$500 for travel expenses of the consultant in attending Commission meetings, meetings with the staff, and legislative hearings.

The staff is to contact Professor Coskran to determine whether he is willing to prepare the study; and, if he is, the Executive Secretary was directed to execute a contract on behalf of the Commission, as outlined above, conforming to the standard contract used by the Law Revision Commission for expert consultants.

#### STUDY F-602 - RETROACTIVE APPLICATION OF FAMILY LAW LEGISLATION

The Commission considered the Second Supplement to Memorandum 86-1, and a letter from Robert J. Fulton distributed at the meeting (attached to these Minutes as Exhibit 1), relating to the Commission's proposed legislation on the effect of the Buol decision. The Commission heard a presentation by Linda Wisotsky on behalf of the State Bar Family Law Section Executive Committee opposed to AB 2626, which would reserve legislative power to make retroactive changes in the law governing marital property division. The basis of the Bar's opposition is that (1) it creates the potential for a legislative change to "equitable division" (as opposed to "equal division") in the

future, (2) it makes it difficult for parties to plan their affairs based on an assumption of what the law will be in the future, and (3) it requires spouses to make written agreements in order to assure stability in their property rights, assuming that the law is revised to honor written agreements between the spouses.

After discussion of the reasons for the Commission recommendation and the problems raised by the State Bar committee, the Commission, by unanimous vote, adopted a motion to advise Assemblyman McAlister of the fact that the Commission has received heavy opposition to the legislation and the nature of the opposition, and that the Commission is not unanimous on its recommendation, leaving it to Mr. McAlister to take such action as he sees fit. The Commission also decided to recommend to Mr. McAlister that if he goes forward with the bill, the bill should include a provision that future legislation may not retroactively affect property rights established by a written agreement between the spouses that was valid at the time it was made. The Commission requested the State Bar committee to prepare for the benefit of Mr. McAlister and the Commission a detailed position paper concerning the nature of the committee's opposition.

#### STUDY L - PROBATE CODE (PROBATE CLEANUP REVISIONS)

The Commission considered the First Supplement to Memorandum 86-1 and the attached staff draft of cleanup revisions to the Probate Code. The Commission approved amending Assembly Bill 2625 to make the following technical revisions of Sections 584.3 and 1406:

Probate Code § 1406 (repealed). Account in an insured savings and loan association

SEC. \_\_\_\_\_. Section 1406 of the Probate Code is repealed.

Probate Code § 1406 (added). Account in an insured savings and loan association

SEC. \_\_\_\_\_. Section 1406 is added to the Probate Code, to read:

1406. (a) "Account in an insured savings and loan association" means a savings account or mutual capital certificate of either of the following:

(1) A federal association.

(2) A savings association doing business in this state which is an "insured institution," as defined in Title IV of the National Housing Act (12 U.S.C. Sec. 1724 et seq.).

(b) As used in this section:

(1) "Federal association" has the same meaning as defined in subdivision (b) of Section 5102 of the Financial Code.

(2) "Mutual capital certificate" has the same meaning as defined in Section 5111 of the Financial Code.

(3) "Savings account" has the same meaning as defined in Section 5116 of the Financial Code.

(4) "Savings association" has the same meaning as defined in subdivision (a) of Section 5102 of the Financial Code.

Comment. Section 1406 is repealed and reenacted to conform to the Financial Code provisions as revised by Chapter 1091 of the Statutes of 1983.

Probate Code § 584.3 (technical amendment). Granting option to purchase real property

SEC. \_\_\_\_\_. Section 584.3 of the Probate Code is amended to read:

584.3. An executor or administrator shall have power, with approval of the court which ordered appointment of such executor or administrator, to grant an option to purchase real property of the estate for a period within or beyond the administration of the estate.

(a) To obtain such approval, the executor or administrator shall file a verified petition with the clerk describing the subject real property, stating the terms and conditions of the proposed option, and showing the advantage to the estate in giving such option.

(b) The purchase price of the real property subject to the option must be at least 90 percent of the appraised value of such real property, and such appraisal must have been made by the referee within 90 days prior to the date of filing the petition.

(c) The clerk shall set the petition for hearing by the court and give notice thereof in the manner provided in Section 1200. The executor or administrator shall also cause notice of the hearing to be mailed, postage prepaid, to all heirs, devisees, and legatees of the decedent who are known to the executor or administrator at least 10 days before the hearing, addressed to them, at their respective post office addresses as set forth therein.

(d) Upon the hearing, the court, upon proof that due notice of the hearing has been given, shall proceed to hear the petition and any objection thereto that may have been filed or presented, and examine into the advantage to the estate in granting the option. If it appears to the court that good reason exists and that it will be to the advantage of the estate for the option to be granted, and it does not appear that a higher offer of a sum exceeding the purchase



price of the real property subject to the option, or a better offer with respect to terms of the option, may be obtained, the court shall make an order approving the granting of the option and directing that the executor or administrator give such option, prescribing the terms and conditions thereof. A higher offer with respect to the purchase price shall be subject to the provisions of Section 785 governing increased bids in sales of real property, and a better offer with respect to the terms of the option shall be one deemed to be materially more advantageous to the estate. A higher offer made either for cash or upon a credit, whether on the same or different credit terms, or a better offer, shall be considered only if the personal representative informs the court in person or by counsel that the offer is acceptable prior to the court's making its order approving the granting of the option.

(e) Where the option granted pursuant to subdivision (d) extends beyond the administration of the estate, the decree of final distribution shall provide that the real property subject to such option be distributed to the distributees subject to the terms and conditions of the option. Further, any option, whether within or beyond the administration of the estate, granted pursuant to subdivision (d) shall be subject to the provisions of Section 1213.5 Chapter 4 (commencing with Section 884.010) of Title 5 of Part 2 of Division 2 of the Civil Code.

Comment. Section 584.3 is amended to delete the obsolete cross-reference to Section 1213.5 of the Civil Code which has been repealed, and to substitute a reference to the new Civil Code provisions which replaced the repealed section.

STUDY L-618 - ESTATES AND TRUSTS CODE (UNIFORM TRANSFERS TO MINORS ACT)

The Commission considered Memorandum 85-104 and the attached letter from John W. Schooling who has concluded that no additional revisions should be made in the new California Uniform Transfers to Minors Act. Mr. Schooling is the author of an article suggesting various revisions in the new act, and the Commission requested that he make a study of the suggested revisions and report to the Commission those that should be adopted.

A letter from Kathryn A. Ballsun, on behalf of "Team 4" (consisting of Harley Spitler, John McDonnell, and Kathryn A. Ballsun), dated January 8, was handed out at the meeting. The letter made the following comments with respect to Memorandum 85-104:

1. We believe that the public and most attorneys would like custodianships created by gift to continue until age 25;

therefore every effort should be made to draft provisions which would accomplish this result but which would not create a trap for the unwary.

2. Team 4 felt that co-custodians should be able to serve and that satisfactory provisions could be drafted.

3. Team 4 agreed with John Schooling's suggestion that custodian assets should be liable to pay minors debts, and that no change was required.

The Commission decided to defer any further consideration of these matters until after the new Estates and Trusts Code has been drafted. At that time, the Commission may give further consideration to the matters.

#### STUDY L-830 - PRORATION OF ESTATE TAXES

The Commission considered the Third Supplement to Memorandum 86-1, together with a letter from J. Earle Norris on behalf of the California Land Title Association (copy attached to these Minutes), relating to the Commission's recommendation on proration of estate taxes. The Commission approved restoration of the phrase "fair market value" to the proposed legislation and amendment of proposed Section 20115 as follows:

20115. Where the payment of any portion of the federal estate tax is extended under the provisions of the federal estate tax law, the amount of extended tax shall be a charge against the persons who receive the specific property that gives rise to the extension.

The Commission will give further consideration to questions raised concerning the proposed legislation at the next Commission meeting upon receipt of written communications from the State Bar and others.

#### STUDY L-1010 - ESTATES AND TRUSTS CODE (OPENING ESTATE ADMINISTRATION)

The Commission considered Memorandum 85-53 and the attached draft of a tentative recommendation relating to opening estate administration. The Commission made the following decisions concerning the draft:

No contest clauses. The Commission felt that the concept of codifying some rules governing no-contest clauses should be investigated. Also, the possibility of assessing attorney's fees instead of a forfeiture in the case of a good faith contest should be considered. The Commission deferred consideration of this matter pending receipt from Professor Niles of a memorandum concerning no-contest clauses. This should be dealt with as a separate matter and preparation of a draft statute on opening estate administration should proceed.

§ 8000. Petition. In subdivision (b), "of" should be inserted in the phrase "regardless whether".

§ 8002. Contents of petition. Subdivision (b)(4), relating to the character and estimated value of the property of the estate, should be retained in the statute.

§ 8004. Opposition. Subdivision (a) was revised to read: Any interested person may contest the petition by filing objections setting forth written grounds of opposition. The court may continue the matter upon an oral request made at the hearing for time to file objections setting forth written grounds of opposition.

§ 8005. Hearing. Subdivision (b)(3) should be retained in the statute.

§ 8006. Court order. In subdivision (a), a provision should be added that the order admitting a will to probate includes the date of the minute order. In subdivision (b), the word "void" should be moved from the end of the sentence to follow "makes".

§ 8110. Persons on whom notice served. The staff noted that we now have both the recommendation of the State Bar and the Uniform Probate Code Editorial board on notice to creditors. The matter should be agendized for Commission discussion at the February Commission meeting.

§ 8200. Delivery of will by custodian. A new section should be added to the effect that the executor must file the will with the court within the later of 30 days after the death of the decedent or 10 days after delivery of the will to the executor by the custodian of the will, with appropriate penalties for failure. The section should

make clear what court the will is to be filed with. The section might also include a provision concerning obtaining the will from the file if needed for probate.

§ 8252. Trial. The staff is to see whether any recent figures are available concerning reversal of jury and judge verdicts in will contests. Possibly a law review would undertake a study.

§ 8173. Costs and attorneys fees. This provision should be limited to the situation where there has previously been a will contest.

§ 8226. Effect of admission of will to probate. Subdivision (b) should be reorganized to make clear that the last sentence applies only where two wills are admitted to probate during the administration of the estate. A will may not be admitted after the estate is closed, even as to after-discovered property. After-discovered property should be governed by the will, i.e. by a statutory omnibus clause.

§ 8401. Qualifications. The Comment to subdivision (a)(3), which provides for disqualification if there are grounds for removal from office, should note that the conflict of interest should be sufficient to require removal. In Section 8502 (grounds for removal), it should be made clear that removal is proper if necessary for the protection of the estate "or of interested persons."

§ 8402. Nominee of person entitled to appointment. This section should be limited to administrators and relocated among the administrator provisions.

§ 8404. Statement of duties and liabilities. In paragraph (3) of this section, reference should be made to permission from the court or "if so advised" by an attorney.

§ 8424. Minor named as executor. The reference to the court's discretion was deleted from subdivision (b) and the Comment should note that the court may exercise its discretion under either subdivision (a) or (b).

§ 8461. Priority for appointment. Subdivision (d) of this section should read "(d) Other issue." After subdivision (g) a new subdivision should be added to read "(x) Issue of grandparents." Subdivision (i) should read "(i) Other next of kin."

§ 8462. Priority of relatives. The limitation to ancestors or descendants should be deleted from subdivision (b) so that collaterals will be entitled to priority also. The section should also be revised to make clear it applies to the surviving spouse as well.

§ 8463. Estranged spouse. This section should be revised to provide that an estranged spouse has priority next after brothers and sisters of the decedent. The Commission's report should note the basic conflict of interest of an estranged spouse in connection with this change in law. Other questions relating to the rights of an estranged spouse should be deferred until after completion of the administration statute. The staff should see whether a more neutral term than "estranged" can be found.

§ 8481. Waiver of bond. Subdivision (b) was revised to provide that if all beneficiaries have waived a bond, the court "may" (instead of "shall") direct that no bond be given. The first sentence of subdivision (b) was revised to read, "Notwithstanding the waiver of a bond by a will or by all the beneficiaries, on petition of any interested person the court may for good cause require that a bond be given, either before or after issuance of letters." The Commission's recommendation should explain that this change in the law is made because it appears to the Commission that the existing waiver scheme is not working.

§ 8482. Amount of bond. Subdivision (a) should be prefaced by the phrase "except as provided in Section 8481." The section should provide that the amount of the bond may be not more than the value of the personal property and annual gross income of the estate, plus the value of any real property in the case of independent administration as to the real property.

§ 8571. Bond of nonresident personal representative. This section should apply "notwithstanding a prior waiver" of the bond.

§ 8483. Reduction of bond by deposit of assets. This section should be revised to provide that the bond may not be reduced until a receipt is produced showing actual deposit of the assets. The staff should check to see whether it is possible for a person with assets in the person's possession to make the deposit before appointment as

personal representative and thereby avoid payment of the first year bond premium. The section should also be revised to include federally insured credit unions.

§ 8485. Substitution or release of sureties. This section should provide for notice to the surety.

§ 8488. Limitation as to sureties on bond. This section should provide for a 4-year statute of limitations, and a conforming change should be made in the comparable provision of the guardianship and conservatorship statute for consistency.

§ 8502. Grounds for removal. Subdivision (d) should be expanded to apply where removal is otherwise necessary for protection of the estate "or interested persons." The Comment should note that not every conflict necessarily requires removal, depending on the circumstances.

§ 8544. Special powers, duties, and obligations. The Comment should note that among the other powers the court may grant the special administrator is the power to make a disclaimer, where appropriate.

§ 8547. Fees and commissions. This section should be revised to allow the special administrator fees before close of administration if the general personal representative joins in the petition "or the court in its discretion allows." The phrase "if settlement occurs within four months of the appointment of the special administrator" was deleted from subdivision (d), and the Comment should explain how the system of awarding fees works.

#### STUDY L-1020 - ESTATES AND TRUSTS CODE

##### (COURT APPROVAL OF CERTAIN MUTUAL FUND INVESTMENTS)

The Commission considered Memorandum 85-110 and the attached draft of a section relating to the authority of the personal representative to invest without court authorization in direct obligations of the United States and in mutual funds which invest in those obligations (drawn from existing Section 584.1 of the Probate Code). The Commission revised the section to read substantially as follows:

§ 9730. Investments permitted without prior court authorization

9730. Pending settlement of the estate, the personal representative may invest and reinvest moneys of the estate in any one or more of the following:

(a) Direct obligations of the United States maturing not later than one year from the date of making the investment or reinvestment.

(b) Mutual funds which are invested only in either or both of the following:

(1) Direct obligations of the United States maturing not later than one year from the date of making the investment or reinvestment.

(2) Repurchase agreements with respect to direct obligations of the United States, regardless of maturity, in which the fund is authorized to invest.

(c) Units of a common trust fund described in Section 1564 of the Financial Code. The common trust fund shall have as its objective investment primarily in short term fixed income obligations and shall be permitted to value investments at cost pursuant to regulations of the appropriate regulatory authority.

Comment. The investments described in Section 9730 may be made without prior court authorization. See Section 9601.

Subdivisions (a) and (b) of Section 9730 continue former Probate Code Section 584.1 with the following changes in subdivision (b): The requirement has been added that a mutual fund must invest "only" in the permitted obligations and repurchase agreements. This limitation on the permissible investments of the mutual fund does not preclude the fund from having a reserve of uninvested cash. The provision has been added in subdivision (b) that repurchase agreements are limited to those with respect to "direct obligations of the United States." The definition of "repurchase agreement" is new and is clarifying.

Subdivision (c) restates former Probate Code Section 585.1 without substantive change.

For similar provisions in guardianship-conservatorship law, see Sections 2574 (federal and state obligations, stocks, bonds, and securities) and 2575 (common trust fund). See also Section 16224 (investments by trustees).

The Commission asked the staff to develop a definition of "repurchase agreement" as used in paragraph (2) of subdivision (b) of Section 9730.

STUDY L-1028 - ESTATES AND TRUSTS CODE (INDEPENDENT ADMINISTRATION)

The Commission considered Memorandum 85-112, the Fourth Supplement to Memorandum 85-71, the Sixth Supplement to Memorandum

85-71, and a letter from Team 3 of the State Bar Section (attached as Exhibit 2 to these Minutes), all relating to independent administration.

The Commission reviewed the draft statute attached to Memorandum 85-112 and made the changes indicated below. The Commission requested that the staff prepared a revised Tentative Recommendation for review by the Commission at a future meeting before the Tentative Recommendation is distributed to interested persons and organizations for review and comment.

**§ 10451. Notice of hearing**

The notice of hearing provisions in this section will need to be reviewed when the general notice provisions are drafted. Subdivision (b) should be revised to require notice to the executor named in the will if not the petitioner.

Subdivision (c) was revised to require the following statement be included in the notice of hearing:

"The petition requests authority to administer the estate under the Independent Administration of Estates Act. This authority would permit the personal representative to act without court supervision that would otherwise be required. The petition will be granted unless good cause is shown why it should not be."

**§ 10453. Increase in amount of bond**

This section is to be considered at the next meeting when the general provisions relating to bonds are considered. (It would appear that the word "less" should be changed to "more" in Section 10453 to conform to the decision made in connection with the general bond provisions.)

**§ 10500. Administration without court supervision**

Subdivision (c) was deleted. The Comment to the repealed section (Section 591.2) should contain the following statement:

The second sentence of subdivision (b) is omitted as unnecessary. If the personal representative does not take a proposed action under independent administration authority, the action is taken under the procedures that apply where the personal representative does not have independent administration authority, and the publication requirements of the applicable procedure must be satisfied.



Also a statement should be added in the Comment to Section 10559 to the effect that if there is an objection to the proposed action, the proposed action must be taken under the applicable court supervised procedure and that procedure, including any publication requirement, must be complied with.

**§ 10502. Specific independent administration powers**

The Executive Secretary noted that the listing of powers in Section 10502 appears to be intended to supplement the other powers granted a personal representative by the code. It does not appear to be necessary to list any power that the personal representative is given by the code if the power can be exercised without prior authorization by the court. The listing of the powers in Section 10502 should be limited to those powers that the personal representative is not given by the code; the listing should be limited to the powers that the personal representative can obtain by petitioning the court for authority to exercise the particular power. Also, there are powers listed in Section 10502 that are not included in the powers specifically granted to a personal representative acting under court supervision, and the staff will consider specifically granting those powers to a personal representative acting under court supervision, either with or without a requirement that the power may be exercised only with prior court authorization. Examples of such powers listed in Section 10502 are the power to abandon worthless property and the power to insure property of the estate and to insure the personal representative against personal liability.

Subdivision (b) (4) (mutual funds) should be conformed to the language adopted for general use to describe the funds.

**§ 10551. Actions requiring advice of proposed action**

Subdivision (c) should be expanded to permit selling or exchanging over-the-counter stock. The subdivision is now limited to "securities listed upon an established stock or bond exchange. The Commission wants to permit sale or exchange of securities that are listed in the Wall Street Journal (using appropriate language).

Subdivision (e) should be clarified. The question whether an employment contract terminable at will would be a "contract not to be performed within two years." Either the statute or Comment should

make clear that such an employment contract would not be within the requirement that advice of proposed action be given.

Appropriate language should be substituted in subdivision (h) to describe the mutual funds so that the language used in subdivision (h) will conform to the language used in other provisions.

The Commission considered the suggestion to provide an exception from the requirement that advice of proposed action be given. The suggestion was that advice of proposed action not be required for sales of small amounts of tangible personal property. The State Bar Section representative reported that the Executive Committee of the Section is opposed to the suggested exception and, in view of that action by the Executive Committee, the Commission decided not to provide such an exception.

**§ 10552. Persons to whom advice of proposed action must be given**

Advice of proposed action also should be given to the beneficiaries of any trust that is a devisee of the estate if the trustee of the trust is the personal representative. Reference should be made to the provision relating to giving notice to trust beneficiaries (Section 1215.1) which is to be used to determine those beneficiaries who are to be given advice of proposed action.

**§ 10554. Waiver of advice of proposed action**

The representative of the State Bar Section reported that the Executive Committee of the Section is in favor of a provision that would permit a general waiver of advice of proposed action, rather than requiring a waiver with respect to each particular proposed action.

The Commission requested that the staff draft a provision that would permit a general waiver or a waiver of all transactions of a particular type. The provision should be a statutory form for waiver and should contain appropriate warning statements. The blanket waiver might be appropriate where one child is to be given the responsibility of administering the estate and the other child does not want to receive advice of proposed actions. The provision will be reviewed by the Commission when the redrafted tentative recommendation is reviewed.

**§ 10556. Delivery or mailing of advice of proposed action and copy of form for objecting to proposed action**

Subdivision (d) was revised to require that the form prepared by the Judicial Council for objecting to a proposed action "or its substantial equivalent" accompany or be a part of the advice of proposed action.

**§ 10559. Court supervision and notice of hearing required if objection made**

The substance of the following was added at the end of the first paragraph on page 26:

Where the proposed action is taken under court supervision, the provisions that apply to court supervised administration are applicable, including any publication requirement.

There should be a reference in connection with subdivision (d) to the provision of the new code that deals with the liability of the personal representative, and that liability should be limited (like the liability of the trustee) to three times the actual damages.

The Commission considered the Sixth Supplement to Memorandum 85-71 and reaffirmed its decision that the personal representative can take a proposed action only under court supervision if there is an objection to the taking of the proposed action.

**§ 10560. Effect of failure to object to proposed action**

How long does the person who fails to object have to request a court review? The objection can be raised upon final accounting. Once the estate is closed there could be no objection (except for fraud). The good faith purchaser or encumbrancer is protected. Something should be added to the Comment to discuss this matter.

A provision should be added to the new code to provide that a guardian ad litem can be appointed to object, waiver, or consent to proposed actions under the Independent Administration of Estates Act. The provision for a guardian ad litem should probably be a general provision. The general provision would be consistent with existing practice.

**CHAPTER 5. FORMS**

The statutory waiver form probably should be compiled in this chapter.

§ 10600. Judicial Council form for advice of proposed action

This section was revised to require that the advice of proposed action be given either using the Judicial Council form or using an advice of proposed action that is in substantial compliance with the requirements of the Judicial Council form or the statutory form.

STUDY L-1029 - ESTATES AND TRUSTS CODE (DISTRIBUTION AND DISCHARGE)

The Commission considered Memorandum 85-63 and the attached draft statute relating to distribution and discharge in estate administration. The Commission made the following changes in the draft.

§ 8700. Petition for distribution. The phrase "transferee or successor in interest of an heir or devisee" should be replaced by a reference to other "interested persons."

§ 8701. Notice of hearing. Subdivision (f) was deleted. The staff noted that it will continue to pursue efforts to get the State Controller to review and comment on the draft.

§ 8702. Opposition to petition. This section should be deleted and a general provision added to the joint personal representative section that any personal representative acting alone may oppose a petition. In addition, the definition of "interested person" should be revised to include a personal representative.

§ 8705. Conclusiveness of order and distribution. In subdivision (c), reference should be made to the property "being distributed." A provision should be added to the Comment noting the general law provisions on the ability to correct errors in the order.

§ 8720. Time for petition. Preliminary distribution should not be made until after 4 months (creditors claim period) has elapsed.

§ 8721. Notice of hearing not required in certain cases. This section was deleted.

§ 8722. Order for distribution. Paragraph (a)(1) was deleted.

§ 8723. Distribution under Independent Administration of Estates Act. This section should be limited to 50% of the estate "in the aggregate."

§ 8724. Costs of proceedings. Subdivision (c) should be relocated to Section 8886. The staff will note the new location in the Comment.

§ 8741. Accountability until final distribution. The statement in the section that the personal representative is accountable to the heirs and devisees entitled to distribution should be replaced by a statement that the personal representative is "responsible for distribution in accordance with the court order." The Comment should note that in the case of distribution to a trust the trustee is the distributee, and that under the statutory omnibus clause (to be drafted) income on property distributed is automatically covered without the need for a new accounting.

§ 8800. Petition. The staff should redraft this provision to eliminate the reference to the "reason" for the petition, possibly by referring instead to the person's "interest" or possibly by splitting the sentence and simply referring to the "basis" for the petition.

§ 8804. Hearing. This section should be redrafted to state basically that at the hearing the court should consider all papers filed, and should make clear who can file documents of various types, and that the personal representative may be a party to assist the court.

§ 8805. Court order. A provision should be added to make clear that a late petition is not permissible.

§ 8820 et seq. Deceased distributee. The staff should redraft this series of sections to keep existing law, and to add that property may be distributed to the deceased distributee's estate or, if no administration proceedings are pending, pursuant to Section 630 affidavit.

§ 8840. When deposit with county treasurer authorized. Subdivision (a) was deleted from the draft. The distribution should be named to the named distributee or any known assignee of the named distributee. The staff should continue its efforts to obtain county treasurer input.

§ 8841. Sale of personal property and deposit of proceeds. This section should be reorganized for clarity. Subdivision (a)(1) should include a 90 day holding period. The words "legally qualified" should be deleted from subdivision (a)(3).

§ 8443. Copy of decree of distribution. The introductory portion of this section was revised to read, "Whenever money is deposited or already on deposit with the county treasurer, ..." The section should be revised to codify the Section 1027 procedure for distribution of money to the county treasurer and other personal property to the State Controller.

§ 8844. Distribution to fiduciary instead of deposit in county treasury. This section was revised to be permissive rather than mandatory.

§ 8845. Claim of money or property deposited in county treasury. This section should permit the claim to be made ex parte unless the court orders notice. The section should be revised to reflect the fact that money is deposited in the county treasury and personal property other than money with the State Controller.

§ 8846. Alternate procedure for claim of money or property. This section was deleted.

§ 8860. Distribution to State of California. The staff should make sure this section is consistent with other provisions relating to distribution to the State Controller. The staff should investigate whether the term "practical" or "practicable" is appropriate in this section.

§ 8861. Distribution to state in trust. The leadline is misleading and should be revised. The staff should investigate the phrasing of this section for consistency with other escheat-type sections.

§ 8862. Disposition of property distributed to state. In seeking comments from relevant public officers (State Treasurer, State Controller) concerning this and other provisions, inquiry should also be made of the Attorney General concerning operation of the system.

§ 8863. Claims against property distributed to state. Treatment of minors and incompetents under this section should conform to treatment under the general escheat statutes. The Comment to this section should refer to the general provisions.

§ 8864. No deposit in county treasury. This section should be revised to provide that if any part of the property has been deposited with the State, all must be so deposited. The Comment should note that this provision is for the convenience of the claimant of the property in only having to deal with one governmental agency.

§ 8880. Right to partition or allotment. The word "distributed" should be deleted from the chapter heading. The word phrase "of the decedent" should be deleted from this sentence. A Comment in the chapter should note that partitioned property may not be distributed except pursuant to the general provisions for distribution.

§ 8882. Summons. This section should be deleted and a provision requiring response within 30 days, similar to Section 851.1, should be added to Section 8883.

§ 8887. Effect of division. The staff should give consideration to whether the partition order should be appealable.

STUDY L-1030 - PROBATE CODE (DISPOSITION OF ESTATE  
WITHOUT ADMINISTRATION)

The Commission considered the Fourth Supplement to Memorandum 86-1 which concerned an amendment to a provision relating to the notice of hearing in a proceeding for determination or confirmation of property passing or belonging to a surviving spouse. At the request of the legislative representative of the State Bar, the Commission decided to amend AB 2625 to make an amendment proposed by a resolution adopted by the Conference of Delegates of the State Bar and which has been placed on the State Bar's 1986 legislative program.

The following amendment of Section 13655 of Assembly Bill 2625 was approved by the Commission:

§ 13655. Notice of hearing

13655. (a) If a petition filed under this chapter is filed with a petition for probate of the deceased spouse's will, notice of the hearing on the petition shall be given in the manner prescribed by Sections 327 and 328 and shall be included in the notice required by those sections. If the petition filed under this chapter is filed with a petition for administration of the estate of the deceased spouse, notice of the hearing on the petition shall be given in the manner prescribed by Section 441 and shall be included in the notice required by that section.

(b) If proceedings for the administration of the estate of the deceased spouse are pending at the time a petition is filed under this chapter or, if the proceedings are not pending and if the petition filed under this chapter is not filed with a petition for probate of the deceased spouse's will or for administration of the estate of the deceased spouse, the clerk shall set the petition for hearing. At least 10 days before the hearing, notice of the hearing on the petition filed under this chapter shall be personally served upon the following persons by the petitioner or mailed, postage prepaid, by the petitioner to the following persons, addressed to the addresses given in their request for special notice or notice of appearance, the addresses of their offices or places of residence, or, if neither of these addresses is known to the petitioner, the county seat of the county in which the proceedings are pending:

(1) Any personal representative who is not the petitioner.

(2) All devisees and known heirs of the deceased spouse and, if the personal representative is the trustee of a trust that is a devisee under the will of the decedent, all persons interested in the trust, as determined in cases of future interests pursuant to subdivision (1), (2), or (3) of Section 1215.1 .

(3) All persons or their attorneys who have requested special notice pursuant to Section 1202.

(4) All persons or their attorneys who have given notice of appearance.

(5) The Attorney General, addressed to the office of the Attorney General at Sacramento, California, if the petitioner bases the allegation that all or part of the estate of the deceased spouse is property passing to the surviving spouse upon the will of the deceased spouse and the will involves or may involve (A) a testamentary trust of property for charitable purposes other than a charitable trust with a designated trustee, resident in this state, or (B) a devise for a charitable purpose without an identified devisee or beneficiary.

~~(6) ANY other persons who are named in the will of the deceased spouse, if the petitioner bases the allegation that all or part of the estate of the deceased spouse is property passing to the surviving spouse upon the will.~~

It should be noted that the amendment to paragraph (2) of subdivision (b) refers to Section 1215.1. This section is renumbered in Assembly Bill 2652 (comprehensive trust bill), and the amendment to Section 13655 should have a double-joining provision to substitute for the reference to Section 1215.1 a reference to the provision of the comprehensive trust bill (AB 2652).

The following is the justification for the amendment to Section 13655:



Comment. Section 13655 does not continue the requirement of former Probate Code Section 653 that notice of hearing be given to "[a]ll other persons who are named in the will of the deceased spouse, if the petitioner bases the allegation that all or part of the estate of the deceased spouse is property passing to the surviving spouse upon the will." This requirement is replaced by the addition of new language in paragraph (2) of subdivision (b) that requires notice to "all persons interested in a trust created under the decedent's will," as determined in the case of future interests pursuant to the general statutory provision governing notice in future interests cases.

Section 13655 requires notice to all persons who might be adversely affected by the order. The former requirement that required notice to all persons named in the will, however, apparently required notice to persons named in the will who are neither devisees nor named as executors of the will. The elimination of the requirement that notice be given to all persons named in the will avoids the need to give notice of hearing to persons who have no interest in the proceeding. For example, notice no longer will need to be given to a mortuary designated in the will to handle funeral arrangements or a former spouse where the will recites dissolution of a prior marriage.

Language in other provisions of the Probate Code that requires notice to "all persons named in the will" should be reviewed and appropriate language substituted in the course of preparing the new Estates and Trusts Code.

APPROVED AS SUBMITTED \_\_\_\_\_

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Executive Secretary

Minutes  
January 16-17, 1986

EXHIBIT 1

ROBERT J. FULTON  
A Professional Law Corporation  
Robert J. Fulton  
Barbara J. Young  
M. DEAN SUTTON\*  
BARRIE A. LAING\*  
\*Associated Attorneys

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(408) 275-0255

January 14, 1986

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

Attn: Edwin K. Marzec

Re: Letter, California Law Revision Commission to  
Honorable George Deukmejian, Governor of  
California and The Legislature of California,  
December 5, 1985

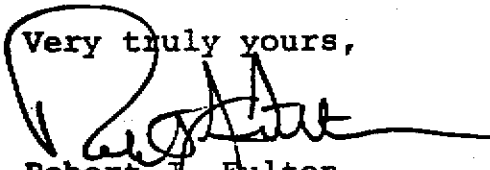
Dear Mr. Marzec:

There is a feeling oft expressed in the BIG WORLD out here that people who draft and enact legislation may not be in touch with reality or are from some other planet. Your Commission's recommendation concerning Civil Code section 4800.1 and 4800.2, in my opinion, is substantiating evidence of the underlying truth of that feeling.

Nonetheless, it is comforting to be told that constitutional issues can be avoided by passing legislation inferring there are none. And, that where a dispute exists about the terms of an oral agreement, I can expect the parties to "reconfirm" their oral agreement in writing before the litigation is commenced.

Frankly, I am unable to believe the recommendation of the Commission and the materials accompanying it are not a joke.

Very truly yours,

  
Robert J. Fulton  
Certified Family Law Specialist

RJF:R3/au

cc: Lowell Sucherman, Esq.  
President, Association of Certified  
Family Law Specialists

Paul Jacobs, Esq.

Minutes  
January 16-17, 1986

EXHIBIT 2

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WRITER'S DIRECT DIAL NO.

January 13, 1986

James V. Quillinan, Esq.  
444 Castro Street  
Suite 900  
Mountain View, CA 94041

RECEIVED  
JAN 16 1986  
Dinner, Schneider, Joffe,  
Lowe & Quillinan

Re: LRC Memorandum 85-112  
Independent Administration of Estates

Dear Jim:

Team 3 has reviewed LRC Memo 85-112. The Team is generally in agreement with the staff's tentative recommendations and offers the following additional comments:

Section 10404--Application of Part: For the reasons set forth in the draftsman's note, it is desirable to make the act generally applicable to pending proceedings.

Section 10451--Notice of Hearing: The members of Team 3 are not aware of any problems caused by the existing statement in subdivision (c) and concur in the draftsman's recommendation that the statement not be expanded. Any expansion would increase the cost of publication of the Section 333 Notice of Death, and the additional expense does not appear warranted.

Section 10453--Increase in Amount of Bond:  
Placement of this section where suggested by the draftsman or where suggested by a previous team of the Estate Planning, Trust and Probate Law Section are both reasonable. As

indicated by staff, the important thing is to have a cross-referencing.

Section 10500--Administration Without Court

Supervision: Publication of a notice of sale when a power of sale is not granted by a Will, is antiquated and should be abolished in all instances as an unnecessary estate expense. However, half a loaf is better than none. Therefore, subdivision (c) is reasonable in view of present legislative realities.

Section 10502--Specific Independent Administration

Powers: In recognition of modern business practices, the Commission may wish to consider expansion of subdivision (b) (1) to include certificates of deposit (which are considered notes rather than deposits).

Section 10551--Actions Requiring Advice of Proposed

Action: The draftsman's recommendation of exempting the advice of proposed action for the selling or exchanging tangible personal property of an aggregate value of \$5,000 or less has merit from the standpoint of efficiency but could cause problems because the assets most likely to be sold under the power are furniture, furnishings and personal effects which beneficiaries often want preserved in an estate. In fact, it is these types of assets over which there are more disputes in probate than any other. A prudent fiduciary would not usually want to liquidate them without an advise to the beneficiaries

or, better yet, outright consent. Accordingly, the Executive Committee of the Estate Planning, Trust and Probate Law Section does not favor the granting of this power or its inclusion in the code.

Section 10554--Waiver of Advice of Proposed

Action: The Commission may wish to consider expansion of this section to permit a general waiver of advice of proposed action in addition to the waiver of a particular proposed action. This would permit a beneficiary to waive all advices during the course of the proceeding if the beneficiary did not wish to have the notices mailed to the beneficiary. There does not appear to be any reason for a public policy which prohibits a beneficiary from giving a general waiver of notices if the beneficiary wishes to do so.

Section 10556--Delivery and Mailing of Advice

of Proposed Action: The recommendation of the earlier Estate Planning, Trust and Probate Law Section team that 10 days notice be required is meritorious. Different notice periods should not be utilized in the code except in instances where there are compelling reasons because different notice periods invariably lead to faulty notices by attorneys who fail to double check the code in reliance upon the general 10 day rule.

Section 10560--Effect of Failure to Object to

Proposed Action: The example cited for the second exception

James V. Quillinan, Esq.  
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of subdivision (c) is not appropriate because a purchase by a personal representative of property of or claim against an estate is only voidable by any of the effected beneficiaries who has not consented to the purchase, and not a violation of a fiduciary duty if consented to or ratified. Perhaps a different example could be used, such as one where a personal representative intentionally violated a right of a beneficiary.

Section 10600--Judicial Council Form for Advice of Proposed Action: Mandatory use of a judicial council form may cause serious practical problems in estate administration. For example, what if an attorney in a small outlying community has not received a supply of updated judicial council forms and has an immediate requirement of an estate which requires that notices be sent. Should not the attorney be able to type a notice in substantial compliance with the code? Also, what if an attorney mistakenly uses an outdated judicial council form which says substantially the same thing as a current judicial form? Should the advice be ineffective? The answer in both instances is "no" and it is recommended that the section be deleted.

Section 10601--Form for Advice of Proposed Action: For the reasons set forth under Section 10600, it is recommended that the introductory clause to this section: "unless the judicial council prescribes a form for advice of proposed

James V. Quillinan, Esq.  
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action," be deleted. Presumably, a judicial council form would be in substantial compliance with Section 10601 and therefore be satisfactory.

Respectfully submitted,

*John S. by H. Paul Williams*

Minutes  
January 16-17, 1986

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**J. Earle Norris**  
Vice President and  
Senior Claims Counsel

January 10, 1986

Mr. John H. DeMouilly  
Executive Secretary  
California Law Revision Commission  
4000 Middlefield Road  
Suite D-2  
Palo Alto, CA 94303

Re: Study No. L-830 Tentative Recommendation  
Relating to Probate Law (Proration of  
Estate Taxes)

Dear Mr. DeMouilly:

Along with various other matters of legislation received by the California Land Title Association was the above-referenced Tentative Recommendation concerning the proration of estate taxes. That study was referred to the undersigned as Chairman of a Special Sub-committee of the CLTA Forms and Practices Committee.

I apologize that we could not send you our recommendations prior to November 15, 1985 as requested in the recommendation since the meeting of the full Committee of the Forms and Practices did not take place until December, 1985.

At the December meeting there was some concern discussed as to what effect an enactment of this sort may have on estate tax liens. For example, Section 971.060 indicates that if there is an extension for the payment of Federal Estate Tax both the tax and accruing interest thereon "shall be a charge against a specific property that gives rise to the extension". Obviously, our concern would be the insuring of a transfer of such property to a bonafide purchaser or encumbrancer without any record notice of such a tax lien or extension thereof.



Correspondence to John H. DeMouilly  
January 10, 1986  
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We would recommend that some language be placed in the Tentative Recommendation concerning the protection of bonafide purchasers for value or bonafide encumbrancers without notice. This might be coupled with additional proration language for the payment of such tax as to the residuary estate or to the heirs.

Thank you very much for your kind attention to this matter.

Very truly yours,

*J. Earle Norris*

J. Earle Norris

JEN:elm

cc: Robert Reyburn  
Clark Staves  
James Wickline  
Kenneth Cooley  
Members of the Subcommittee