

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

jd10
09/10/87

| <u>Time</u> | | <u>Place</u> |
|---------------------|--|-------------------------------|
| Sept. 17 (Thursday) | 10:00 a.m. - 6:00 p.m. | State Bar Building |
| Sept. 18 (Friday) | 9:00 a.m. - 2:00 p.m. | 818 West 7th |
| | (Meeting will continue without a break for lunch on Friday Sept. 18) | Los Angeles (213) 689-6200 |

REVISED FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Los Angeles

September 17-18, 1987

1. Minutes of July 23-24, 1987, Meeting (sent 8/28/87)

2. Administrative Matters

Schedule for Future Meetings

Request of Commissioner Marzec that meetings be rescheduled

1987 Legislative Program

Oral Report at meeting

Confidentiality of Communications to Commission

Memorandum 87-76 (sent 8/31/87)

3. Study L-1058 - Filing Fees in Probate

Memorandum 87-84 (sent 9/3/87)

4. Study L-1025 - Form of Notice to Creditors

Memorandum 87-85 (sent 9/3/87)

5. Study L-655 - Inventory and Appraisal (Review of Revised Provisions Before Approval for Printing)

Memorandum 87-67 (sent 8/14/87)
Revised Provisions (attached to Memorandum)

6. Study L-1040 - Public Guardian and Public Administrator (Review of Revised Provisions Before Approval for Printing)

Memorandum 87-68 (sent 8/14/87)
Revised Provisions (attached to Memorandum)
First Supplement to Memorandum 87-68 (sent 9/3/87)

7. Study L-1038 - Interest and Income Accruing During Administration (Approval of Tentative Recommendation for Distribution for Comment)

Memorandum 87-69 (sent 9/4/87)
Draft of Tentative Recommendation (attached to Memorandum)

8. Study L-3010 - Corporate Trustee Fees

Memorandum 87-70 (sent 8/28/87)
First Supplement to Memorandum 87-70 (sent 8/31/87)
Second Supplement to Memorandum 87-70 (sent 9/4/87)
Third Supplement to Memorandum 87-70 (to be distributed at meeting)

9. Study L-643 - Punitive Damages for Breach of Trust

Memorandum 87-66 (sent 9/8/87)
Draft of Tentative Recommendation (attached to Memorandum)

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

Memorandum 87-75 (sent 8/21/87)
Draft of Recommendation (attached to Memorandum)

11. Study L-1029 - Distribution and Discharge (Review of Comments on Tentative Recommendation)

Memorandum 86-203 (sent 6/2/87)
Draft of Tentative Recommendation (attached to Memorandum)

12. Study L-1046 - Nonresident Decedent (Review of Comments on Tentative Recommendation)

Memorandum 86-204 (sent 6/2/87)
Draft of Tentative Recommendation (attached to Memorandum)
First Supplement to Memorandum 86-204 (sent 7/9/87)
Second Supplement to Memorandum 86-204 (sent 8/21/87)

13. Study L-1033 - Determining Class Membership (Review of Comments on Tentative Recommendation)

Memorandum 86-205 (sent 5/20/87)
Draft of Tentative Recommendation (attached to Memorandum)
First Supplement to Memorandum 86-205 (sent 7/14/87)

14. Study L-2006 - Miscellaneous Provisions of Division 3

Memorandum 87-63 (sent 7/9/87)
Draft Statute (attached to Memorandum)

15. Study L-940 - Substitution and Delegation of Powers of Fiduciaries

Memorandum 87-77 (sent 8/14/87)

16. Study L-636 - No Contest Clause

Memorandum 87-44 (sent 6/2/87)
First Supplement to Memorandum 87-44 (sent 7/30/87)

17. Study L-1060 - Multiple Party Accounts (Review of Staff Draft of Tentative Recommendation)

Memorandum 87-51 (sent 9/8/87)
Draft of Tentative Recommendation (attached to Memorandum)

18. 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

Note. The Commission will meet until 2:00 p.m., without a break for lunch, on Fridays.

SEPTEMBER 1987

| | | |
|---------------|------------------------|--|
| 17 (Thursday) | 10:00 a.m. - 6:00 p.m. | Los Angeles |
| 18 (Friday) | 9:00 a.m. - 2:00 p.m. | State Bar Building 818 West 7th (213) 689-6200 |

OCTOBER 1987

| | | |
|---------------|------------------------|------------|
| 15 (Thursday) | 10:00 a.m. - 6:00 p.m. | Sacramento |
| 16 (Friday) | 9:00 a.m. - 2:00 p.m. | |

NOVEMBER 1987

| | | |
|---------------|------------------------|---------------|
| 19 (Thursday) | 10:00 a.m. - 6:00 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. | Monterey |
| 11 (Friday) | 9:00 a.m. - 2:00 p.m. | |

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION
SEPTEMBER 17-18, 1987
LOS ANGELES

A meeting of the California Law Revision Commission was held in Los Angeles on September 17-18, 1987.

Law Revision Commission

Present: Ann E. Stodden, Chairperson
Forrest A. Plant, Vice Chairperson Edwin K. Marzec
Roger Arnebergh Vaughn R. Walker
Arthur K. Marshall (Sept. 18)

Absent: Elihu M. Harris, Member of Assembly Bion M. Gregory
Bill Lockyer, Member of Senate Tim Paone

Staff Members

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

Consultants Present

None

Other Persons Present

Charles Collier, State Bar Estate Planning, Trust and
Probate Law Section, Los Angeles
Nancy E. Ferguson, California Probate Referees' Association,
Sacramento (Sept. 18)
Michael Harrington, California Bankers Association, San
Francisco (Sept. 18)
Valerie J. Merritt, Los Angeles
L. Bruce Norman, California Bankers Association, Los Angeles
(Sept. 18)
Kenneth Petrulis, Beverly Hills Bar Association, Probate,
Trust and Estate Planning Section, Beverly Hills
James Quillinan, State Bar Estate Planning, Trust and
Probate Law Section, Mountain View
Michael Whalen, Los Angeles County Bar Association, Probate
and Trust Law Section, Los Angeles

ADMINISTRATIVE MATTERS

MINUTES OF SEPTEMBER 17-18, 1987, MEETING

The Minutes of the September 17-18, 1987, Meeting were approved as submitted by the staff.

SCHEDULE FOR FUTURE MEETINGS

Future meetings are scheduled as set out below. On the Friday meetings, the Commission will meet until 2:00 p.m. without taking a break for lunch.

OCTOBER 1987

| | | |
|---------------|------------------------|-------------------------|
| 22 (Thursday) | 10:00 a.m. - 6:00 p.m. | State Capitol, Room 125 |
| 23 (Friday) | 9:00 a.m. - 2:00 p.m. | Sacramento |

NOVEMBER 1987

| | | |
|---------------|------------------------|---------------|
| 19 (Thursday) | 10:00 a.m. - 6:00 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. | San Jose |
| 11 (Friday) | 9:00 a.m. - 2:00 p.m. | |

NOTICE OF MEETINGS TO LOCAL BAR GROUPS

The staff reported that seven local bar associations in Los Angeles were informed that the Commission would be meeting in Los Angeles and that interested persons were welcome to attend the meeting as observers. Although no one attended the meeting as a result, the Commission decided to give notice of the next meeting to the local bar association in Sacramento.

LEGISLATIVE PROGRAM

The staff made the following report on the 1987 legislative program.

Legislation Enacted

Chapter 128, Statutes of 1987 (Assembly Bill 362) (Urgency Trust Bill)
(Harris)

Senate Concurrent Resolution 12 (Continues Authority to Study

Previously Authorized Topics; Senator Lockyer amended this concurrent resolution to include authorization to study administrative law) (This measure does not require approval by Governor) (Lockyer)

Sent to Governor

Assembly Bill 708 (Comprehensive Probate Bill) (Harris) [Approved by Governor; Chapter 923, Statutes of 1987]

Dead

Assembly Concurrent Resolution 42 (Authorizes Study of Administrative Law) (This measure no longer necessary since authority to study administrative law is included in Senate Concurrent Resolution 12 which has been adopted by Legislature) (Harris)

HANDBOOK OF PRACTICES AND PROCEDURES

The Commission considered Memorandum 87-21 and the attached Handbook of Practices and Procedures. The Commission started at page 7 of the Handbook and considered each section of the Handbook and made the following revisions.

Acceptance of Amendments After Introduction in Legislature (pages 8-9 of Handbook)

This material should be revised to permit the making of nonpolicy revisions that do not depart from Commission's policy where time does not permit the revisions to be reviewed by the Chairperson and other Commissioners prior to making the amendments. The staff should limit amendments made without prior approval to amendments that are technical or nonpolicy or where the failure to make the amendment would jeopardize the enactment of the legislation. Where possible, the staff should submit amendments to the members of the Commission in advance of making the amendments, either at a meeting or by distribution of a draft of the amendments to each member of the Commission. If this is not possible, the amendments made to the bill should be presented, at the first opportunity, to the Commission for review and approval or revision.

Relationship with State Bar (pages 10-11 of Handbook)

This portion should be revised to reflect the current practice of the Commission.

Additional Funding of Consultant Studies (page 14 of Handbook)

The phrase "through the Executive Secretary" was deleted.

CONFIDENTIALITY OF COMMUNICATIONS TO COMMISSION

The Commission considered Memorandum 87-76, relating to confidentiality of communications received by the Law Revision Commission. The Commission adopted the following policy, to be included in the Handbook of Practices and Procedures.

(1) The Commission does not ordinarily engage in communications on a confidential basis. The Commission will solicit a communication on a confidential basis only where the Commission has made a determination that the information contained in the communication is necessary for a Commission study and might not reasonably be obtainable without providing confidentiality. An unsolicited request for confidentiality will be considered by the Commission on an individual basis, applying the same standard of necessity. The notice on the cover of a Commission tentative recommendation should state that any comments received will be considered at a public meeting.

(2) A communication received under a Commission assurance of confidentiality will be considered by the Commission without knowledge of the identity of the author of the communication. The Commission staff will summarize the contents of the communication, quote from the communication, reproduce the communication with identifying markings deleted, or handle the communication in another appropriate way to protect the identity of the author from disclosure.

(3) The staff will protect the identity of the author of a communication received under a Commission assurance of confidentiality from disclosure. The staff will mark Commission files as confidential, segregate Commission files, destroy the communication, or take other appropriate action to preserve the author's identity from disclosure. This could be accomplished by filing confidential communications in a separate drawer and by referring to the existence of a confidential communication in the study file to which the communication relates. The staff will resist judicial proceedings to require disclosure of any communication received by the Commission under an assurance of confidentiality.

SCHEDULE OF PROJECTS

The Commission requested the staff to attach to the agenda a schedule showing the status of the projects in the probate study--whether at the policy decision stage, the tentative recommendation stage, approval for printing stage, etc.

STUDY L -- MISCELLANEOUS PROVISIONS IN DIVISION 3

The Commission considered Memorandum 87-63, disposing of miscellaneous provisions in Division 3 of the Probate Code. The Commission approved the disposition as set out in the memorandum for inclusion in the 1988 probate legislation, subject to the following changes.

Prob. Code § 6112. Interested witness

Subdivision (d), suspending operation of a no-contest clause where there is an interested witness, should be extended to suspend operation of a no-contest clause where an interested person prepared the will.

Prob. Code § 8806. Change in ownership statement

This provision should be included in the statement of personal representative duties, rather than as a separate provision among the inventory statutes.

STUDY L-643 - PUNITIVE DAMAGES FOR BREACH OF TRUST

The Commission postponed consideration of Memorandum 87-66 and the staff draft of a *Tentative Recommendation Relating to Exemplary Damages for Breach of Trust*. The staff should review this material in light of the new legislation relating to punitive damages generally and prepare a memorandum on this subject for a future meeting.

STUDY L-655 -- INVENTORY AND APPRAISAL

The Commission considered Memorandum 87-67, together with a letter from State Bar Study Team No. 1 (distributed at the meeting and attached to these Minutes as Exhibit 1), relating to the time within

which an inventory and appraisal must be filed. The Commission made the following decisions concerning the draft statute attached to the memorandum.

§ 8800. Inventory and appraisal required

Section 8800 was revised to read:

8800. (a) The personal representative shall file with the court clerk an inventory of the property to be administered in the decedent's estate and an appraisal of the property in the inventory. The An inventory and appraisal may be combined in a single document.

(b) The inventory shall be filed within three months after letters are first issued to a general personal representative. The appraisal shall be filed within six months after letters are first issued to a general personal representative ~~or within~~ . The court may allow such further time for filing an inventory or an appraisal as is reasonable under the circumstances of the particular case.

(c) The personal representative may file partial inventories or partial appraisals where appropriate under the circumstances of the particular case, but all inventories and appraisals shall be filed before expiration of the time allowed under subdivision (b).

Conforming changes should be made in Section 8850. The Comment should note that the court allowance of additional time may be made before or after expiration of the statutory periods.

§ 8801. Supplemental inventory and appraisal

Section 8801 was revised to read:

8801. If after the inventory is filed expiration of the time allowed under subdivision (b) of Section 8800 for filing an inventory the personal representative acquires knowledge of property to be administered in the decedent's estate that is not included in the a prior inventory, the personal representative shall file a supplemental inventory and an appraisal or supplemental appraisal of the property in the manner prescribed for the an original inventory and an original appraisal. The supplemental inventory shall be filed within three months after the personal representative acquires knowledge of the property. The supplemental appraisal shall be filed within six months after the personal representative acquires knowledge of the property or within . The court may allow such further time for filing a supplemental inventory or a supplemental appraisal as is reasonable under the circumstances of the particular case.

§ 8804. Failure to timely file inventory and appraisal

Section 8804 was revised to read:

8804. If the personal representative negligently or intentionally fails or refuses to file an inventory or appraisal within the time provided in this chapter, upon petition of an interested person:

(a) The court may compel the personal representative to file an inventory or appraisal pursuant to the procedure prescribed in Section 921.

(b) The court may remove the personal representative from office.

(c) The court may impose on the personal representative ~~is personally liable~~ personal liability for injury to the estate or to an interested person that directly results from the failure. The liability may include attorney's fees, in the court's discretion. Damages awarded pursuant to this subdivision are a liability on the bond of the personal representative, if any.

STUDY L-800 - NONRESIDENT DECEDENT

The Commission considered Memorandum 86-204, which reviewed the comments received on the *Tentative Recommendation Relating to Nonresident Decedent* (distributed for comment in September 1986), the staff draft of a recommendation on this subject, and a letter from State Bar Study Team # 2 on behalf of the Executive Committee of the State Bar Section (Exhibit 2 to these Minutes). The Commission made the following decisions:

Definitions

The definitions should be reviewed and revised to eliminate artificial constructions. In some cases, such as the definition of "nonresident decedent," the definition can be confusing when read in the context of a particular provision, such as Section 12530.

§ 12510. Commencement of proceedings

The Commission rejected the suggestion that only the will that affects property in this state should be offered in ancillary administration. Such a rule might invite suppression of relevant documents and remove the power to consider relevancy from the court.

§ 12511. Jurisdiction and venue

This jurisdiction and venue provision should be retained in this part of the code. A cross-reference should be added to an appropriate comment in the general jurisdictional provisions.

§ 12522. Admission of will to probate

This section and related provisions should be redrafted to make clear which rules apply to foreign state wills and which rules apply to foreign nation wills. The staff should research the effect of admission to probate in another state and the effect of international treaties on the status of foreign nation wills. Depending on the conclusions from this research, paragraphs (2) and (4) of subdivision (a) should probably be deleted.

§ 12530. Conditions for distribution

The suggestion that distribution should be made to the foreign personal representatives, and not to beneficiaries, where the decedent's estate in the foreign jurisdiction is insolvent was rejected.

§ 12531. Sale of real property and delivery of proceeds

A provision should be added that permits the court in California to distribute real property unless it is ordered to be sold.

Incorporation of general provisions

A provision reading substantially as follows should be added to the chapter in the draft statute relating to ancillary administration:

Except to the extent otherwise provided in this chapter, administration of a decedent's estate under this chapter is subject to all other provisions of this title, including but not limited to opening estate administration, inventory and appraisal, creditor claims, estate management, independent administration, compensation, accounts, payment of debts, distribution, and closing estate administration.

§ 12550. Informal collection authorized

This chapter should be redrafted as an adaptation of the affidavit procedure for collection of small estates by an out of state personal representative.

§ 12551. Notice of intent to collect

§ 12552. Payment or delivery to foreign personal representative

§ 12553. Delivery of funds in accounts under \$1,000

§ 12554. Discharge from liability

Potential issues in these sections were reserved for consideration at a later time if the adapted affidavit procedure should prove to be impractical. It was suggested that the \$1000 limit in Section 12553 should be raised if this procedure is retained in preference to the affidavit procedure.

§ 12570. Filing proof of authority

§ 12571. Maintaining actions and proceedings

This article should be omitted. The existing rule requiring the foreign personal representative to be appointed in California should be retained.

§ 12590. Jurisdiction by act of foreign personal representative

This section should be reconsidered in light of the adapted affidavit procedure to be drafted.

§ 12592. Effect of adjudication for or against personal representative

This section should be omitted as it appears to be beyond repair.

STUDY L-940 - SUBSTITUTION AND DELEGATION OF POWERS OF FIDUCIARIES

The Commission considered Memorandum 87-63 and the draft statute relating to substitution and delegation of powers of fiduciaries, together with a letter from State Bar Study Team # 2 on behalf of the State Bar Section Executive Committee (Exhibit 3 to these Minutes). The draft statute would have generalized the provisions of the Fiduciaries' Wartime Substitution Law. Code Civ. Proc. §§ 1700-1700.8. The Commission decided that the substance of the existing law should be continued. Fiduciaries should not be able to temporarily abandon their duties in the absence of extreme circumstances as covered by the existing statute.

STUDY L-1010 - OPENING ESTATE ADMINISTRATION

The Commission considered Memorandum 87-75, reviewing comments on the tentative recommendation relating to opening estate administration, together with a letter from State Bar Team 3 (distributed at the meeting and attached to these Minutes as Exhibit 4). The Commission made the following decisions concerning the draft statute.

§ 8001. Failure of person named executor to petition

The Comment to this section should emphasize that it is discretionary with the court whether to hold that a waiver has occurred.

§ 8002. Filing of will

This section should refer to deposit, rather than filing, of a will with the court clerk.

§ 8251. Summons

This section should refer to failure of a person "timely" to respond to summons.

§ 8406. Suspension of powers of personal representative

This section should be relocated to the provisions governing powers and duties of personal representatives. The Comment should state that the section supersedes former Sections 352 and 550.

§ 8407. Claims against personal representative

The words "the person from" were deleted from the first sentence of this section. The second sentence was deleted.

§ 8408. Selection of attorney

This section was deleted from the draft.

§ 8440. Appointment

The captions in this article, referring to administrators "with will annexed," and the statute text, referring to administrators "with the will annexed," should be made consistent.

§ 8441. Priority for appointment

This section should give priority for appointment to a nominee of a person having priority, and should allow several persons to act jointly to make a nomination.

§ 8442. Authority of administrator with will annexed

This section should be revised to make clear that the administrator with will annexed may exercise discretionary powers granted in the will to any personal representative.

§ 8467. Equal priority

This section should be revised to allow the court to appoint a disinterested person having the same priority or the next lower class of priority or the public administrator.

§ 8481. Waiver of bond

This section was revised to provide, in effect:

8481. (a) A bond is not required in either of the following cases:

(1) The will waives the requirement of a bond.

(2) All beneficiaries waive in writing the requirement of a bond and the written waivers are attached to the petition for appointment of a personal representative. This paragraph does not apply if the will requires a bond.

(b) Notwithstanding the waiver of a bond by a will or by all the beneficiaries, on petition of any interested person or on its own motion the court may for good cause require that a bond be given, either before or after issuance of letters.

§ 8482. Amount of bond

The introductory phrase of subdivision (a), "Except as provided in Section 8481", was deleted. Subdivision (a)(3) was revised to refer to the equity or net interest in real property.

§ 8483. Reduction of bond by deposit of assets

The phrase "to be required in respect of the property" was deleted from subdivision (b)(1).

§ 8488. Limitation as to sureties on bond

The phrase "not later than four years" should replace "within four years", and the reference to settlement of accounts of the personal representative was deleted.

§ 8500. Procedure for removal

The reference to the "judge's own knowledge" in subdivision (b) should refer to the "court's" own knowledge. In subdivision (c) "allegations" should be "declarations" and failure to "attend and answer" should be failure to "attend or answer." The staff should review the draft for other possible procedural improvements.

§ 8503. Removal at request of person with higher priority

Subdivision (b) should refer to a petition "by" rather than "of" a person. The Comment should note that progress of administration for a certain length of time may in itself be grounds for denial of the petition to remove the personal representative.

§ 8540. Grounds for appointment

The statute should include more detail concerning appointment of a special administrator for a limited purpose, and the letters should note the limited character of the special administrator's authority. The Comment to this section should include a will contest or maintenance of a lawsuit on the decedent's cause of action as situations where appointment of a special administrator may be proper.

§ 8545. General powers, duties, and obligations

This section should include general notice for appointment of a special administrator with general powers. The Comment should refer to case law enabling a special administrator with general powers to make distributions.

STUDY L-1024 — INTEREST AND INCOME ACCRUING DURING ADMINISTRATION

The Commission considered Memorandum 87-69 relating to interest and income accruing during administration. The Commission approved the draft tentative recommendation attached to the memorandum to distribute for comment, subject to the following changes.

§ 12001. Rate of interest

This section should be revised to provide that the rate of interest is determined one year after the date of death. The Comment should indicate that the rate on United States savings bonds, Series EE, may be ascertained from a financial institution or the financial section of a newspaper.

§ 12002. Income and expenses of specific devise

This section should be revised to provide that, to the extent expenses on specifically devised property exceed income from the property, the estate pays the excess until distribution (unless the devisee takes possession earlier). However, any expenses paid more than a year after the testator's death are a charge against the share of the devisee.

§ 12003. Interest on general pecuniary devise

The tentative recommendation should particularly solicit comments concerning the wisdom of subdivision (b), which runs interest on a marital deduction gift from the date of death rather than one year after death.

The reference to the "first anniversary of the testator's death" should be reviewed to determine if it is intended to have a different application than the reference to "one year after the testator's death", and if not, one phrase should be used consistently.

STUDY L-1025 — FORM OF NOTICE TO CREDITORS

The Commission considered Memorandum 87-85 relating to the form of notice to creditors. The Commission also received a letter from the Executive Committee of the State Bar Estate Planning, Trust and Probate Law Section on this subject (attached to these Minutes as Exhibit 5). The Commission decided to recommend revision of the relevant portion of Section 9052 (form of notice to creditors) to read:

You must file your claim with the court and mail or deliver a copy to the personal representative within the last to occur of four months after _____ (the date letters were issued to the personal representative), or 30 days after the date this notice was mailed to you or, in the case of personal delivery, 30 days after the date this notice was delivered to you, ~~whichever is later~~, as provided in Section 9100 of the California Probate Code.

STUDY L-1029 — DISTRIBUTION AND DISCHARGE

The Commission considered Memorandum 86-203, reviewing comments on the tentative recommendation relating to distribution and discharge. The Commission made the following changes in the draft of the recommendation.

§ 11621. Order for distribution

Subdivision (b) was revised to read, "The order of distribution shall be stayed until any bond required by the order is filed."

§ 11622. Bond

In subdivision (b), the term "fixes" should be changed to "orders". The staff should check on the usage of the term "given" in subdivision (c).

§ 11623. Distribution under Independent Administration of Estates Act

Subdivision (a) should be limited so that an ex parte order for preliminary distribution may not be made before expiration of the creditor claim period. Subdivision (b) should be limited to trustees who have accepted the trust. The staff should check to see whether subdivision (b) might not be deleted in reliance on the general provisions governing waiver of accounts.

§ 11640. Petition and order

Subdivision (a) of this section should refer to debts that have been paid "or provided for." A provision should be added to the section that "If there are debts remaining unpaid or if, for other reasons, the estate is not in a condition to be closed, the administration may continue for a reasonable time, subject to Chapter 1 (commencing with Section 12200) of Part 11 (time for closing estate)."

§ 11641. After-acquired or after-discovered property

The omnibus clause in subdivision (a) should be supplemented by provision for further instructions to the personal representative or a supplemental account. A provision should be added to the statute immediately preceding Section 11641, to the effect that "When an order settling a final account becomes final, the personal representative may immediately distribute the property in the estate to the persons entitled to distribution, without further notice or proceedings."

§ 11700. Petition

The staff should refrain from citing Estate of Stehr, 181 Cal. App. 3d 1131 (1986), in the Comment.

§ 11701. Notice of hearing

This section should be revised consistent with the general notice provisions in Section 1004.

§ 11702. Responsive pleading

This section or a related section should be augmented with procedural provisions that place a case at issue even though interested persons have not responded and that clarify the consequences of failure to respond.

§ 11703. Attorney General as party

Subdivision (c), relating to a trustee who does not accept the trust, should be deleted. The staff should check whether a reference to the guardian ad litem statute might not be appropriate in the Comment.

§ 11704. Hearing

This section should provide that the court is to "consider all evidence" rather than "hear and consider all papers".

§ 11705. Court order

The staff should review other provisions governing the conclusive effect of orders in probate to see if there is a general or consistent phrase that could be used in this section.

§ 11753. Filing receipts and discharge

A sentence should be added to this section to the effect that if the personal representative is unable to obtain a receipt after reasonable effort, the court may accept other satisfactory evidence that the property has been delivered to or is in possession of the beneficiary.

§ 11801. Distribution despite death of distributee

The phrase "whether or not the deceased distributee is named in the order for distribution" was deleted from subdivision (a). Subdivision (b) should be augmented by a provision to protect bona fide purchasers under an order for distribution. The staff should devise language to cover the situation of a will requiring survival beyond a period other than distribution of the estate. The Comment might refer to the case law rule that the survival requirement is deemed satisfied if distribution is delayed unduly.

§ 11850. When deposit with county treasurer authorized

Subdivision (a) was revised to read, "The property remains in the possession of the personal representative unclaimed or the whereabouts of the distributee are unknown."

§ 11854. Claim of property deposited in county treasury

This section should refer to "money", rather than "property", deposited in the county treasury. Notice to the Attorney General should not be required unless so ordered by the court.

§ 11902. Disposition of property distributed to state

Subdivision (b) was revised to require delivery to the State Controller of a certified copy of the order for distribution together with a statement of the counties where recorded and the recording data for each county.

§ 11904. No deposit in county treasury

The Comment to this section should indicate what types of property are deposited in the State Treasury and what types are deposited with the State Controller.

§ 11950. Right to partition or allotment

This section should be limited to interests in property that are subject to administration.

§ 11952. Parties and notice

The text of this section should be replaced by the draft set out in the Note to the section.

§ 11953. Disposition of property

The reference to the court taking evidence should be made consistent throughout the statute.

§ 11955. Expenses

Language should be added that the lien is included and specified in the court order.

§ 12200. Time required for closing or status report

This section should allow 18 months where there is an estate tax return and one year in other cases.

§ 12250. Order of discharge

The reference in this section to filing receipts should be adjusted to include the case where the court has excused the filing of a receipt on satisfactory proof of distribution.

§ 12251. Discharge without administration

This section should require notice to interested persons.

STUDY L-1033 - DETERMINING CLASS MEMBERSHIP

The Commission considered Memorandum 86-205 which reviewed the comments received on the *Tentative Recommendation Relating to Determining Class Membership* (distributed for comment in September 1986) and the staff draft of a recommendation on this subject. The Commission concluded that this procedure was not needed and that it should not be included in the revised Probate Code. If a probate estate is pending, the question of whether a person is a member of a class entitled to a distribution is determined in the probate proceedings. If a probate estate is not pending, a determination that a person is within the class would not be of much use as compared with a quiet title judgment. The procedure of existing Probate Code Sections 1190-1192 does not appear to be used very frequently. To the

extent that this procedure overlaps with the estate distribution procedure, it is unneeded and may be a source of confusion. Outside probate administration, other procedures are superior to the class membership procedure.

Before deciding to omit this procedure from the Probate Code, the Commission made the following decisions concerning the draft statute:

§ 320. Proceeding authorized

The bracketed language that would permit a petition by an interested person was approved. This procedure should be available only where proceedings for administration of the decedent's estate are not pending.

§ 322. Notice of hearing

The alternative section providing for 30 days' notice and requiring personal service was approved.

STUDY L-1040 -- PUBLIC GUARDIAN AND PUBLIC ADMINISTRATOR

The Commission considered Memorandum 87-68 and the First Supplement thereto, relating to appointment of the public guardian in cases opposed by the public guardian. The Commission approved draft Section 2920 for printing, after making the following changes:

§ 2920. Application for appointment

2920. If any person domiciled in the county requires a guardian or conservator and there is no one else who is qualified and willing to act and whose appointment as guardian or conservator would be in the best interest of the person:

(a) The public guardian may apply for appointment as guardian or conservator of the person, the estate, or the person and estate.

(b) The public guardian shall apply for appointment as guardian or conservator of the person, the estate, or the person and estate, if the court so orders. The court may make an order under this subdivision on motion of an interested person or on the court's own motion in a pending proceeding or in a proceeding commenced for that purpose. The court shall not make an order under this subdivision except after notice to the public guardian for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1, consideration of the alternatives, and a determination by the court that the appointment is necessary. The notice and hearing under this subdivision may be combined with the notice and hearing required for appointment of a guardian or conservator.

Comment. Section 2920 supersedes the first, second, and a portion of the third sentences of former Welfare and Institutions Code Section 8006. Section 2920 applies even though a person may be institutionalized in a facility in another county if the person is domiciled in the county of the public guardian. Even though there may be other persons qualified and willing to act, their appointment may not be in the best interest of the ward or conservatee. This could occur, for example, where a neutral party is needed because of family disputes. In such a situation, a public guardian is not liable for failure to take possession or control of property that is beyond the public guardian's ability to possess or control. See Section 2944 (immunity of public guardian).

The court may order appointment of the public guardian only after notice to the public guardian and a determination that the appointment is necessary. The determination of necessity may require the court to ascertain whether there is any other alternative to public guardianship, and whether the public guardianship is simply being sought as a convenience or as a strategic litigation device by the parties involved. Alternative means of resolving the situation, besides appointment of the public guardian, could include such options as use of a private guardian or appointment of a guardian ad litem, in an appropriate case.

Subdivision (b) permits the special notice to the public guardian and hearing under this subdivision to be combined with a general notice and hearing for appointment of a guardian or conservator, in the interest of procedural efficiency.

STUDY L-1058 - FILING FEES IN PROBATE

The Commission considered Memorandum 87-84 relating to filing fees in probate. In view of the technical complexity of this subject, the staff should work with the State Bar to develop appropriate provisions for inclusion in a clean up bill.

STUDY L-1060 - MULTIPLE-PARTY ACCOUNTS

The Commission considered Memorandum 87-51 and the attached staff draft of a *Tentative Recommendation Relating to Multiple-Party Accounts*. The Commission wanted to know the views of the State Bar and California Bankers Association when the California Multiple-Party Accounts Law was before the Legislature in 1983, the present views of those two organizations, and the present view of the California Credit

Union League on its experience under the law as enacted. The Commission deferred further consideration of the draft until the staff can collect this information.

STUDY L-3010 - CORPORATE TRUSTEE FEES

The Commission considered Memorandum 87-70 and the First, Second, and Third Supplements thereto relating to corporate trustees' fees. The staff reported to the Commission on the meeting between Assembly Member Harris and the representatives of the California Bankers Association and the State Bar. At this point, CBA and the State Bar have agreed to work on legislation to remedy the problem of corporate trustees' fees. The staff will turn over the information received in response to the questionnaire distributed to attorneys and in fee data submitted by corporate trustees concerning their fees to the interested parties. However, the Commission will not continue working on this topic.

APPROVED AS SUBMITTED _____

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

Date

Chairperson

Executive Secretary

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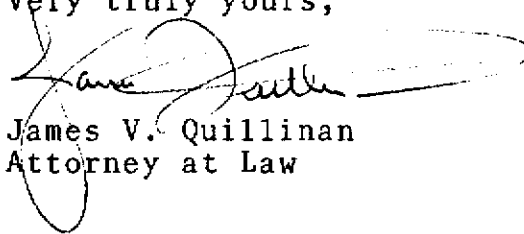
September 11, 1987

CA LAW REV. COMM'N
SEP 14 1987
RECEIVEDMr. John H. DeMouilly
Executive Director
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303Re: LRC Memo: 87-67, Inventory & Appraisal

Dear John:

I have enclosed copies of Study Team 1's technical report on Memo 87-67, Inventory and Appraisal. The report represents the opinions of the team only. The report has not been reviewed by the Executive Committee. I am sending it to you for your information and comment. It is intended to assist in the technical review of those sections involved.

Very truly yours,



James V. Quillinan
Attorney at Law

JVQ/h1
Encls.

| | |
|-------------------|-------------|
| cc: Chuck Collier | Jim Opel |
| Keith Bilter | Jim Devine |
| Irv Goldring | Lloyd Homer |

R E P O R T

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

FROM: WILLIAM V. SCHEMIDT

DATE: SEPTEMBER 9, 1987

RE: MEMORANDUM 87-67

SUBJECT: REPORT OF STUDY TEAM NO. 1 (STUDY L-655) INVENTORY
AND APPRAISAL (Review of Revised Provisions Before
Approval for Printing); PROBATE CODE SECTIONS
8800-8804

Study Team No. 1 had a conference call on September 2, 1987, Charles A. Collier, Jr., Richard S. Kinyon, Sterling L. Ross, Jr., Michael V. Vollmer and William V. Schmidt participating.

We have the following comments in this regard:

Section 8800: We suggest that the word "An" be used in place of the word "The" as the first word of each of the first two sentences in subsection (b). This would be consistent with the use of the word "an" in the first sentence of subsection (a) as it applies to both an inventory and an appraisal. We feel the word "an" is preferable because the word "the" tends to suggest that there is only one first and final inventory, whereas the word "an" tends to

suggest that there can be more than one inventory and is consistent with the supplemental inventory provisions of Section 8801. In practice, supplemental or partial inventories are used frequently in the administration of estates. Consistent with these thoughts, the second sentence of subsection (a) might be rewritten to read in its entirety as follows:

"An inventory and an appraisal may be combined in a single document."

We are very concerned about the mandatory and inflexible nature of the requirement that an inventory be filed within three months after the issuance of letters. We are concerned with the situation, for example, where the personal representative may know of an asset in the general sense but not have enough knowledge to describe it with the particularity that should or must be used in completing an inventory. Examples would be real property, where the exact legal description cannot be ascertained within three months, or a bank account in a distant or remote bank where the amount of the account and the number cannot be ascertained within three months. Another example would be jewelry or other personalty which the personal representative was unable to take into his possession within the three months and, therefore, could not describe with any particularity. In these situations, should the personal representative be subject to the sanctions set forth in Section 8804 when he fails to file an inventory through no fault of his own? We

acknowledge the Comment to Section 8804 answers this question in the negative, but is the Comment enough?

We suggest that the words "or within such further time as the court for reasonable cause may allow." be added to the end of the first sentence of subsection (b). These words are taken almost verbatim from the first sentence of existing Probate Code Section 600.

We are very happy with the second section in the Comment. We are concerned, however, that the first sentence of the comment may be somewhat misleading in that it states that Section 8800 restates the first portion of the first sentence of former Section 600. To us there are fundamental changes between proposed Section 8800 and existing Section 600 in that Section 8800 talks about an Inventory and an Appraisal as two separate documents and provides for a separate time for the filing of each document with the court. Existing Section 600, of course, talks only of one document. Should the first sentence of the comment recognize these differences between the two sections?

Section 8801: We suggest that the words "in the inventory" in the third line of the first sentence be changed to "in a prior inventory." Such a change would merely recognize the possibility that there could be more than one inventory before the filing of a supplemental inventory.

We are again concerned that the first sentence of the Comment may be misleading in that existing Section 611 contemplates one document which combines an inventory and

appraisalment and proposed Section 8801 together with Section 8800 introduces the concept of two separate documents -- an appraisal separate and distinct from an inventory.

Section 8804: Our comments here reflect the uneasiness of our five participants with this new Section, especially as it is viewed in relation to the mandatory three months requirement for filing an inventory. Our group, the members of which handle a substantial amount of probate administration work, spent almost one hour in discussing the three sections covered in Memorandum 87-67 and the effect of those three sections on the everyday practice and work of personal representatives and their attorneys.

Two members expressed concern on whether the words "within the time provided in this chapter" include the reasonable time concept in 8800(b) for the filing of an appraisal or whether such words could be construed to apply only to the three month and six month requirements. These members felt that it would be helpful if the comment could make it clear that such reasonable time concept is included within the meaning of such words.

Another member of the study team was concerned that the language of subsection (c) could possibly be construed to permit an interested person to file a civil action against a personal representative outside of the probate court. In this sue-happy society we would not want to see a beneficiary be able to file a civil lawsuit outside of the probate court against the personal representative claiming that the

personal representative had failed to file the inventory within the three month requirement and the appraisal within the six month requirement and have that matter heard, for example, before a jury. To clarify this matter and to make the sentence structure parallel among subsections (a), (b) and (c), it is suggested that the words "The court may..." which begin subsections (a) and (b) also begin subsection (c). For example, perhaps the first sentence of subsection (c) could read "The court may determine the personal liability of the personal representative for injury to the estate or to an interested person that directly results from the failure." We feel this parallel structure makes it clearer that the probate court is to act under each of the three subsections and is to act only upon the petition of an interested person as set forth in the third line of the section.

The first sentence of the Comment refers to case law. Is the comment stating that the case law says that the statute applies to the failure to timely file the appraisal as well as failure to timely file the inventory? Since existing and former law deals only with the concept of a single Inventory and Appraisement as opposed to two separate documents, we are unsure what the sentence means.

SUMMARY: To summarize all of the thoughts expressed above, as well as the thoughts of the Executive Committee in general over the last several months, our Section would like to return to existing law found in Section 600, which

provides for a combined inventory and appraisal filed within three months after the issuance of letters or "within such further time as the court for reasonable cause may allow."

We feel existing law has worked well over many years. We certainly have no objection to the general concepts of Section 8804 to provide protection from the personal representative who delays unreasonably.

Once we return to existing law, most, if not all, of our concerns expressed in this and earlier reports will be gone.

Respectfully submitted,
STUDY TEAM NO. 1

By: William V. Schmidt
WILLIAM V. SCHMIDT,
Captain

**ESTATE PLANNING, TRUST AND
PROBATE LAW SECTION
THE STATE BAR OF CALIFORNIA**



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September 11, 1987

Mr. James V. Quillinan
Attorney at Law
444 Castro Street, Suite 900
Mountain View, California 94041

Re: LRC Memo 86-204 (Non-Resident Decedent)

Dear Jim:

The staff states that there is a problem with the affidavit procedure for collecting small estates because it is available only to the decedent's "successors" and not to the decedent's personal representative. I do not view that as a problem. The affidavit procedure is an economical and effective means of transferring small amounts of California property to successors at the least expense. I see no reason to subject the property to domiciliary administration, except where necessary to protect the interests of the heirs, devisees or creditors of a decedent. This is the standard which applies to estates of California decedents (Probate Code Section 13111(d)), and there is no reason to have a different standard for estates of non-California residents.

The staff states that successors who use the affidavit procedure acquire no right in the property other than possession. The successor who acquires possession has all of the rights of an ostensible owner, subject only to the obligations enclosed by the statute. The property is subject to subsequent administration as set forth in Section 13111, but the burden of proof is on the personal representative to establish that the property is necessary to protect the interests of the heirs, devisees, and creditors. Thus, the rights in the property acquired by the successors who use the affidavit procedure are substantial. The affidavit procedure is not limited to estates of California decedents, and should not be limited.

Mr. James V. Quillinan
September 11, 1987
Page 2

The staff recommends two alternative proposals: (1) allowing an out-of-state personal representative to subsequently collect the property from the successor; and (2) prohibiting the affidavit procedure where there is an out of state probate pending. I am opposed to the second proposal. California has a long-established public policy of allowing transfer of small estates to successors with the least cost possible. Requiring that all California small estates be subject to probate if an out of state probate is pending is a step backwards. I have no objection to allowing an out-of-state personal representative to subsequently collect property to the extent necessary for administration under the guidelines of Section 13111. Section 13111 already imposes liability on the successors if "proceedings for the administration of the decedent's estate are commenced." The section is not limited to proceedings in this state (cf. Probate Code Section 13101-(a)(4)), so the ability of a non-California personal representative to collect property from a successor is probably already the law. I do not believe it is not necessary to change the statute to so provide.

Very truly yours,



Kenneth M. Klug

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HUGH NEAL WELLS III, *Irvine*

September 11, 1987

Mr. James V. Quillinan
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444 Castro Street, Suite 900
Mountain View, California 94041

Re: LRC Memo 87-77

Dear Jim:

Team 2 has reviewed Memo 87-77. We like the concept of allowing for substitution and delegation of powers of fiduciaries as proposed. We wonder if there is any reason why the procedure should not also be available where the original fiduciary is permanently unable to act. The proposed procedure is more streamlined than the existing procedure for appointment of successor fiduciaries.

Very truly yours,

A handwritten signature in dark ink, appearing to be "Klug".

Kenneth M. Klug

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September 16, 1987

James V. Quillinan, Esq.
444 Castro Street, Suite 900
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Re: Memorandum 87-85: Opening Estate
Administration (1st 29 Pages)

Dear Jim:

On behalf of Team 3 I reviewed the first 29 pages of the referenced memorandum and offer the following comment with respect to Section 8001.

This section has utility in instances of gross neglect by named executors. I recently obtained Letters of Administration CTA for a petitioner after the named executor declined to honor requests for commencement of a probate for over a year. The attorneys' fees incurred in making repeated demands for the commencement of the administration and in preparing a petition requiring the filing of the decedent's original Will with the court, and the filing and publication fees attendant thereto were considerable. Under the circumstances, the court was

justified in finding that the named executor had waived his rights. In the hypothetical proposed by the staff, the court would undoubtedly exercise its discretion in favor of the named executor (surviving spouse).

Respectfully submitted,



H. Neal Wells III

Team 3 Captain

cc/ Valerie Merritt
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Anne K. Hilker
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Charles Collier, Jr.
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September 16, 1987

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Re: LRC Memo 87-85
Notice to Creditors

Dear Jim:

The Executive Committee of the Estate Planning, Trust and Probate Law Section considered the referenced memo at its meeting last Saturday.

The Executive Committee is appreciative that a creditor of a decedent might benefit from advice as to the date by which a claim against a decedent's estate must be filed with the court. However, for the reasons hereafter set forth, the Committee respectfully suggests that it would be inappropriate to require that the personal representative or the attorney for the personal representative must give this advice.

1. The computation of the last day to file a creditor's claim with the court often requires knowledge not generally possessed by a lay personal representative (e.g. does 30 days mean 30 actual days or a calendar month? Do you include the first day of the time period and exclude the last? Do you extend the time period in the case of mailed notice? Is the time period extended if the last day falls on a non-business day? What are non-business days for the purposes of this Section?) Accordingly,

it would not be fair to require the personal representative to give this advice.

2. If the duty is imposed upon the personal representative, and the personal representative makes a mistake, he might be personally liable to the creditor for negligently performing the statutory duty. This could include damages equal to a claim that was barred as a result of late filing based upon the improper advice.

3. If the duty is imposed upon the attorney for the personal representative, and the attorney makes a mistake, he might be personally liable on a claim for malpractice. The attorney would also be placed in a position of conflict of interest because he would be advising the creditor on a matter of law at the same time the attorney is representing the personal representative of the estate.

4. Neither the personal representative nor the attorney are compensated enough by the statutory fee schedule to cover the exposure to liability aforesaid. Also, bonding companies would have to increase the cost of personal representative's bonds to cover the exposure.

5. Summons, subpoenas and citations, all specify time periods rather than specific due dates. The recipient of the summons, subpoena, or citation, is thereby placed on notice and should obtain the advice of his own attorney (not the attorney for the sender of the notice) as to the last day to act. Creditors need not be treated any differently.

6. The best solution to the problem is for the creditor to simply fill out a claim and file it with the court promptly, well within the 30 day minimum claim period.

Respectfully submitted,



H. Neal Wells III

cc/ Valerie Merritt
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