

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

jd10
05/05/87

<u>Time</u>		<u>Place</u>
May 14 (Thursday)	3:00 p.m. - 7:00 p.m.	State Capitol
May 15 (Friday)	9:00 a.m. - 2:00 p.m.	Room 125 Sacramento

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Sacramento

May 14-15, 1987

1. Minutes of April 9-10, 1987, Meeting (sent 4/27/87)

2. Administrative Matters

1987 Legislative Program

Oral Report at meeting

Confidentiality of Communications Sent to Commission

Memorandum 87-39 (sent 4/30/87)

3. Study L - Probate Code - Assembly Bill 708 (as amended)

Generally

Memorandum 87-36 (enclosed)

Assembly Bill 708 (as amended) (attached to Memorandum)

Transitional Provisions

First Supplement to Memorandum 87-36 (enclosed)

4. Study L-830 - Proration of Estate Taxes

Memorandum 87-40 (enclosed)

5. Study L-655 - Inventory and Appraisal (Review of Comments on Tentative Recommendation)

Memorandum 87-28 (sent 4/23/87)
Revised Draft of Tentative Recommendation (attached to Memorandum)
First Supplement to Memorandum 87-28 (to be sent)

6. Study L-1038 - Abatement; Interest and Income Accruing During Administration

Memorandum 87-37 (sent 4/20/87)
Draft Statute (attached to Memorandum)

7. Study L-1040 - Public Guardian and Public Administrator (Review of Comments on Tentative Recommendation)

Memorandum 86-207 (sent 3/20/87)
Draft of Tentative Recommendation (attached to Memorandum)
First Supplement to Memorandum 86-207 (sent 4/30/87)

8. Study L-1027 - Accounts (Review of Staff Draft of Tentative Recommendation)

Memorandum 87-29 (sent 4/27/87)
Draft of Tentative Recommendation (attached to Memorandum)

Note. Memorandum 87-29 supersedes the following materials: Memorandum 87-1; First Supplement to Memorandum 87-1; Second Supplement to Memorandum 87-1; Third Supplement to Memorandum 87-1; Fourth Supplement to Memorandum 87-1.

9. Study L-1011 - Opening Estate Administration (Review of Comments on Tentative Recommendation)

Memorandum 86-201 (sent 1/21/87)
Draft of Tentative Recommendation (attached to Memorandum)
First Supplement to Memorandum 86-201 (sent 3/3/87)
Second Supplement to Memorandum 86-201 (sent 3/28/87)
Third Supplement to Memorandum 86-201 (sent 3/31/87)
Fourth Supplement to Memorandum 86-201 (sent 4/30/87)

10. Study H-408 - Uniform Dormant Mineral Interests Act

Memorandum 87-38 (sent 4/23/87)

11. Handbook of Practices and Procedures

Memorandum 87-21 (sent 3/20/87)
Draft of Handbook (attached to Memorandum)

Note. We will start at page 7 (Chapter Three -
Relationship With Legislature)

MEETING SCHEDULE

MAY 1987

14 (Thursday)	3:00 p.m. - 7:00 p.m.	Sacramento
15 (Friday)	9:00 a.m. - 2:00 p.m.	State Capitol

JUNE 1987

25 (Thursday)	3:00 p.m. - 7:00 p.m.	San Diego
26 (Friday)	9:00 a.m. - 3:00 p.m.	Viscount Hotel 1960 Harbor Island Drive (619) 291-6700

JULY 1987

23 (Thursday)	3:00 p.m. - 7:00 p.m.	Newport Beach
24 (Friday)	9:00 a.m. - 3:00 p.m.	

SEPTEMBER 1987

17 (Thursday)	3:00 p.m. - 7:00 p.m.	Los Angeles
18 (Friday)	9:00 a.m. - 3:00 p.m.	

OCTOBER 1987

15 (Thursday)	3:00 p.m. - 7:00 p.m.	Sacramento
16 (Friday)	9:00 a.m. - 2:00 p.m.	

NOVEMBER 1987

19 (Thursday)	3:00 p.m. - 7:00 p.m.	San Francisco
20 (Friday)	9:00 a.m. - 2:00 p.m.	

DECEMBER 1987

10 (Thursday)	3:00 p.m. - 7:00 p.m.	Newport Beach
11 (Friday)	9:00 a.m. - 3:00 p.m.	

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION
MAY 14-15, 1987
SACRAMENTO

A meeting of the California Law Revision Commission was held in Sacramento on May 14-15, 1987.

Law Revision Commission

Present: Arthur K. Marshall, Chairperson Edwin K. Marzec
 Roger Arnebergh Forrest A. Plant
 Bion M. Gregory Vaughn R. Walker

Absent: Elihu M. Harris, Member of Assembly
 Bill Lockyer, Member of Senate
 Ann E. Stodden, Vice Chairperson Tim Paone

Staff Members

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

Consultants Present

None

Other Persons Present

Edward V. Brennan, California Probate Referees' Association,
San Diego
Phyllis Cardoza, Beverly Hills Bar Association, Probate,
Trust and Estate Planning Section, West Los Angeles
James D. Devine, State Bar Estate Planning, Trust and Probate
Law Section, Monterey
Nancy E. Ferguson, California Probate Referees' Association,
Chico (May 15)
Louis F. Gianelli, California Probate Referees' Association,
Modesto (May 14)
Michael Harrington, California Bankers Association, San
Francisco
Arthur E. Levy, California Probate Referees' Association,
San Diego (May 14)
Valerie J. Merritt, Probate and Trust Law Section, Los
Angeles County Bar Association, Los Angeles
James Quillinan, Executive Committee, State Bar Estate
Planning, Trust and Probate Law Section, Mountain View
James R. Scannell, Public Administrator and Public Guardian,
San Francisco
Gerald L. Scott, California Probate Referees' Association,
San Jose (May 14)
James A. Willett, State Bar Estate Planning, Trust and
Probate Law Section, Sacramento (May 15)

ADMINISTRATIVE MATTERS

MINUTES OF APRIL 9-10, 1987, MEETING

The Minutes of the April 9-10, 1987, Meeting were approved, with the following correction:

On page 16, in the middle of the page, the reference to Section 21525 should be 21526.

SCHEDULE FOR FUTURE MEETINGS

The Commission considered the schedule for future meetings attached to the final agenda. The Commission decided that the meeting on Thursday, June 25, in San Diego, should run from 10:00 a.m. to 6:00 p.m. The December 10 and 11 meeting originally scheduled for Newport Beach should be rescheduled for Monterey. As so revised, the future meeting schedule is set out below.

JUNE 1987

25 (Thursday)	10:00 a.m. - 6:00 p.m.	San Diego
26 (Friday)	9:00 a.m. - 3:00 p.m.	Viscount Hotel 1960 Harbor Island Drive (619) 291-6700

JULY 1987

23 (Thursday)	3:00 p.m. - 7:00 p.m.	Irvine
24 (Friday)	9:00 a.m. - 3:00 p.m.	Airporter Inn Hotel 18700 MacArthur Blvd. (800) 432-7018

SEPTEMBER 1987

17 (Thursday)	3:00 p.m. - 7:00 p.m.	Los Angeles
18 (Friday)	9:00 a.m. - 3:00 p.m.	

OCTOBER 1987

15 (Thursday)	3:00 p.m. - 7:00 p.m.	Sacramento
16 (Friday)	9:00 a.m. - 2:00 p.m.	

NOVEMBER 1987

19 (Thursday)	3:00 p.m. - 7:00 p.m.	San Francisco
20 (Friday)	9:00 a.m. - 3:00 p.m.	

DECEMBER 1987

10 (Thursday)	3:00 p.m. - 7:00 p.m.	Monterey
11 (Friday)	9:00 a.m. - 3:00 p.m.	

LEGISLATIVE PROGRAM

The Executive Secretary made the following report on the 1987 legislative program.

Approved by Policy Committee in Second House

Assembly Bill 362 (Urgency Trust Bill) (Harris) (Approved by Senate Judiciary Committee and sent to Senate Floor on May 5; bill as approved by Committee includes a technical amendment relating to notice and may have additional amendments added to it relating to family law and proration of estate taxes before it is approved in the Senate)

Passed First House

Senate Concurrent Resolution 12 (Continues Authority to Study Previously Authorized Topics) (Lockyer)

Assembly Concurrent Resolution 42 (Authorizes Study of Administrative Law) (Harris)

Approved by Policy Committee in First House

Assembly Bill 708 (Comprehensive Probate Bill) (Harris) (Bill amended on April 23) (on consent calendar) (additional amendments needed but cannot be made until bill has passed Assembly)

1987-88 BUDGET

Approved by Subcommittees in Assembly and Senate

CONFIDENTIALITY OF COMMUNICATIONS SENT TO COMMISSION

The Commission considered Memorandum 87-39, relating to the confidentiality of communications sent to the Commission. The Commission discussed a number of concepts, including honoring requests for confidentiality and informing persons of the option to keep communications confidential. The Legislative Counsel suggested that confidentiality might be possible through an exception in the Public Records Act for confidential communications that might be privileged under Evidence Code Section 1040. The Commission asked the staff to explore this approach, and to work on a policy statement that would protect confidentiality where appropriate, if possible to do so.

STUDY H-408 - UNIFORM DORMANT MINERAL INTERESTS ACT

The Commission considered Memorandum 87-38, relating to the Uniform Dormant Mineral Interests Act. The Commission requested the staff to prepare for its review a draft tentative recommendation for adoption of the uniform act in California.

STUDY L - ASSEMBLY BILL 708

The Commission considered Memorandum 87-36 and the First Supplement thereto, presenting the latest amended version of AB 708, setting out the next set of proposed amendments, and discussing operative date and transitional provisions. The Commission also considered a letter from State Bar Study Team No. 1 (memorandum attached to these Minutes as Exhibit 1). The Commission approved the proposed amendments, with the following changes.

Section 6247 (statutory will form)

The version of subdivision (d) of Probate Code Section 6247 attached to Memorandum 87-36 should be replaced by a new subdivision (d) that reads:

(d) A California statutory will does not fail to satisfy the requirement of subdivision (a) merely because the will is executed on a form that incorporates the mandatory clauses of Section 6246 that refer to former Section 1120.2. If the will incorporates the mandatory clauses with a reference to former Section 1120.2, the trustee has the powers listed in Article 2 (commencing with Section 16220) of Chapter 2 of Part 4 of Division 9.

Section 9645 (transitional provision for estate management)

Section 9645, as set out on pages 2 and 3 of the First Supplement to Memorandum 87-36, should be revised as follows:

(1) Subdivision (a)(1) should be deleted and its substance incorporated into the body of Section 9645.

(2) Subdivision (a)(2) should be revised to refer to the applicable law in effect before July 1, 1988.

(3) Subdivision (c) should be revised to delete the phrase "with the effective conduct of the matter or".

Section 21501 (transitional provision for marital deduction gifts)

This provision should be rewritten to apply new law to any distribution made on or after January 1, 1988, and old law to any distribution made before January 1, 1988. The Commission was also

concerned about the possibility of partial distributions under old law and new law, and any inequity that might result. In rewriting this provision the staff should give some thought to this problem, and perhaps consult with Mr. Mills.

Conforming Changes

The staff should draft a section that applies appropriate operative dates to the conforming changes. After the Commission has reviewed the section a decision will be made whether the section should be codified or uncodified.

STUDY L -- SCHEDULE FOR COMPLETION OF PROBATE CODE REVISION

The Commission discussed its progress on the Probate Code study and its schedule for completion of work. The Commission decided to try to complete work disposing of current Division 3 (decendent estate administration) for the 1988 legislative session and to complete work on the new Probate Code, including conforming revisions in the Probate Code and in other codes, for the 1989 legislative session.

STUDY L-636 -- OPENING ESTATE ADMINISTRATION -- NO CONTEST CLAUSES

Chairman Marshall stated that he had received a letter from the Commission's consultant Professor Russell Niles concerning no contest clauses in wills. The Chairman summarized the letter, which raises the possibility of liberalizing the standard for enforcement of a no contest clause, and noted that the letter concludes with a request for the Chairman's reaction to the letter. The Executive Secretary stated that the purpose of the letter was to see whether it might be worthwhile for the consultant to undertake a study of this matter.

The Commission decided to agendize this question for discussion at its next meeting.

STUDY L-655 -- INVENTORY AND APPRAISAL

The Commission considered Memorandum 87-28 and the First Supplement thereto, reviewing comments on the inventory and appraisal tentative recommendation. The Commission also considered comments of State Bar Team 1 distributed at the meeting (memoranda attached to these Minutes as Exhibits 2 and 3) and heard a presentation by Louis F.

Gianelli on behalf of the California Probate Referees Association that the Association does not support a \$250 limitation on the appraisal fee for publicly traded stock. The Commission made the following decisions concerning the inventory and appraisal recommendation. The staff should implement these decisions promptly, and send drafts to the probate referees and the State Bar for careful and detailed review, with the object of final approval of the draft for printing at the July 1987 meeting.

§ 8903. Waiver of appraisal by probate referee

The technical clarifications suggested by State Bar Team 1 for this section were adopted. The Comment should point out that the waiver petition may be made at any time, including at the time of a petition for final distribution, provided other statutory requirements are satisfied (i.e., inventory has not been delivered to probate referee and proposed appraisal included with petition).

§ 8904. Appraisal by independent expert

This section should apply to "artistic" as well as unique, unusual, and special items of tangible personal property. The procedure should be revised to provide that the personal representative notifies the probate referee that the personal representative plans to have an independent expert appraise property. The probate referee should have an opportunity to object and have a court resolution. The staff should consider what fee is appropriate for the referee for this review function. The fee might be fixed at the time of the court ruling on the probate referee's objection.

§ 8906. Fee for appraisal by personal representative

There might be language added to the Comment to clarify that estate tax work (as distinguished from appraisals used for estate tax purposes) is not ineligible for extraordinary compensation. Alternatively or additionally, this might be made clear by relocating the section to the provisions governing personal representative and attorney fees. A Note should be added to that effect.

§ 8907. Appraisal report, backup data, and justification of appraisal

In subdivision (a), the phrase "subject to a statutory provision for confidentiality" was replaced by the phrase "if the information is required by law to be confidential." The Comment should refer to statutory confidentiality requirements, if readily available.

§ 8908. Retention of records by probate referee

References in this section to "information" should be replaced by "reports and data."

§ 8920. Designation by court

The reference in this section to failure to designate a person appointed for the county should be more adequately integrated with the provisions enabling the court to designate a probate referee in another county in appropriate cases. The Comment should cross-refer to the provisions governing designation of a probate referee for reappraisal of property to be sold.

§ 8922. Discretion not to designate person as probate referee

The Comment should include a reference to a slow or overworked probate referee as illustrative of the type of situation this section might apply to, and should note that these illustrations are given by way of example.

§ 8923. Disqualification of probate referee

The reference in subdivision (a) to the clerk should be to the court clerk. The staff should make a note to deal, possibly in a general way, with the problem of assistant clerks. Subdivision (c) should be revised along the lines set out in the Note, and possibly divided into two subdivisions without paragraphs.

§ 8924. Removal of probate referee

Subdivision (a)(2) should be redrafted as set out in the Note, with the inclusion of the requirement that the peremptory removal right may only be exercised before the personal representative delivers the inventory to the probate referee.

§ 8940. Time required for appraisal or status report

Subdivision (b) should require an appraisal or status report within 60, rather than 90, days. Subdivision (b)(1) should refer to a "completed" appraisal.

§ 8941. Hearing and order

A new subdivision (c)(5) should be added authorizing the court to make "such other orders as are appropriate." The Comment should cross-refer to the general provisions on notice and particularly the provision that excuses a petitioner from giving notice to himself or herself.

§ 8962. Limitation on commission and expenses for publicly traded stock

After extensive discussion of the concept of allowing the personal representative to appraise publicly traded stock, of the financial impact of a \$250 cap, of the philosophy of balancing out easy and hard appraisals, of the politics of the situation, and after discussion of other relevant factors and after hearing the views of the State Bar and the probate referees, the Commission decided to recommend the \$250 cap. The cap should be limited to securities traded on the New York, American, and Pacific stock exchanges.

§ 8964. Division of commission between referees

This section should include a reference to "participating" in an appraisal.

STUDY L-830 — PRORATION OF ESTATE TAXES

The Commission considered Memorandum 87-40, relating to proration of estate taxes. The Commission revised draft Section 20114.5 as set out in the memorandum to read:

20114.5. (a) As used in this section:

(1) A reference to Section 4981 of the Internal Revenue Code means Section 4981 enacted by Section 1133(a) of the Tax Reform Act of 1986, Public Law 99-514.

(2) "Excess retirement accumulation" has the meaning given it in Section 4981(d)(3) of the Internal Revenue Code.

(b) If the federal estate tax is increased under Section 4981(d) of the Internal Revenue Code, the amount of the increase shall be a charge against the persons who receive the excess retirement accumulation that gives rise to the increase, and shall be equitably prorated among all persons who receive interests in qualified employer plans and individual retirement plans to which the excess retirement accumulation is attributable.

This version of the section should be added to AB 362 before it is enacted, if practical. If not practical, the original version should be left in AB 352 and this version should be included in AB 708.

STUDY L-1040 — PUBLIC GUARDIAN AND PUBLIC ADMINISTRATOR

The Commission considered Memorandum 86-207 and the First and Second Supplements thereto, reviewing comments received on the public guardian and public administrator tentative recommendation. The Commission also considered memoranda distributed at the meeting from Len Pollard of the State Bar Executive Committee (attached to these

Minutes as Exhibit 4) and from James R. Scannell, the San Francisco Public Guardian and Public Administrator (attached to these Minutes as Exhibit 5). The Commission made the following decisions concerning the tentative recommendation.

§ 2900. Creation of office

The 1986 legislation set out in the Note should be added to this section, and the section should be combined with Section 2901 and relocated to the Government Code.

§ 2901. Termination of office

This section should be combined with Section 2900 and relocated to the Government Code.

§ 2902. Public administrator as public guardian

This section should be relocated to the Government Code.

§ 2903. Termination of public administrator as public guardian

This section should be relocated to the Government Code.

§ 2904. Termination of public guardian and appointment of public administrator.

This section should be relocated to the Government Code.

§ 2907. Advance on expenses of public guardian

The phrase "as soon as and to the extent that such funds become available" was added at the end of subdivision (a).

§ 2920. Taking possession or control of property

This section should be applicable where the public guardian determines that a particular case satisfies the criteria for guardianship and conservatorship and intends to petition for guardianship or conservatorship, along the lines suggested in Mr. Scannell's memorandum (Exhibit 5), but should not be dependent on a "referral". The statute should authorize the public guardian to make a certificate as provided in Mr. Scannell's draft, but the effectiveness of the certificate should be limited to 5 days. In this connection the staff should review the general bank statute and possibly conform it, depending on the purposes it serves. The staff should check to see that the statutes are clear that the public guardian's fee under this section will be approved by the court in the successor guardianship.

§ 2921. Application for appointment

This section should be limited to the situation where there is no other qualified and willing person whose appointment as guardian or conservator would be in the best interest of the conservatee. The Comment should include the example of the need for a neutral party because of family disputes. This section should provide an immunity to the public guardian, similar to that provided the public administrator, for property the public guardian is unable to get possession or control of. The staff should attempt to devise a procedure whereby the appointment of the public guardian is done at time the court orders the public guardian to apply for appointment, without the need for a separate notice and hearing for this purpose.

§ 2922. Persons under jurisdiction of Departments of Mental Health or Developmental Services

In connection with its consideration of this section, the Commission directed the staff to attempt to devise a "summary procedure" to enable the public guardian to take single or limited protective actions, short of appointment as temporary guardian or conservator. This should be done as a separate project, and not part of the current public guardian and conservator statute revision.

§ 2942. Disposition of property on death of ward or conservatee

This section should be revised to authorize public guardian action to dispose of the ward's or conservatee's property if the estate is less than \$10,000. This authority should be extended to expenses and charges "accruing before or after the death of the ward or conservatee."

§ 2943. Expenses of public guardian

Subdivision (c) should refer to a "bond fee" rather than to a "share of the cost of the public guardian's official bond". The bond fee in this section should be inapplicable to estates of persons who meet the SSI eligibility requirements.

§ 2944. Inventory and appraisal of estate

This section should be revised to provide that if the public guardian files an inventory and appraisal showing that the total guardianship or conservatorship estate (including cash) is less than \$10,000, a probate referee appraisal is not necessary.

§ 7601. Assistant or deputy public administrator

This section should be relocated to the Government Code.

§ 7620. Report of public officer or employee

This section should be clarified to refer to any public officer or employee who is aware of the situation, in order to avoid the implication that there is one officer or employee responsible for reporting.

§ 7621. Authority of public administrator

The headline of this section was revised to refer to the "duty" of the public administrator. General notice provisions, including provisions for shortening time, should be incorporated in this section. Subdivision (b) was revised to refer to property beyond "the ability" of the public administrator to obtain possession or control.

§ 7622. Search for property, will, and instructions for disposition of remains

Subdivision (a) was revised to provide that the public administrator "shall make a prompt search" for a will, other property, and disposition instructions.

§ 7623. Providing information and access

This provision should parallel the provisions governing public guardians, including the use of an appropriate "certificate".

§ 7624. Costs and fees for taking possession or control of property

The staff should check to make sure that the procedures for court approval of fees are adequate, and perhaps cross-referenced in the Comment.

§ 7640. Authority of public administrator

This section should be coordinated with the statutory priority for appointment as administrator.

§ 7641. Appointment of public administrator

This section should incorporate the general notice provisions. Subdivision (d) should refer to a "bond fee" rather than to a "share of the cost of the public administrator's official bond", parallel to the public guardian provisions governing the bond fee.

§ 7645. Expiration of term of office

This section should be revised to provide that when the public administrator leaves office, the public administrator does not continue to function privately in pending estates, but pending estates are left to the successor public administrator. Mr. Scannell will check to see whether this change could impact funding of any existing public administrators.

§ 7681. Liquidation of assets

The Comment to this section should elaborate the fact that a real property sale under summary disposition authority is subject to court supervised sale procedures.

§ 7682. Payment of debts

A sentence should be added to this section precluding contribution for late claims by creditors that have already been paid.

§ 7685. Public administrator's statement of disposition

The holding period for records under this section should be extended from two years to three.

APPROVED AS SUBMITTED _____

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

Date

Chairperson

Executive Secretary

R E P O R T

TO: JAMES V. QUILLINAN
LLOYD W. HOMER
D. KEITH BILTER
CHARLES A. COLLIER, JR.
JAMES D. DEVINE
IRWIN D. GOLDRING
JAMES C. OPEL
THE EXECUTIVE COMMITTEE IN GENERAL

FROM: WILLIAM V. SCHMIDT, STUDY TEAM NO. 1

DATE: MAY 12, 1987

RE: FIRST SUPPLEMENT TO MEMORANDUM 87-36

SUBJECT: REPORT OF STUDY TEAM NO. 1 on STUDY L-PROBATE
CODE-ASSEMBLY BILL 708 (Transitional Provisions)

Study Team No. 1 had a conference call on May 11, 1987, between Charles A. Collier, Jr. and William V. Schmidt.

We have the following comments:

Chapter 22. Notices (§§ 1200-1265).

New proposed Section 1200(d) is satisfactory. Since Notices is procedural in nature, it makes sense for the new notice provisions to apply to all pending proceedings where the notice to be given was delivered, mailed, posted or first published after the July 1, 1988 effective date. This eliminates possible confusion in the minds of attorneys and judges if the new rules did not apply to probate proceedings commenced prior to July 1, 1988. Thereafter, two different sets of procedural provisions affecting notices would otherwise exist.

Part 4. Creditor Claims (§§ 9000-9304).

We have no strong objection to new proposed Section 9004. However, we wonder about the statement that the creditor claims provisions are highly procedural in character. If they are primarily procedural, rather than substantive, then perhaps the same concept adopted for notices above, and for estate management below, should apply.

Part 5. Estate Management (§§ 9600-10382).

New proposed Section 9645 is basically satisfactory. We wonder about the last portion of subdivision (c), which would make an exception if the court determines that the application of a particular provision would substantially interfere with the effective conduct of the matter or with the rights of the parties. Perhaps this Section is worthwhile to allow the court to exercise its discretion, but it also opens the door for challenge and prevents the finality that otherwise might be desired. We basically feel that where the provisions involved are primarily procedural, that they should apply, after the effective date, to all proceedings to avoid having two different sets of provisional provisions running concurrently.

Part 6. Independent Administration of Estates (§§ 10400-10600).

These provisions are satisfactory.

Part 9. Payment of Debts (§§ 11400-11446).

Since the substantive changes in the law are not substantial as the memorandum indicates, we agree that the

new provisions should apply to any proceeding commenced on or after July 1, 1988, even if the death occurred prior to that time. However, we are not sure why the payment of debts is treated any differently than the estate management provisions and why they should not be subject to the new law if such payment occurs after the effective date of the new law, regardless of when the proceedings were commenced. We acknowledge the "few changes that are arguably substantive in nature" set forth in the second sentence, which may well be sufficient reason to support the staff recommendation. We do not feel strongly either way here.

Division 11. Construction of Wills, Trusts, and Other Instruments (§§ 21100-21541).

We wonder whether the January 1, 1983 date contained in Section 21501(a) should not be retained. Would we not be creating a five year gap between 1983 and 1988 if we changed the date to January 1, 1988? It is also not clear to us why retention of the old date would require the reopening of estates settled in that five year period, but time restraints has prevented us from giving as much thought to this matter as the staff has undoubtedly given.

Conforming Changes

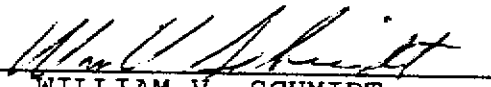
We realize that codifying these transitional rules may be cumbersome and may clutter the law for years to come, but we feel that it is highly desirable. The proposed uncodified listing of operative dates may not be readily available to those judges and attorneys who rely primarily upon the code.

Such a list may well not be picked up by publishers and printers of the code. In this situation, it seems to us that the convenience of the many judges and attorneys throughout the State of California who will be frequently dealing with these problems and who will be relying primarily on the Probate Code outweighs the one time burden placed upon the staff (and perhaps partially placed upon us).

Respectfully submitted,

STUDY TEAM NO. 1

By:


WILLIAM V. SCHMIDT,
Captain

R E P O R T

TO: JAMES V. QUILLINAN
LLOYD W. HOMER
D. KEITH BILTER
CHARLES A. COLLIER, JR.
JAMES D. DEVINE
IRWIN D. GOLDRING
JAMES C. OPEL
THE EXECUTIVE COMMITTEE IN GENERAL

FROM: WILLIAM V. SCHMIDT, STUDY TEAM NO. 1

DATE: MAY 12, 1987

RE: FIRST SUPPLEMENT TO MEMORANDUM 87-28

SUBJECT: REPORT OF STUDY TEAM NO. 1 (STUDY L-655) INVENTORY
AND APPRAISAL (REVIEW OF COMMENTS ON TENTATIVE
RECOMMENDATION); New Estate and Trust Code §§
400-453 and 8800-8963

Study Team No. 1 had a conference call on May 11, 1987, between Charles A. Collier, Jr. and William V. Schmidt.

The written First Supplement was received by Charles A. Collier, Jr. but not by William V. Schmidt who, in preparing this report, is relying upon the information furnished to him by Charles A. Collier, Jr. during the conference call and statements made during the last meeting of the Executive Committee in San Diego.

We understand that we are to reply to a proposed cap of \$250.00 as compensation to the Probate Referee for appraising publically traded stocks. In other words, we understand that the referee would not be compensated for appraising in excess of \$250,000 of publically traded stocks.

First and foremost, we would like to say as a matter of policy, that we believe the entire matter of the probate referee and his compensation and duties have been reviewed and discussed over the past several years and that the proposed changes of the new code relating thereto are satisfactory to our section, and we believe satisfactory to the probate referees. To change them now by this proposed cap for their compensation would perhaps, or should perhaps, reopen the entire subject of their duties and their compensation, which we feel is not in the best interest of the public, the referees, or the bar. However, assuming that the commission feels that this compensation cap is appropriate for further study, we will devote the remainder of this report to a discussion of "publically traded stock" and publically traded securities.

We feel that there are certain types or levels and that it may be best to approach this study by looking at those types or levels of publically traded stock. The first level would be stock that is regularly traded each working day on a major stock exchange such as the New York Stock Exchange, the American Stock Exchange and perhaps other stock exchanges of major cities or major regional areas such as the Boston, Philadelphia and the Pacific Stock Exchange. The stocks on these exchanges are traded frequently and reports of their activity are regularly published and readily available.

A second category would be those stocks traded over the counter. Here the value is more speculative as they are not

traded each day, and it is more difficult to ascertain the value of these stocks.

A third category would be bonds, which may be included within the word "securities", which is a broader word than "stocks". Bonds also fall into at least two categories. Quotations for U.S. Treasury Bonds seem to be readily available in the financial section of major newspapers. Corporate bonds, as well as state, municipal and other types of bonds, may be more difficult to find in the financial pages.

Mutual funds are another category. These are neither stocks nor bonds but are regularly listed in the financial section of major newspapers. Their values are not difficult to ascertain.

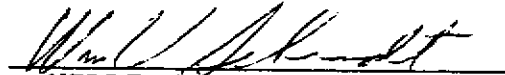
In summary, we would like to point out that there are many levels or types of stocks, bonds and securities. If the commission desires to put a cap on the compensation of the referee for the appraisal of some of these, we would urge that the new law make it very clear which types or levels are included and which types or levels are excluded. In our opinion, the great majority of the securities we deal with are listed on the New York Stock Exchange. For that reason, we feel that if the commission wishes to place a compensation cap on the referee for appraising "publically traded stocks", it should do so by defining publically traded stocks as those traded on the New York Stock Exchange and the American Stock Exchange. Since we live in California, we may wish to

include the Pacific Stock Exchange. However, I note from the financial section of the May 12, 1987 edition of the Los Angeles Times that only 51 stocks were listed for this Exchange. All others were reported as being already listed on the New York or American Stock Exchange.

Respectfully submitted,

STUDY TEAM NO. 1

By:


WILLIAM V. SCHMIDT,
Captain

R E P O R T

TO: JAMES V. QUILLINAN
LLOYD W. HOMER
D. KEITH BILTER
CHARLES A. COLLIER, JR.
JAMES D. DEVINE
IRWIN D. GOLDRING
JAMES C. OPEL
THE EXECUTIVE COMMITTEE IN GENERAL

FROM: WILLIAM V. SCHMIDT, STUDY TEAM NO. 1

DATE: MAY 12, 1987

SUBJECT: REPORT OF STUDY TEAM NO. 1 on LRC MEMO 87-28 (STUDY L-655) INVENTORY AND APPRAISAL (REVIEW OF COMMENTS ON TENTATIVE RECOMMENDATION); New Estate and Trust Code §§ 400-453 and 8800-8963

Study Team No. 1 had a conference call on May 11, 1987. Only Charles A. Collier, Jr. and William V. Schmidt participated.

We note that the proposed code sections for this Memorandum are the same code sections covered in Memorandum 87-10. We are happy to see that several of our comments in regard to Sections 400-453 and 8800-8901 have been incorporated into those sections as presented in Memorandum 87-28.

In regard to Sections 8902-8963, our comments are the same as those set forth in our Report on Memorandum 87-10, which are set forth below:

Section 8902: It is our intention to bring a question of appraisal of checks and other cash equivalents before the

Executive Committee at its April 4, 1987, meeting. We feel that the referee should appraise accounts receivables and publically traded stock.

Section 8903: We are concerned that the first sentence of subsection (b) seems to imply that a probate referee must be appointed because it refers to the time that the personal representative delivers the inventory to the referee. In Los Angeles and other counties, a referee may never be appointed if the appointment procedure requires affirmative action on behalf of the personal representative. Perhaps this sentence should be qualified to apply only where a referee has been appointed.

We suggest that the words "whose interests are affected by the waiver" be added to subsection (c)(2). If the concept applies to devisees under (c)(1), then it should apply to heirs in an intestate estate as well. An example would be a situation where an heir had already received his or her intestate share prior to the time the personal representative applies for the waiver.

We do not understand the words "notwithstanding Section 8901" in subsection (d). It seems confusing to us. Would not the sentence be satisfactory if these words were deleted?

Section 8904-8906: Satisfactory.

Section 8907: We are concerned with the second sentence in subsection (a). We are not sure what type of information and under what circumstances a referee might receive information subject to a statutory provision for

confidentiality. We are concerned that referees might assert confidentiality in failing to disclose information in many cases which were not intended by this statute. We are, however, unclear as to what is exactly intended by this language.

Section 8908: Satisfactory.

Sections 8920-8922: Satisfactory.

Sections 8923: Subsection (c) is difficult to read, and we wonder if it cannot be drafted in a manner which makes it easier to read and understand.

Sections 8924: The words "shall be mailed" in the last sentence to subsection (a)(1) are in error and should be deleted. We are also concerned about the language of subsection (a)(2). We feel that that could be reworded to read more smoothly. We also feel that the word "demand" or the words "demands removal" are perhaps inappropriate and perhaps too harsh. We prefer words something along these lines: "The personal representative shall have the right to remove the first probate referee who is designated by the court, regardless of cause. This removal shall be made by an affidavit or declaration under penalty of perjury filed with the court with a copy mailed to the probate referee. Thereupon, the court shall remove the probate referee without any further act or proof."

Section 8940: We wonder whether subsection (b)(1) should read "Return the completed appraisal to the personal representative." It would serve no purpose for the referee

to be able to return an uncompleted or partially completed appraisal to the personal representative. We note that the word "complete" is used in subsection (b)(2).


Section 8941: We feel that subsection (a) is somewhat ambiguous. There is no need to have a Notice of Hearing served on the personal representative if he or she is the petitioner or on the probate referee if he or she is the petitioner.

Sections 8960-8963: Satisfactory.

Respectfully submitted,

STUDY TEAM NO. 1

By:


WILLIAM V. SCHMIDT,
Captain

To: Jim Quillinan

From: Len Pollard

Date: May 12, 1987

Re: LRC Memo 86-207 - First Supplement to Memorandum

COMMENTS BY HARRY DRABKIN

Overall no real objections to comments.

Section 2920 - Agree with staff, public guardian should only take referrals.

Section 2921 - Staff misconstrued Drabkin's comments. Public guardian should always get 15 days notice. Drabkin's thought is that if public guardian appointed after hearing and 15 days, then why file a petition for the public guardian to act. (I think the formality of formal petition should be followed).

Section 2922 - No knowledge on whether it is obsolete. The "summary conservatorship" comment is interesting. It would be helpful to have a summary estate proceeding like a P.C. Section 3200 proceeding for medical treatment of adults without conservator (i.e., for financial matters, simply get authorization to conduct transactions such as spending down limited assets to meet Medi-cal eligibility requirements.

Section 2942 - May be a good idea to have public guardian liquidate conservatorship assets, and pay out pending bills rather than setting up a separate summary probate estate under P. C. 1143.

Section 2944 - Agree with staff on existing proposal.

Section 7665 - I agree it would be convenience to have the financial institution notify the presiding judge if the public administrator has money in the bank which is not moved in five (5) years.

cc: Chuck Collier
Jim Devine
Jim Opel
Irv Goldring

When the Public Guardian has received a (proper) referral which appears to meet the criteria for conservatorship or guardianship and the Public Guardian intends to petition the Superior Court for conservatorship or guardianship, the Public Guardian or his/her designee may act to protect any property in imminent danger or loss, destruction or waste, either by the proposed conservatee or ward or any other person.

In furtherance thereof, the Public Guardian or his designee shall deliver to any person, bank, corporation, or other financial institution written certification that there are reasonable grounds to believe that a conservatorship or guardianship, of the named person, will be petitioned for and that any assets held in the (sole) name of the proposed conservatee or ward is in imminent danger or loss, destruction or waste, either by the proposed conservatee/ward or by another person. The Public Guardian ^{CAN RECORD} (may (file)) a copy of this written certification with the County Recorder's Office when the potential conservatee/ward owns real property within the County.

The Public Guardian must file within a reasonable amount of time, a petition for Special Letters of Conservatorship as outlined in Sections 2250 to 2258.

The receipt of the written certification provided by this Section shall constitute sufficient acquittance for granting access to the potential conservatee/ward, financial information, or protecting said assets and shall fully discharge the

person, the bank, corporation or other financial institution or the County Recorder from any liability for granting such access or for any other act or omission of the Public Guardian with reference thereto, without the necessity of inquiring into the truth of any of the facts stated in the certificate.