

1/30/89

<b>DATE &amp; TIME:</b>  February 9 (Thursday) 10:00 am - 6:00 pm February 10 (Friday) 9:00 am - 2:00 pm (no lunch break)	<b>PLACE:</b>  Hyatt at LAX 6225 W. Century Blvd. Los Angeles 90045 (213) 670-9000
<b>NOTE:</b> Changes may be made in this Agenda. For meeting information, please call (415) 494-1335.	

**FINAL AGENDA**

*for meeting of*

**CALIFORNIA LAW REVISION COMMISSION**

**THURSDAY, FEBRUARY 9**

**1. Minutes of January 12-13, 1989, Commission Meeting (sent 1/23/89)**

**2. 1989 Legislative Program**

Handout at Meeting

**3. Study L-2010 - 1989 Probate Cleanup Legislation (Urgency Bill)**

Memorandum 89-21 (sent 1/25/89)

**4. Study L - Schedule for Completion of Work on Probate Code**

Memorandum 89-27 (sent 1/27/89)

**5. Study L-1062 - Priority for Appointment as Administrator**

Memorandum 88-82 (sent 11/15/88; another copy sent 1/23/89)  
First Supplement to Memorandum 88-82 (Comments of Public  
Administrators) (to be sent)

**6. Study L-3010 - Trustees' Fees**

Memorandum 89-22 (sent 1/27/89)  
Draft of Recommendation (attached to memorandum)

**7. Study L-1036/1055 - Compensation of Estate Attorney and Personal Representative**

Memorandum 89-23 (sent 1/25/89)  
Draft of Statute (attached to memorandum)

First Supplement to Memorandum 89-23 (sent 1/26/89)  
Draft of Preliminary Portion of Recommendation (attached to supplement)

Second Supplement to Memorandum 89-23 (Letter from Commissioner Walker) (enclosed)

**8. Study L-1060 - Multiple-Party Accounts in Financial Institutions**

Memorandum 89-24 (sent 1/25/89)  
Draft of Recommendation (attached to memorandum)

**9. Study L-3012 - Uniform Management of Institutional Funds Act**

**Special** Memorandum 89-13 (sent 1/26/89)  
**Order of** Draft of Tentative Recommendation (attached to memorandum)  
**Business**  
**on Feb. 9**  
**at 3:00 pm**

**10. Study L-612 - 120-Hour Survival of Intestate Takers**

Memorandum 89-20 (Comments on Tentative Recommendation) (sent 1/25/89)  
Copy of Tentative Recommendation (attached to Memorandum)

**11. Study L-3007 - In-Law Inheritance**

Memorandum 89-17 (sent 12/20/88)  
Draft of Tentative Recommendation (attached to Memorandum)

First Supplement to Memorandum 89-17 (Letter from State Bar Committee) (sent 1/9/89)  
Second Supplement to Memorandum 89-17 (Letter from Prof. Bird) (enclosed)  
Third Supplement to Memorandum 89-17 (Additional Letters) (to be sent)

**12. Study L-1058 - Probate Filing Fees**

Memorandum 89-14 (enclosed)  
Draft of Tentative Recommendation (attached to Memorandum)

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FRIDAY, FEBRUARY 10

13. Administrative Matters

Conflicts of Interest

Memorandum 89-26 (to be sent)

Commissioner Attendance at Meetings

Memorandum 88-79 (sent 11/7/88)

New Topic

Memorandum 89-28 (sent 1/25/89)

Final Report of California Child Victim Witness Judicial  
Advisory Committee (attached to memorandum)

Communications from Interested Persons

14. Study H-111 - Assignment and Sublease

Memorandum 89-25 (sent 1/24/89)

Draft of Recommendation (attached to memorandum)

Memorandum 89-6 (Residential Tenancies) (sent 12/14/88)

Consultant's Report (attached to memorandum)

Memorandum 89-7 (Tenant Remedies) (sent 12/14/88)

Background Study (attached to memorandum)

Memorandum 89-8 (Landlord Remedies) (sent 12/15/88)

Background Study (attached to memorandum)

Memorandum 89-9 (Rule in Dumpor's Case) (sent 12/14/88)

Background Study (attached to memorandum)

Memorandum 89-11 (Use Restrictions) (sent 12/14/88)

Background Study (attached to memorandum)

MEETING SCHEDULE

February 1989

9 (Thursday) 10:00 a.m. - 6:00 p.m. Los Angeles  
10 (Friday) 9:00 a.m. - 2:00 p.m.

March 1989

9 (Thursday) 10:00 p.m. - 6:00 p.m. San Francisco

April 1989

13 (Thursday) 1:30 p.m. - 6:00 p.m. Sacramento  
14 (Friday) 9:00 a.m. - 2:00 p.m.

May 1989

18 (Thursday) 1:30 p.m. - 6:00 p.m. San Francisco  
19 (Friday) 9:00 a.m. - 2:00 p.m.

July 1989

13 (Thursday) 1:30 p.m. - 6:00 p.m. Los Angeles  
14 (Friday) 9:00 a.m. - 2:00 p.m.

September 1989

7 (Thursday) 1:30 p.m. - 6:00 p.m. Sacramento  
8 (Friday) 9:00 a.m. - 2:00 p.m.

October 1989

12 (Thursday) 1:30 p.m. - 6:00 p.m. Los Angeles  
13 (Friday) 9:00 a.m. - 2:00 p.m.

November-December 1989

Nov. 30 (Thurs.) 1:30 p.m. - 6:00 p.m. San Francisco  
Dec. 1 (Fri.) 9:00 a.m. - 2:00 p.m.

**STATUS OF COMMISSION STUDIES**

(as of January 17, 1989)

STUDY	SUBJECT	Staff Work	Comm'n Review	Approve TR	Review Comment	Approve to Print
F-641 /L-3020	Limitations on Disposition of Community Property	4/88	9/88	[3/89]		
H-111	Commercial Leases -- Assignment & Sublease	2/88	3/88	10/88	1/89	[2/89]
L-1	New Probate Code	2/88				
L-612	120-Hour Survival	2/88	12/88	12/88	[2/89]	
L-1036 /1055	Personal Representative & Attorney Fees in Probate	8/87	1/88	10/88	1/89	[2/89]
L-1058	Probate Filing Fees	8/87	9/87	[2/89]		
L-1060	Multiple-Party Accounts	9/88	10/88	10/88	1/89	[2/89]
L-3005	Anti-Lapse & Other Rules	1/88	5/88			
L-3007	In-Law Inheritance	2/88	12/88	[2/89]		
L-3010	Trustees' Fees	3/88	5/88	10/88	1/89	[2/89]
L-3012	Uniform Management of Institutional Funds Act	8/88	12/88	[2/89]		
N	Administrative Law	[10/89]				

[date] = scheduled

MINUTES OF MEETING  
of  
CALIFORNIA LAW REVISION COMMISSION  
FEBRUARY 9-10, 1989  
LOS ANGELES

A meeting of the California Law Revision Commission was held in Los Angeles on February 9-10, 1989.

Commission:

Present:	Forrest A. Plant Chairperson Roger Arnebergh Arthur K. Marshall	Tim Paone Ann E. Stodden (Feb. 9) Vaughn R. Walker
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Absent:	Elihu M. Harris Assembly Member Bill Lockyer Senate Member	Bion M. Gregory Legislative Counsel Edwin K. Marzec Vice Chairperson
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Staff:

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

William G. Goskran, Landlord and Tenant Law (Feb. 10)

Other Persons:

Edward V. Brennan, California Probate Referees' Association, San Diego (Feb. 9)  
Jacqueline Cannon, California Association of Public Administrators, Public Guardians, and Public Conservators, Riverside (Feb. 9)  
Kenneth A. Feinfield, Los Angeles County Bar Association, Probate and Trust Law Section, Los Angeles (Feb. 10)  
Irwin D. Goldring, State Bar Estate Planning, Trust and Probate Law Section, Los Angeles (Feb. 9)  
Michael Harrington, California Bankers Association, San Francisco  
David Lauer, California Bankers Association, San Francisco (Feb. 9)  
Howard Lind, State Bar Commercial and Industrial Development Subsection, Oakland (Feb. 10)  
Maurine C. Padden, California Bankers Association, Sacramento  
Kenneth Petrulis, Beverly Hills Bar Association, Probate, Trust and Estate Planning Section, Beverly Hills (Feb. 9)

Michael V. Vollmer, State Bar Estate Planning, Trust and Probate Law  
Section, Irvine  
Michael Whalen, Los Angeles County Bar Association, Probate and  
Trust Law Section, Los Angeles (Feb. 9)  
Shirley Yawitz, California Probate Referees Association, San  
Francisco

ADMINISTRATIVE MATTERS

MINUTES OF DECEMBER 1-2, 1988, MEETING

The Commission approved the Minutes of the January 12-13, 1989,  
meeting with the following changes:

(1) The Minutes concerning Study H-111 (assignment and sublease)  
were revised to reflect the fact that Commissioner Paone did not  
participate in the consideration of any matter other than Civil Code  
Section 1951.4 (continuation of lease after breach and abandonment).

(2) In the Minutes concerning Study L-1036/1055 (compensation of  
estate attorney and personal representative):

The next to last sentence of the first paragraph was revised  
to read, "This decision is consistent with the way attorney fees  
are determined in most legal matters, ~~and will have the aggregate  
effect of reducing attorneys' fees for large estates and  
increasing attorneys' fees for small estates.~~"

The next to last sentence of the second paragraph was revised  
to read, "If the personal representative's fee is fixed by private  
agreement, some members of the Commission thought it would lead to  
intra-family disputes."

MEETING SCHEDULE

In connection with its consideration of Memorandum 89-27 (schedule  
for completion of Probate Code--see Study L, below), the Commission  
revised its 1989 meeting schedule as follows:

March 1989

Meeting now scheduled for March 9 (10:00 a.m. - 6:00 p.m.) will be  
held only if necessary to complete work on recommendations to 1989  
legislative session or to deal with problems in connection with  
1989 legislative program. After the staff meets with the  
California Bankers Association (CBA) concerning the trustee's fees  
recommendation, the staff will be in a position to determine  
whether the March Commission meeting should be cancelled. The

March meeting will be cancelled if the staff advises the Commission that it will be useful to have more time to work on the trustee's fees recommendation at the staff level with CBA. The meeting will be cancelled if the staff so advises the Commission by February 21.

April 1989

Two day meeting now scheduled for April 13 and 14 will be cut down to one day, the day to be the day that Commissioner Marzec plans to have meeting with Governor. The staff will ascertain the date as soon as possible.

May 1989

Two day meeting now scheduled for May 18 and 19 will be cancelled.

1989 LEGISLATIVE PROGRAM

The staff made the following report on the 1989 Legislative Program.

PASSED POLICY COMMITTEE IN FIRST HOUSE

Assembly Bill 156 -- Probate Cleanup Bill (Introduced by Assembly Member Harris on December 19, 1988; it has been converted into an Assembly Judiciary Committee bill with Assembly Member Friedman as lead author). This is an urgency bill. The bill makes technical and clarifying revisions in provisions recently enacted upon recommendation of the Law Revision Commission and also incorporates the recommendation relating to notice to creditors. The bill was approved by the Assembly Judiciary Committee on February 8. We will add to this bill all the cleanup provisions that the Commission decides (during the next several months) to recommend for 1989. We will not publish a separate recommendation concerning the cleanup provisions; the final recommendation on notice to creditors has been approved for printing.

Senate Concurrent Resolution No. 11 (Introduced by Senator Lockyer on December 19, 1988). This resolution continues the Commission's authority to study previously authorized topics. This resolution was approved by the Senate Judiciary Committee on February 7, 1989.

MEASURES INTRODUCED

Assembly Bill 155 -- Notice to Creditors (Introduced by Assembly Member Harris on December 19, 1988). The substance of this bill has been amended into AB 156. AB 155 will be held for other purposes.

Assembly Bill 157 -- Technical Creditors' Remedies Revisions (Introduced by Assembly Member Harris on December 19, 1988; we are currently seeking an alternative author on the bill). This bill makes technical corrections in the Enforcement of Judgments Law. The recommendation relating to this bill has been approved for printing and is now being printed as a part of our Annual Report. The bill is tentatively set for hearing by the Assembly Judiciary Committee on February 22.



Assembly Bill 158 -- General Probate Bill for 1989 (Introduced by Assembly Member Harris on December 19, 1988; Assembly Member Friedman will take over as lead author). As introduced, this bill includes only the provisions relating to no contest clauses. The Commission has approved the recommendation relating to no contest clauses for printing. As the Commission approves recommendations on additional aspects of probate law for 1989, the recommended legislation will be added to Assembly Bill 158 unless the recommended legislation on a particular subject is controversial, in which case a separate bill will be introduced for the controversial legislation. In this connection, the Commission considered Memorandum 89-32, which includes a request from the Assembly Judiciary Committee to include in AB 158 legislation proposed by the State Bar Conference of Delegates relating to will depositaries. The Commission decided to advise the Judiciary Committee that it has no objection to allowing the Committee to use AB 158 as a vehicle, so long as the Committee is aware that the Commission has not studied the will depositary proposal and it is not a Commission recommendation.

#### OTHER MEASURES APPROVED BY COMMISSION FOR INTRODUCTION

Revision of Commission's Enabling Statute (Assembly Member Harris will introduce this bill.) This bill would authorize the Commission to study and recommend technical and minor substantive revisions without prior legislative approval for the study.

#### ADDITIONAL MEASURES UNDER STUDY FOR SUBMISSION IN 1989

##### Trustees' Fees

Assembly Member Harris is introducing a "spot bill" and will amend in the substance of the Commission's recommendation on this matter.

##### Compensation of Estate Attorney and Personal Representative (including Employment of Persons to Assist Personal Representative)

Senator Lockyer is considering introduction of this measure. We have a "spot bill" ready for introduction and will amend in the substance of the Commission's recommendation on this matter.

##### Multiple-Party Accounts in Financial Institutions

Senator Robert G. Beverly has agreed to carry this bill for the Commission. It will be introduced as a "spot bill" and the substance of the Commission's recommendation on this matter will be amended in.

##### Assignment and Sublease

Senator Robert G. Beverly has agreed to carry this bill for the Commission. It will be introduced in a form that reflects the Commission's most recent decisions, and any further changes made by the Commission in its final recommendation will be amended into it.

##### Probate Code

Assembly Member Friedman will introduce the bill to repeal and reenact the Probate Code. The bill is currently being drafted by the Legislative Counsel. Our intent is to amend the bill in late summer and set it for hearing in Assembly Judiciary Committee in January 1990.

LETTER TO ASSEMBLY MEMBER FRIEDMAN

The staff should prepare a letter for the Chairman's signature expressing appreciation to Assembly Member Friedman for his willingness to carry the Commission's probate legislation and inviting him to attend Commission meetings when probate matters are discussed.

CONFLICTS OF INTEREST

The Commission considered Memorandum 89-26 providing information relating to the disqualification rules under the Political Reform Act of 1974. The Commission also considered whether there were any business entities or sources of income that should be added to disclosure category 1 in the Commission's Conflict of Interest Code as a result of new topics on the active agenda. The Commission agreed with the staff analysis that no change was required as a result of the administrative law and attorney fee studies.

NEW TOPIC

The Commission considered Memorandum 89-28 and the attached Final Report of the California Child Victim Witness Judicial Advisory Committee. The Commission directed the Executive Secretary to write to the Attorney General (and to Assembly Member Speier) with the response that the Commission is not now in a position to undertake a Family Relations Code with its present resources and present schedule. The Commission currently has a number of other major projects underway. The Attorney General might consider the Judicial Council or Legislative Counsel to undertake this task.

STUDY H-111 - ASSIGNMENT AND SUBLEASE

The Commission considered Memorandum 89-25, relating to assignment and sublease of commercial real property leases. The Commission approved the recommendation to print and to submit to the Legislature, subject to the following changes. The recommendation will incorporate editorial changes made in the bill draft by the Legislative Counsel or

implemented by the staff in the process of preparing the recommendation for printing. Commissioner Paone did not participate in the Commission consideration of this topic.

§ 1995.030. Transitional provision

The staff noted that the Legislative Counsel's draft revises this section to read, "Except as provided in Section 1995.250, this chapter applies to ~~a lease executed before, on, or after January 1, 1990~~ all leases no matter when executed." The staff is unhappy with this revision and may seek to have it undone during the legislative process.

§ 1995.240. Express standards and conditions for landlord's consent

The second paragraph of the Comment, which states that "The meaning of 'unreasonably withheld' under subdivision (a) is governed by the intent of the parties," was deleted. Commissioner Arnebergh did not participate in this decision. The deleted paragraph should be replaced by a paragraph comparable to the third paragraph of the Comment to Section 1995.250 (implied standard for landlord's consent), stating that reasonableness is an objective standard of commercial reasonableness as developed by case law. Commissioners Arnebergh and Walker did not participate in this decision.

§ 1995.250. Implied standard for landlord's consent

The last sentence of subdivision (a) was revised to read, "The tenant may satisfy the burden of proof by showing that, in response to the tenant's written request for a statement of reasons for withholding consent, the landlord has ~~not stated in writing a reasonable objection to the transfer or has not acted reasonably in stating~~ failed, within a reasonable time, to state in writing a reasonable objection to the transfer." The Comment should note that this is not the exclusive means for showing that the landlord's consent has been unreasonably withheld, and other facts may be shown, such as the landlord's unreasonable imposition of excessive investigation fees.

The Comment should also note that the limitation on retroactivity of Kendall is consistent with post-Kendall cases.

§ 1995.260. Transfer restriction subject to standards and conditions

A note should be added to the Comment that "This section does not apply, and Section 1995.240 does apply, to a restriction on transfer of a tenant's interest in a lease that requires the landlord's consent for

transfer." Commissioner Walker did not participate in the Commission's decision to recommend this provision to the Legislature.

STUDY L - PROBATE CODE

The Commission considered Memorandum 89-21, relating to the schedule for completion of work on the Probate Code. The Commission approved the schedule as proposed by the staff. The staff will attach the schedule to the meeting agenda so that the Commission can monitor progress on the project. In this connection, the Commission changed its future meeting schedule as set out in these Minutes under the heading, "Meeting Schedule."

STUDY L-612 - 120-HOUR SURVIVAL REQUIREMENT

The Commission considered Memorandum 89-20 and the attached Tentative Recommendation Relating to 120-Hour Survival to Take by Intestacy. With the exception of Team 2 of the Estate Planning, Trust and Probate Law Section, all the comments received were in favor of the tentative recommendation, although some commentators were in favor of a longer survival requirement than 120-hours. The representative of the Estate Planning, Trust and Probate Law Section stated that the Section had no position on the recommendation.

The Recommendation was approved for printing and submission to the 1989 session of the Legislature.

STUDY L-1036/1055 - COMPENSATION OF ESTATE ATTORNEY  
AND PERSONAL REPRESENTATIVE

The Commission considered Memorandum 89-23 and the First and Second Supplements to Memorandum 89-23.

A letter from HALT was distributed to members of the Commission. A copy of this letter is attached to these Minutes as Exhibit 1. The

letter stated in effect that HALT approved the general concept of the draft statute but HALT was now studying the draft statute and would submit its comments on the draft statute in March 1989.

The Commission first considered the draft statute attached to Memorandum 89-23. The following decisions were made concerning the draft statute.

§ 9680. Authority to hire attorneys, advisors, and others

This section was revised to read in substance:

9680. Except as restricted or otherwise provided by the will or by court order and subject to Section 10804, the personal representative, acting reasonably for the benefit of the estate and in the best interest of interested persons, may hire persons to advise or assist in the administration of the estate, including attorneys, accountants, auditors, technical advisors, investment advisors, or other experts or agents, even if they are associated or affiliated with the personal representative.

The Commission deleted subdivision (b) of Section 9680 of the staff draft -- the provision of the staff draft that provided that the personal representative could "act without independent investigation" on recommendations of the persons hired under Section 9680. The representative of the State Bar Section stated that the Executive Committee of the Section did not want to include a provision in the section that would eliminate the ultimate responsibility of the personal representative. The staff noted that the Comment to the section in the staff draft referred to Estate of Barbikas, 171 Cal. App. 2d 452, 459. 341 P.2d 32 (1959) (lay personal representative may rely on attorney's advice unless "a lay person exercising common prudence would do otherwise). The State Bar Section representative stated that there is a more recent case that holds that, if the attorney gives the personal representative bad legal advice and the personal representative acts on the advice, the personal representative is liable even though acting in reasonable reliance on the lawyer's advice and has an action over against the attorney. The State Bar Section is of the view that the persons injured by an act the personal representative takes in reasonable reliance upon advice received should be able to go against the personal representative and the personal representative should be required to go against the person advising the

personal representative in an action brought outside the estate proceeding. The Commission decided to delete subdivision (b), leaving the law on this matter to the existing case law.

§ 9681. Compensation determined by agreement

This section was approved in substance as drafted.

§ 9682. Relief from limiting provision of the decedent's will

This section was approved in substance as drafted except that notice of the hearing on the petition should also be given to all known heirs and devisees whose interest in the estate would be affected by the relief sought.

§ 9683. Payment out of funds of estate

This section was approved in substance as drafted. The words "an attorney" were substituted for "a member of the State Bar of California."

A discussion should be added to the Comment as to what constitutes a duty of the personal representative for which the personal representative is compensated and a duty that is not one for which the personal representative is compensated. The court must determine whether or not the duty is one for which the personal representative is compensated. If the duty is one for which the personal representative is compensated, the personal representative must pay the person assisting in the performance of that duty out of the personal representative's own funds. For example, the personal representative could pay out of funds of the estate persons whom the personal representative hires to assist in the operation of a business of the estate. If an accountant is hired, whether the accountant can be paid out of funds of the estate depends on (1) whether the accounting service provided is the ordinary accounting which the personal representative is expected to perform and which is included in the duties for which the personal representative is compensated or (2) whether the accounting service is beyond that which would be covered by the compensation paid to the personal representative. The distinction is the same as under the existing law in determining those expenses that may be paid out of the funds of the estate when the accounts of the personal representative are allowed. The section does not change the existing law as to which services are ones that the personal

representative must pay for out of his or her own compensation and which services are ones that may be paid for out of funds of the estate. See the case cited in the Comment.

Probate Code § 9684. Court review of employment and compensation

Subdivision (a) of Section 9684 was approved in substance as drafted.

Subdivision (b) was revised to require that notice of the hearing on the petition also be given to all known heirs and devisees whose interest in the estate would be affected by the relief sought.

Subdivision (c) was revised to read in substance:

(c) If the court determines that the agreed compensation is unreasonable, the court shall fix a reasonable amount as compensation and may order the person who has received excessive compensation to make an appropriate refund.

Subdivision (d) was revised to read in substance:

(d) Nothing in this section limits the right to contest the account of the personal representative under Chapter 3 (commencing with Section 11000) of Part 8, but the petitioner and all persons to whom notice of the hearing on the petition was given pursuant to subdivision (b) are bound by the determination of the court under this section.

The second sentence of the Comment was revised to read in substance:

In determining whether the compensation for the estate attorney is unreasonable, the court may consider any relevant factors, including but not limited to those set out in Rule 4-200 of the Rules of Professional Conduct of the State Bar of California (fees for legal services).

Probate Code § 9685. Right of attorney to decline employment

A provision should be added to the statute that makes clear that nothing in the statute limits the right of an attorney to decline to be the attorney for the personal representative or the right to withdraw as the attorney for the personal representative. This provision would, for example, permit the attorney to withdraw as attorney for the personal representative if the court disapproved the written fee contract between the attorney and the personal representative.

Probate Code (new provision). Use of independent administration for  
compensation of estate attorney

A provision should be added to the statute to provide that the procedure provided under independent administration may be used for the hiring and paying of persons hired by the personal representative, notwithstanding any provision in the will and whether or not independent administration is otherwise granted.

Probate Code § 10501 (amended). Matters requiring court supervision

This section was approved as drafted.

The Commission discussed whether independent administration should be allowed for the compensation of the personal representative. The Commission decided to retain the provision of Section 10501 that precludes the use of independent administration for the compensation of the personal representative.

Probate Code § 10565 (added). Hiring and paying attorneys, advisors  
and others

This section was approved in substance as drafted with the addition of the phrase "Subject to Section 10804," at the beginning of the section.

Probate Code § 10585.5 (added). Estimated amount of compensation to be  
included in notice of proposed action; copy of fee contract

The section was approved in substance as drafted.

§ 10800. Compensation for ordinary services

This section was approved as drafted.

§ 10801. Additional compensation for extraordinary services

This section was approved as drafted. The staff will check the examples of extraordinary services that are set out in the Comment to determine that the examples (most of which involve extraordinary services by the attorney) are appropriate for the personal representative. Examples of extraordinary services include running a business or negotiating a gas and oil lease. The Comment should pick up the discussion of Estate of Walker from the Comment to Section 10833 (which was deleted). The Comment should include a reference to Section 10802.



§ 10802. Compensation provided by decedent's will

Subdivision (b) of Section 10802 should be revised to conform to the scheme of Section 9682. It should be noted in the preliminary part that this section makes a significant change in existing law. It permits the will to provide alternative methods of compensation, such as an hourly rate. The alternative method could eliminate the distinction between ordinary and extraordinary services. The Comment to Section 10802 should include a discussion of the alternative methods of compensation that might be provided in the will. The report should include a statement that the Commission is providing an alternative method of dealing with the compensation issue for personal representatives.

§ 10803. Agreement for higher compensation void

This section was approved as drafted.

§ 10804. No compensation as estate attorney unless authorized by will

The staff reported that HALT had expressed concern about this section. The Commission approved the section after revising the section to permit the court to make an order authorizing the attorney to act both as personal representative and estate attorney, but the section will be given further consideration at a future meeting if HALT sends the Commission any comments or suggestions concerning this section. The second paragraph of the Comment should be deleted.

The staff should prepare a memorandum on the policy issue presented by this section for consideration at a future meeting.

§ 10805. Apportionment of compensation

This section was approved in substance as drafted.

§ 10830. Partial allowance of compensation

This section was approved as drafted.

§ 10831. Final compensation

This section was approved as drafted.

§ 10832. Limitation on allowance of compensation for extraordinary services

This section was approved as drafted.

§ 10833. Matters to be considered in determining compensation for extraordinary services

This section was deleted.

CONFORMING REVISIONS

Probate Code § 7623 (technical amendment). Additional compensation of public administrator

This section was approved as drafted.

Probate Code § 7666 (technical amendment). Compensation of public administrator

This section was approved as drafted.

Probate Code § 8547 (technical amendment). Compensation

This section was approved as drafted.

Probate Code § 9651 (technical amendment). Taking possession of property of estate; delivery of property to person entitled thereto

This section was approved as drafted.

Probate Code § 10900 (amended). Contents of account

This section was approved as drafted.

Probate Code § 10954 (technical amendment). When account not required

This section is to be revised to permit an attorney-in-fact to waive the account. As so revised, the section was approved.

Probate Code § 11003 (technical amendment). Litigation expenses

This section was approved as drafted.

Probate Code § 12205 (amended). Sanction for failure timely to close estate

The Executive Secretary reported that a representative of HALT had expressed concern that there would be no sanction against the attorney for delay in closing the estate if the revision of this section is approved.

The section considered a staff suggestion that the following subdivision (b) be added before the last sentence of the section:

(b) The court may, on the hearing for final distribution, impose a monetary sanction against the attorney for the personal representative if the court determines that the time taken for the administration of the estate exceeds the time required by this chapter or prescribed by the court and that the time taken was within the control of the attorney and was not in the best interest of the estate or interested persons.

The Commission decided not to include this provision in Section 12205. The personal representative is responsible for the administration of the estate. The estate attorney, accountants, and

others will assist the personal representative in performing this duty. But the personal representative is the one responsible. If the personal representative is surcharged for delay in closing administration and the fault is that of the attorney, accountant, or other person, the personal representative can seek to recover from the attorney, accountant, or other person responsible for the delay in closing the estate. The preliminary portion of the recommendation should note and justify the change in existing law to eliminate the existing sanction against the attorney (reduction of compensation) for delay in closing the estate.

#### Transitional Provision

The new statute should apply only to estates where the proceeding is commenced on or after January 1, 1990. The operative date of the new statute would not be delayed, and the statute would become operative on January 1, 1990.

#### Narrative Description

The Commission made the following suggestions concerning the narrative description of the recommendation (First Supplement):

On pages 2-3, the letter of transmittal should refer to the Uniform Probate Code's "agreed fee system," rather than "reasonable fee system."

On page 6, it should be made clearer that the statement that the "California statutory fee system imposes a significant burden on the courts" refers to extraordinary fees, not the percentage fee.

On page 8, the distinction should be made clearer between states that use the agreed fee system of the Uniform Probate Code for the estate attorney without mandatory court review, and states that require the court in every case to fix a reasonable fee for the estate attorney.

At the top of page 10, the reference to the Uniform Probate Code authorizing the personal representative to hire persons to perform "any act of administration" should be revised to refer to assisting the personal representative in administering the estate.

On pages 13-14, the discussion of factors in fixing the personal representative's compensation for extraordinary services should be

deleted, consistent with the Commission's decision to delete Section 10833.

On page 14, the discussion of dual compensation should note that the Commission's recommendation permits the court to authorize dual compensation, as well as the decedent's will.

On page 15, it should be made clearer that a significant change in existing law will be made by eliminating the right of the personal representative to renounce provisions in the will providing for compensation and to take the statutory compensation instead. Under the Commission's recommendation, only the court will be able to grant relief from provisions of the will governing compensation.

#### Approval for Printing

The Recommendation was approved for printing subject to the following qualification: The Recommendation is to be revised to conform to the decisions made at the meeting. The revised Recommendation is to be sent to each member of the Commission so that it can be checked by the member before it is printed. The member is to be allowed five days to review the Recommendation and to suggest revisions in the Recommendation.

#### STUDY L-1058 - PROBATE FILING FEES

The Commission considered Memorandum 89-14 and the First Supplement thereto concerning probate filing fees. The Commission also considered a letter from Martin J. Moshier, San Bernardino County Clerk, and a report from Study Team #1 of the Executive Committee of the State Bar Estate Planning, Trust and Probate Law Section, which were distributed at the meeting. (Copies are attached as Exhibits 2 and 3.) The Commission decided to table further consideration of the draft tentative recommendation in light of information that the Judicial Council is sponsoring legislation that would completely supersede the draft statute. If the Judicial Council bill fails passage, the Commission may revive this topic at a later time.

STUDY L-1060 - MULTIPLE-PARTY ACCOUNTS IN FINANCIAL INSTITUTIONS

The Commission considered Memorandum 89-24 and the attached draft of the Commission's Recommendation Relating to Multiple-Party Accounts in Financial Institutions (February 1989) and a letter from the Executive Committee of the Estate Planning, Trust and Probate Law Section of the State Bar of California (attached to the Minutes as Exhibit 4).

The Commission approved the Recommendation for printing and submission to the 1989 session of the Legislature after the following revisions were made.

§ 5122. Account

Paragraph (4) of subdivision (b) was revised to read:

(4) An account established for the deposit of funds of the estate of a guardianship, ~~---conservatorship~~ ward, conservatee, or decedent.

§ 5139. P.O.D.

A new section was added to read:

5139. "P.O.D." means pay on death.

Comment. Section 5139 is a new provision that makes clear the meaning of the abbreviation "P.O.D." See also Sections 5140 ("P.O.D. account"), 5142 ("P.O.D. payee"). No comparable provision is included in the Uniform Probate Code (1982).

§ 5203. Creation of multiple-party relationship

Paragraph (5) of subdivision (a) was revised to read:

(5) Community property account of husband and wife. "This account or certificate is the community property of the named parties who are husband and wife. The ownership of the account during lifetime and after the death of a spouse is governed by the law governing community property generally and may be affected by a will.

In subdivision (b), the words "the provisions of" were deleted.

§ 5204. Special power of attorney for account transactions

The portion of subdivision (b) relating to the form language was revised to read in substance:

Language in substantially the following form is sufficient to create a power of attorney under this section. "Transactions regarding this account (or certificate) may be made by the

named agent(s). ~~No present or future ownership or right of survivorship is conferred by this designation.~~ This agency is governed by Section 5204 of the California Probate Code. The agent has no present or future ownership or right of survivorship in this account. The agent must keep a record of the transactions and disbursements under this agency. The agent must make disbursements from this account to or for the benefit of the account owner, unless the account owner has authorized the disbursement in writing.

Probate Code § 5307. Account expressly described as "community property" account

In the Comment the phrase "his or her" was substituted for "her or her".

CONFORMING REVISIONS

Prob. Code § 20 (amended). Application of definitions

Section 20 of the Probate Code is to be amended to read as follows:

20. (a) Unless the provision or context otherwise requires and except as provided in subdivision (b), the definitions in this part govern the construction of this code.

(b) The definitions in this part do not apply to Division 4 (commencing with Section 1400) ~~or Division 5 (commencing with Section 5100).~~

This revision makes the general definitions (including the definition of Totten trust account in Section 80) apply to the Multiple-Parties Account Law.

Operative date

The revisions of the Multiple-Parties Account Law should become operative on January 1, 1990, and would apply to accounts in existence on that date and accounts thereafter established.

Project of Uniform Law Commissioners to Draft New Free-Standing Act

When the Uniform Law Commissioners have approved a new freestanding Uniform Multiple-Parties Account Act, consideration should be given to the new Uniform Act. If the California Law Revision Commission decides to recommend enactment of the new Uniform Act, consideration should be given to locating the new Uniform Act in the Financial Code.

Development of Uniform Forms for Use Under Revised Statute

Maurine C. Padden, Legislative Counsel, California Bankers Association, indicated that the California Bankers Association would be willing to cooperate with the Commission's staff in a project to develop uniform forms for use under the revised California Multiple-Parties Account Law.

STUDY L-1062 - PRIORITY FOR APPOINTMENT AS ADMINISTRATOR

The Commission considered Memorandum 88-82 and First Supplement concerning priority for appointment as administrator. The Commission also considered a letter from the Executive Committee of the Estate Planning, Trust and Probate Law Section of the State Bar, a copy of which is attached to these Minutes as Exhibit 5.

For the present, the Commission decided not to recommend any reordering of the priorities in existing law (Prob. Code § 8461). The Commission invited the California Association of Public Administrators, Public Guardians, and Conservators to refine their proposal and to bring it back to the Commission for consideration at a future meeting.

The Commission accepted the staff recommendation to make the following revisions in the language of the statute to make it conform to intestate succession law:

Probate Code § 8461 (amended). Priority for appointment  
as administrator

8461. Subject to the provisions of this article, the following persons are entitled to appointment as administrator in the following order of priority:

- (a) Surviving spouse.
- (b) Children.
- (c) Grandchildren.
- (d) Other issue.
- (e) Parents.
- (f) Brothers and sisters.
- (g) Grandparents.
- (h) Issue of grandparents.
- (i) Children Issue of a predeceased spouse.
- (j) Other next of kin.
- (k) Relatives Parents of a predeceased spouse or issue of parents .
  - (I) Conservator or guardian of the estate of the decedent acting in that capacity at the time of death.
  - (m) Public administrator.
  - (n) Creditors.
  - (o) Any other person.

Comment. Section 8461 is amended to conform the priorities for appointment as administrator more closely to the priorities to take from the decedent by intestate succession. See Section 6402.

These revisions should go in the Commission's urgency bill if other amendments are made to it. If other amendments are not made to the urgency bill, these revisions should go in the general probate bill.

STUDY L-2010 - 1989 PROBATE CLEANUP LEGISLATION

The Commission considered Memorandum 89-21, relating to the time for filing the inventory and appraisal. The Commission decided to take no further action on this matter at this time.

STUDY L-3007 - IN-LAW INHERITANCE

The Commission considered Memorandum 89-17 and the First, Second, and Third Supplements, concerning in-law inheritance. The Commission decided that the in-law inheritance statute (Prob. Code § 6402.5) should be repealed in its entirety. This will greatly simplify California intestate succession law, will reduce the notices required in probate proceedings, and will make intestate succession law better reflect the intent of the average decedent. The staff should prepare a tentative recommendation for Commission consideration.

STUDY L-3010 - TRUSTEES' FEES

The Commission considered Memorandum 89-22 and the revised draft of the *Recommendation Relating to Trustees' Fees*. The Commission also considered a report from Team #2 of the Executive Committee of the State Bar Estate Planning, Trust and Probate Law Section, which was distributed at the meeting. (A copy is attached as Exhibit 6.)



Except as noted below, the Commission did not review the draft recommendation. The Commission accepted the suggestion that the staff and representatives of the California Bankers Association confer in an effort to work out a mutually acceptable draft, and postponed further consideration of the draft. It was noted that a spot bill has been prepared for Assembly Member Harris as a vehicle for this recommendation when it is ready.

Financial Code § 2051. Rights on sale of trust business

The amendment of this section should be revised as follows:

2051. The selling and purchasing banks shall enter into an agreement of purchase and sale which shall contain all the terms and conditions of the sale and contain proper provision for the payment of all liabilities of the selling bank, or of the business, branch, or branch business sold, and proper provision for the assumption by the purchasing bank of all fiduciary and trust obligations of the selling bank, or business, branch, or branch business sold. The agreement may provide for the transfer of all deposits of the selling bank or of the business, branch, or branch business sold to the purchasing bank, subject to the right of every depositor of the selling bank or of the business, branch, or branch business sold to withdraw his the deposit in full on demand after such transfer, irrespective of the terms under which it was deposited with the selling bank, and may provide for the transfer of all court and private trusts so sold to the purchasing bank, ~~subject to the rights of all trustees and beneficiaries under the trusts so sold after such transfer to nominate another or succeeding trustee of the trust so transferred.~~ A transfer under this section is good cause for removal and replacement of the trustee under the Trust Law, Division 9 (commencing with Section 15000) of the Probate Code.

Probate Code § 15691. Application of article

The following staff revision of Section 15691 was distributed for consideration at the meeting:

15691. Notwithstanding any provision in the trust:

(a) Subject to subdivision (b), the trustee may increase the trustee's fee only after compliance with this article or pursuant to a court order.

(b) The requirement of subdivision (a) does not apply to an increase in the trustee's fee arising from an increase in transaction charges in either of the following circumstances:

(1) Where the aggregate amount of transaction charges in the current fiscal year of the trust ~~is less than does not~~ exceed five percent of the total amount of the trustee's fee compensation charged the trust during that time. ♦

(2) Where the aggregate amount of transaction charges in the current fiscal year of the trust does not exceed the aggregate amount of transaction charges charged the trust in the preceding fiscal year of the trust.

Commissioner Stodden did not vote on any matter concerning this study.

#### STUDY L-3012 - UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT

The Commission considered Memorandum 89-13 and the First Supplement thereto concerning the revised draft of the *Tentative Recommendation Relating to the Uniform Management of Institutional Funds Act*. The Commission also considered a letter from the Executive Committee of the State Bar Estate Planning, Trust and Probate Law Section which was distributed at the meeting. (A copy is attached as Exhibit 7.) The Commission approved the draft for distribution for comment as a tentative recommendation, with the changes suggested by the staff in the First Supplement to deal with the objections of the Attorney General's Office, and also made the following decisions:

##### Application of UMIFA to governmental entities

The Commission reaffirmed the general policy of applying UMIFA to both private and public charitable, educational, and other eleemosynary institutions that hold endowment funds. (See draft Section 18503(3).) However, so as not to displace any applicable standards of care relating to public funds, a section should be added reading substantially as follows: "Nothing in this part limits the application of any law relating to the expenditure of public funds.

##### Probate Code § 18503 - Transitional provision

Subdivision (c)(2) should be revised to refer to 1991, rather than 1990, since the a bill would not be introduced until the 1990 legislative session.

##### Probate Code § 18507 - *Cy pres* standard

The *cy pres* standard for releasing restrictions on gifts in this section should be revised to apply where the restriction is "illegal, impossible, or impracticable." This would replace the "obsolete or impracticable" standard of existing Education Code Section 94607.

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

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chairperson

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



An Organization Of

**AMERICANS FOR LEGAL REFORM**

February 7, 1989

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

Dear Commissioners:

HALT is gratified that, at the end of your last meeting, you decided to change your recommendation on probate lawyers' fees to one more in line with consumers' interests. HALT strongly supports your decision to scrap percentage legal fees and replace them with a negotiated fee system. As we emphasized at your January meeting, however, the decision to recommend a reasonable fee system doesn't end the work; there are several details that must still be worked out.

When we received your latest mailings last week, therefore, we were quite dumb-founded to learn that you intend to submit a bill to the legislature right away, with no period indicated for further discussion or public comment. After spending more than one year of deliberation only to recommend keeping the current percentage fee system, it seemed to us that a last-minute decision to overhaul that system warranted *at least a few* months of comment and debate on the details of the new proposal.

Upon relating our concerns to Mr. DeMouly, he assured me that "the case wasn't closed" on the Commission's recommendation — that you wanted to submit the bulk of your recommendation to get something in the legislative hopper this year but that, by doing so, you weren't foreclosing further discussion and would continue to consider LRC-authored amendments to that bill, at least through April. HALT has reviewed Memorandum 89-23 and its supplements, and we have several recommendations for improvements. Because other activities are pressing this month, however, it now appears that no HALT representative will be able attend your February 9 meeting.

In reliance on the Executive Secretary's assurances, therefore, I am writing to inform you that HALT wishes and plans to submit detailed comments in March and would appreciate your consideration of our recommended amendments. Thanks again for your willingness to involve the public in your work.

Sincerely,

A handwritten signature in dark ink, appearing to read "Deborah Chalfie".

Deborah Chalfie  
Legislative Director

- 1 -

**SUPERIOR COURT/COUNTY CLERK**

**COUNTY OF SAN BERNARDINO**

Courthouse, Third Floor, Room 326 • 351 North Arrowhead Avenue  
San Bernardino, CA 92415-0240 • (714) 387-3878



**MARTIN J. MOSHIER**  
Superior Court Executive Officer  
and County Clerk

February 1, 1989

CA LAW REV. COMMISSION

FEB 06 1989

RECEIVED

Mr. Stan G. Ulrich  
Staff Counsel  
California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

Dear Mr. Ulrich:

Thank you for providing this Court with the opportunity to provide comment on the tentative recommendations relating to filing fees in Probate.

We concur with the concept of standardizing the fees and providing uniformity from one court to the next. We have some concern that the proposed fee levels will have an adverse impact upon revenue. We would like to ask the Commission to provide an assessment of revenue impacts before adopting the proposal.

Thank you once again for the opportunity to comment.

Sincerely,

Martin J. Moshier  
Superior Court Executive Officer/  
County Clerk

MJM:go

R E P O R T

TO: JAMES V. QUILLINAN  
IRWIN D. GOLDRING  
VALERIE J. MERRITT  
STERLING L. ROSS, JR.  
THE EXECUTIVE COMMITTEE IN GENERAL

FROM: WILLIAM V. SCHMIDT

DATE: February 6, 1989

RE: LRC Memorandum 89-14; Study L-1058  
Filing Fees in Probate.

---

This Memorandum was discussed by the Executive Committee at its meeting in San Francisco on February 4, 1989. Prior to that time it was reviewed by members of Study Team No. 1, although no conference call among the members of the Study Team was held.

We read from Memorandum 89-14 that at the time it was written the staff had received five (5) letters from County Clerks. The comments from the first four letters presented in the Memorandum were generally favorable. The fifth letter was from Bruce C. Bolinger, County Clerk of the County of Nevada, who opposed the tentative recommendation as it appeared to him that it would have a negative impact on the amount of revenue received by the counties. However, the staff states that the draft now includes conforming changes in related sections which should remove most, if not all, of the reasons for opposition by Mr. Bolinger.

Furthermore, we feel it is helpful for the staff and commission to remember that county clerks of Los Angeles, Orange and Alameda Counties had a substantial input on the work

product which is found in the tentative recommendation. It seems to us, therefore, fair to say that these three counties support the tentative recommendation.

As stated in the First Supplement to this Memorandum, Don Swanson of Santa Clara County suggests a more comprehensive review of the entire filing fee subject. The staff states that it does not now have the time and resources to attempt a comprehensive revision, and, therefore, states that the question now before the commission is whether the probate filing fee draft should be moved forward or dropped. The position of the Executive Committee of the State Bar Section is that it should be moved forward and not dropped.

Our Section, and, in particular, Study Team No. 1 has devoted many hours to this subject over the past several months. We know the staff has devoted even more time. Everyone concerned realizes that this has not been an easy subject with which to deal. We realize that the law recommended in the tentative recommendation may not be perfect and may require some revisions in the future. However, we strongly believe that it is superior to the existing statutory provisions, and that the adoption of the tentative recommendation and its enactment into law would be a major step forward in an attempt to bring greater simplicity and clarity in the law and uniformity among the counties.

Government Code Sec. 26827.4.

In the interest of providing greater clarity, we would like to propose that subsection (d) be revised slightly to read as follows:

"(d) A subsequent paper that is only a consent to an action or relief requested in a proceeding under

the probate code, or is a waiver, declination or disclaimer in connection with such proceeding, is not subject to the subsequent paper fee provided by this section."

Government Code Sec. 26827.2.

To provide consistency and uniformity, we would also recommend that subsection (b) is amended slightly to read as follows:

"(b) The filing of a paper that does not require a hearing or that is only a consent to an action or relief requested in a proceeding under the probate code, or which is only a waiver, declination or disclaimer in connection with such proceeding, is not subject to the fee provided by this section."

We realize that a disclaimer and a declination is mentioned in the comment to Sec. 26827.2, but people do not always have, or read, comments or feel bound by them. We, therefore, prefer to put this language in the statute itself.

The staff states in Memorandum 89-14 on page 2 that the major thrust of the statute is to revise the probate filing fees to be more consistent with the filing fee statutes covering civil actions generally. In a civil action, the filing fee for the first paper under Government Code Sec. 26820.4 is on a "per paper" and not a "per person" basis. However, the filing fee for a responding party is on a "per person" and not on a "per paper" basis. Under Government Code Sec. 26826 the civil filing fee for the first responding paper is on a "per person" and not a "per paper" basis as the statute expressly refers to "any defendant, intervenor, respondent or adverse party, whether separately or jointly..."



The staff proposes, and we agree, that the same concept should be carried over to probate filings. The filing fee for the first petition or paper in probate is, and should be, on a "per petition" or "per paper" basis, and not on a "per person" basis. In other words, if three persons who are named as co-executors in a will combine in a single Petition for Probate, the filing fee is, and should be, for the one petition. It is in the same amount as a filing fee for a Petition for Probate filed by one petitioner. On the other hand, if three brothers join in filing an opposition to a petition for distribution by the executor, each brother is charged a separate filing fee under Government Code Sec. 26827.2. In this regard, the theory and the practice would be consistent with the civil code filing system. We agree with the staff that the policy behind this different treatment is sometimes difficult to understand; however, to our knowledge, this is the way that it has been working in most counties for many years, and to attempt to conform the probate filing fee system to the civil filing fee system hopefully will provide for more continuity, ease and simplicity of administration.

In conclusion, we feel the staff and the Commission should move forward with its proposals, which, we believe, will make a substantial step forward in the direction of improving the existing law.

*Wm V. Schmitt*

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

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JAY BOSS MacMAHON, San Rafael  
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JAMES V. QUILLINAN, Mountain View  
BRUCE B. ROSS, Los Angeles  
STERLING L. ROSS, JR., MID Valley  
MICHAEL V. VOLLMER, Irvine

REPLY TO:

February 6, 1989

CA LAW REV. COMM.

FEB 07 1989

REC'D

VIA FEDERAL EXPRESS

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

Re: MEMORANDUM 89-24 ON THE DRAFT  
RECOMMENDATION RELATING TO MULTIPLE-PARTY  
ACCOUNTS IN FINANCIAL INSTITUTIONS

Dear Commissioners:

I am writing this letter on behalf of the Executive Committee of the Estate Planning, Trust and Probate Law Section of the State Bar of California.

The Executive Committee wants to commend you for a draft recommendation which is much better than the current law and also addresses and deals with the concerns previously raised by the Executive Committee. We believe the current version of the proposal should be submitted to the legislature and enacted without major change. Nevertheless, we have one additional minor technical comment. The wording of Section 5122(b)(4) on page 26 should be altered to "funds of the estate of a ward, conservatee, or decedent." Technically, this is more precisely correct than the existing language.

Very truly yours,

*Valerie J. Merritt*  
Valerie J. Merritt

VJM:plh

cc: Irving D. Goldring, Esq. (via telecopy)  
James V. Quillinan, Esq. (via telecopy)  
Michael V. Vollmer, Esq. (via telecopy)  
Sterling L. Ross, Esq.

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

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BRUCE S. ROSS, *Los Angeles*  
STERLING L. ROSS, JR., *Mill Valley*  
MICHAEL V. VOLLMER, *Irvine*

February 7, 1989

REPLY TO:

444 Castro St. Suite 900  
Mountain View, CA 94041

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

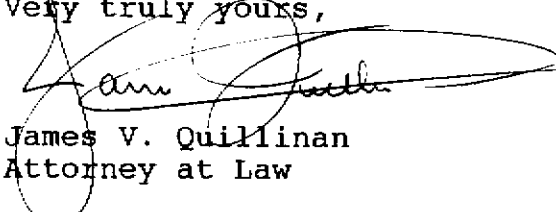
Re: LRC Memo 88-82, Priority for Appointment of Administrators

Dear John:

The Executive Committee has reviewed the Memo and its supplement and generally agrees with the staff. The priority for appointment of administrators should not be changed. Many counties are having difficulty with the Public Administrators in that they cannot close estates timely, are overworked and are generally non-responsive. Public Administrators are generally the last resort for a personal representative. Certainly heirs of a predeceased spouse who take should have priority and even the non-related guardian or conservator is in a much better position to handle the affairs of the decedent who he or she cared for during life than the Public Administrator.

This report is to assist in the technical and substantive review of those sections involved.

Very truly yours,

  
James V. Quillinan  
Attorney at Law

JVQ/hl  
Encls.  
cc: Valerie Merritt  
Terry Ross Irv Goldring

## M E M O R A N D U M

TO: JAMES V. QUILLINAN  
IRWIN D. GOLDRING  
STERLING L. ROSS  
EXECUTIVE COMMITTEE

FROM: VALERIE J. MERRITT

DATE: FEBRUARY 7, 1989

RE: CALIFORNIA LAW REVISION COMMISSION  
MEMORANDUM 89-22 ON REVISED DRAFT  
RECOMMENDATION RELATING TO TRUSTEE'S FEES

---

Team 2 has not had a chance to review this memorandum so these are purely my personal comments, except where I refer back to the prior discussions we had as a team. I perceive our role at this meeting as raising issues rather than giving our definitive position at this time on this issue.

As noted when our Team commented on an earlier draft, we believe there are no adverse tax consequences if the only right of the Settlor is to bring a matter to the Court's attention for decision by the Court, as that does not amount to a right of the Settlor to remove a Trustee and thus should cause no problems.

Previously, we had a split of opinion on the issue of whether the Court should be the ultimate decision maker on the change of Trustee. Jim backed the CBA position the Court should decide, Beatrice abstained and Ken and I voted for keeping the Court out of the process so long as all beneficiaries can agree. Ken eloquently argued that there is no remedy if the cost of removing a Trustee equals or exceeds the cost of the increased fees. The need to go to Court introduces a chill factor that maintains the status quo. In the revised draft, in Section 15695, the Trustee is given the choice of petitioning to resign as one of its options if 50% of the beneficiaries object to the fee increase. On the other hand, if all beneficiaries agree and the trustee does not object, the Trustee can be changed without court approval under Sections 15697 and 15698. If the Trustee objects, Section 15697 provides for court intervention. The same system appears to apply if there is a sale of a trust business under the proposed revision of Financial Code Section 2051, but I do not quite see how that works if there is an objection to the new trustee on a basis other than fees since the provisions of

James V. Quillinan  
Irwin D. Goldring  
Sterling L. Ross  
Executive Committee  
February 7, 1989  
Page 2

15697 and 15695 are triggered by the fee increase objections. Given these changes, I am not sure where our committee would come out.

New Section 15692 gives notice of fee increases to each beneficiary who will be affected (which in the normal situation would be all beneficiaries if fees are charged one half to income and one half to principal). The objections provisions apply to half of the beneficiaries who received notice, regardless of the percentage interest they had. There is no requirement of half of income and half of remainder beneficiaries act. This appears to be practical and easier to administer, although one can imagine an instance or two where it might work unfairly.

Previously, no member of the group had strong feelings about the exemplary damage issues and we probably should still take no position on this issue.

The new draft does redefine Trustee's fees. Section 15690(b) (defining "transaction charges") is better than before, but the language is still quite loose. Section 15691(b)(2) could lead to some very unfortunate results. It appears to excuse the trustee from compliance with the requirements of the article (such as giving notice) if the transaction charges in the current year do not exceed those in the prior year. In any year which has unusual transaction charges, such as due to lease negotiations or sale of a major asset, the "prior year" will be high, setting the stage for massive increases in the usual types of transaction charges (such as preparation of tax returns) without compliance with the article (since the aggregate resulting transaction charges will still be less than the prior year). While I concede that the tendency of trustees to desire a uniform schedule of fees will somewhat obviate this potential for abuse, we need to recognize that it is there.

I suspect there are other sleepers in this proposal, but they probably won't surface without a group discussion of the language. Sorry there was no time for that this month.

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

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February 7, 1989

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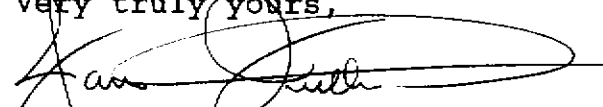
Re: LRC Memo 89-13, UMIFA

Dear John:

The Executive Committee has reviewed the Memo and agrees with the staff comment on page 6 that the words "impossible or impracticable" should be used in place of "obsolete or impracticable". The California Cy Pres doctrine has and should continue to be narrow. The addition of the standard "obsolete" would only increase litigation and add uncertainty.

This report is to assist in the technical and substantive review of those sections involved.

Very truly yours,

  
James V. Quillinan  
Attorney at Law

JVQ/hl

Encls.

cc: Valerie Merritt

Terry Ross

Irv Goldring