

<p>DATE & TIME:</p> <ul style="list-style-type: none"> •January 11 (Thursday) 1:30 pm - 6:00 pm •January 12 (Friday) 9:00 am - 2:00 pm 	<p>PLACE:</p> <ul style="list-style-type: none"> • Los Angeles Airport Sheraton Plaza La Reina 6101 West Century Blvd. Los Angeles 90045 (213) 410-1267
<p>NOTE: Changes may be made in this agenda, or the meeting may be rescheduled, on short notice. IF YOU PLAN TO ATTEND THE MEETING, PLEASE CALL (415) 494-1335 AND YOU WILL BE NOTIFIED OF LATE CHANGES.</p>	

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

THURSDAY, JANUARY 11, 1990

1. MINUTES OF NOVEMBER 30-DECEMBER 1, 1989, COMMISSION MEETING (sent 12/15/89)

2. ADMINISTRATIVE MATTERS

Meeting Schedule

Oral report at meeting

1990 Legislative Program

Oral report at meeting

Policy Statement on Activities of Consultants

Memorandum 90-2 (SGU) (sent 12/15/89)

Communications from Interested Persons

3. STUDY F-1000 - FAMILY RELATIONS LAW

Questionnaire on Matters to Be Included in Study

Memorandum 90-5 (JHD) (sent 12/21/89)

4. STUDY F-641/L-3020 - DISPOSITION OF COMMUNITY PROPERTY

Donative Transfers and Revocation of Consent

Memorandum 89-106 (NS) (sent 11/07/89; another copy sent 12/12/89)
First Supplement to Memorandum 89-106 (to be sent)

Rights and Obligations Associated with Employment Relationship

Memorandum 90-9 (NS) (sent 12/12/89)

Right of Surviving Spouse to Dispose of Community and
Quasi-Community Property

Memorandum 90-10 (NS) (sent 12/12/89)

5. STUDY L-1029 - QUALIFIED DOMESTIC TRUSTS

Proposed Revision of Recommendation

Memorandum 90-8 (NS) (sent 12/12/89)

6. STUDY L-3012 - UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT

Proposed Revision of Recommendation

Memorandum 90-3 (SGU) (sent 12/15/89)

7. STUDY L-608 - DEPOSIT OF ESTATE PLANNING DOCUMENTS WITH ATTORNEY

Memorandum 89-88 (RJM) (sent 9/12/89; another copy sent 12/12/89)

Draft of Tentative Recommendation (attached to memorandum)

First Supplement to Memorandum 89-88 (sent 10/4/89; another copy
sent 12/12/89)

Second Supplement to Memorandum 89-88 (sent 12/21/89)

8. STUDY L-3015 - DISTRIBUTION OF PROPERTY IN ESTATE

Debts that are Contingent, Disputed, or Not Due

Memorandum 89-78 (NS) (sent 9/25/89; another copy sent 12/12/89)

Draft of Tentative Recommendation (attached to memorandum)

9. STUDY L-1030 - AFFIDAVIT PROCEDURE FOR COLLECTION OR TRANSFER OF
PERSONAL PROPERTY

Study L-1030 - Collection by Affidavit Despite Probate

Memorandum 89-79 (RJM) (sent 9/14/89; another copy sent 12/12/89)

First Supplement to Memorandum 89-79 (sent 9/26/89; another copy
sent 12/12/89)

Study L-1030 - Collection of Life Insurance Proceeds by Affidavit

Second Supplement to Memorandum 89-79 (NS) (sent 11/17/89; another
copy sent 12/12/89)

Study L-1030 - Summary Collection in Small Estates (Cameron letter)
Memorandum 89-33 (RJM) (sent 7/19/89; another copy sent 9/6/89)
First Supplement to Memorandum 89-33 (sent 9/8/89; another copy
sent 12/12/89)

Study L-3026 - Affidavit Procedure for Substitution of Parties
Memorandum 89-86 (SGU) (sent 9/26/89; another copy sent 12/12/89)
Draft of Tentative Recommendation (attached to memorandum)
First Supplement to Memorandum 89-86 (sent 12/27/89)

10. STUDY L - NEW PROBATE CODE--SUGGESTIONS FOR SUBSTANTIVE REVISION

Study L-644 - Recognition of Trustees' Powers
Memorandum 90-1 (SGU) (sent 12/15/89)

Study L-700 - Legal Counsel in Conservatorship Proceedings
Memorandum 90-16 (RJM) (sent 12/15/89)

Study L-1025 - Creditor Claims
Memorandum 90-7 (NS) (sent 12/12/89)

Study L-1028 - Independent Administration of Estates Act
Memorandum 90-11 (NS) (sent 12/12/89)

Study L-1040 - Appointment of Public Administrator
Memorandum 90-12 (NS) (sent 12/12/89)

Study L-1041 - Bond of Nonresident Personal Representative
Memorandum 90-13 (NS) (sent 12/12/89)

Study L-1061 - Agreement to Split Brokers' Commissions
Memorandum 90-14 (SGU) (sent 12/15/89)

11. STUDY L-3030 -CUSTODIANSHIPS UNDER UNIFORM TRANSFERS TO MINORS ACT

Memorandum 90-17 (sent 12/15/89)

12. STUDY L-3025 - TOD REGISTRATION FOR VEHICLES AND VESSELS

Memorandum 89-85 (RJM) (sent 9/14/89; another copy sent 12/12/89)
Draft of Tentative Recommendation (attached to memorandum)
First Supplement to Memorandum 89-85 (sent 12/27/89)

FRIDAY, JANUARY 12, 1990

13. STUDY H-112 - COMMERCIAL LEASE LAW

Use Restrictions
Memorandum 90-4 (NS) (sent 12/18/89)
Draft of Tentative Recommendation (attached to memorandum)

14. STUDY N-101 - ADMINISTRATIVE ADJUDICATION

Structural Issues

Memorandum 90-6 (NS) (sent 12/27/89)

Background Study (previously distributed)

First Supplement to Memorandum 90-6 (sent 12/15/89)

Second Supplement to Memorandum 90-6 (sent 12/27/89)

Third Supplement to Memorandum 90-6 (enclosed)

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STATUS OF COMMISSION STUDIES

(as of December 11, 1989)

STUDY	SUBJECT	Staff Work	Comm'n Review	Approve TR	Review Comment	Approve to Print
F-1000	Family Relations Law --scope of study	10/89	12/89			
H-111	Assignment & Sublease --remedies	12/88	9/89	12/89		
H-112	Commercial Lease Law --use restrictions	12/88	19/89	[1/90]		
L-608	Deposit of Estate Planning Documents with Attorney	6/89	7/89	[1/90]		
L-1024	Qualified Domestic Trusts	5/89	9/89	9/89	12/89	12/89
L-3007	In-Law Inheritance	2/88	12/88	7/89	12/89	12/89
L-3009	TOD Designation in Real Property Deeds	10/89	[2/90]			
L-3012	Uniform Management of Institutional Funds Act	8/88	12/88	2/89	7/89	7/89
L-3013	Uniform Statutory Rule Against Perpetuities	5/89	[3/90]			
L-3015	Debts that are Contingent, Disputed, or Not Due	8/89	9/89	[1/90]		
L-3019	Uniform Statutory Form Power of Attorney	5/89	7/89	7/89	12/89	12/89
L-3022	Access to Safe Deposit Box	6/89	7/89	9/89	12/89	12/89
L-3023	Uniform TOD Security Registration Act	8/89	12/89	12/89		
L-3024	Springing Powers of Attorney	9/89	---	---	---	12/89
L-3025	Motor Vehicle and Vessel TOD	8/89	[1/90]			
L-3026	Affidavit Procedure for Substitution of Parties	9/89	[1/90]			
N-101	Admin. Adjudication --structural issues	12/89	[1/90]			

[date] = scheduled

MEETING SCHEDULE

January 1990

Jan. 11 (Thurs.) 1:30 p.m. - 6:00 p.m. Los Angeles
Jan. 12 (Fri.) 9:00 a.m. - 2:00 p.m.

February 1990

Feb. 8 (Thurs.) 1:30 p.m. - 6:00 p.m. Sacramento
Feb. 9 (Fri.) 9:00 a.m. - 2:00 p.m.

March 1990

Mar. 8 (Thurs.) 1:30 p.m. - 6:00 p.m. Santa Barbara
Mar. 9 (Fri.) 9:00 a.m. - 2:00 p.m.

April 1990

Apr. 26 (Thurs.) 1:30 p.m. - 6:00 p.m. Sacramento
Apr. 27 (Fri.) 9:00 a.m. - 2:00 p.m.

May-June 1990

May 31 (Thurs.) 1:30 p.m. - 6:00 p.m. San Francisco
June 1 (Fri.) 9:00 a.m. - 2:00 p.m.

July 1990

July 26 (Thurs.) 1:30 p.m. - 6:00 p.m. San Diego
July 27 (Fri.) 9:00 a.m. - 2:00 p.m.

August 1990

No Meeting

September 1990

Sep. 13 (Thurs.) 1:30 p.m. - 6:00 p.m. San Jose
Sep. 14 (Fri.) 9:00 a.m. - 2:00 p.m.

October 1990

Oct. 11 (Thurs.) 1:30 p.m. - 6:00 p.m. Los Angeles
Oct. 12 (Fri.) 9:00 a.m. - 2:00 p.m.

November 1990

Nov. 29 (Thurs.) 1:30 p.m. - 6:00 p.m. Orange County
Nov. 30 (Fri.) 9:00 a.m. - 2:00 p.m.

December 1990

No Meeting

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION
JANUARY 11-12, 1990
LOS ANGELES

A meeting of the California Law Revision Commission was held in Los Angeles on January 11-12, 1990.

Commission:

Present:	Edwin K. Marzec Chairperson Roger Arnebergh Vice Chairperson	Arthur K. Marshall Forrest A. Plant Ann E. Stodden
Absent:	Elihu M. Harris Assembly Member Bill Lockyer Senate Member	Bion M. Gregory Legislative Counsel

Staff:

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

Michael Asimow, Administrative Law (Jan. 12)
William G. Coskran, Landlord and Tenant Law (Jan. 12)

Other Persons:

Lisa C. Alexander, Beverly Hills Bar Association, Probate, Trust and Estate Planning Section, Legislative Committee, Los Angeles (Jan. 11)
Yeoryios C. Apallas, Attorney General's Office, San Francisco (Jan. 11)
Joseph S. Avila, Attorney and Probate Referee, Los Angeles (Jan. 11)
Jonathan Brown, Association of Independent California Colleges and Universities, Sacramento (Jan. 11)
Ken Cameron, Los Angeles County Bar Association, Administrative Law Committee, Los Angeles (Jan. 12)
Phyllis Cardoza, Beverly Hills Bar Association, Probate, Trust and Estate Planning Section, Legislative Committee, Los Angeles (Jan. 11)
Kenneth A. Feinfeld, Executive Committee, Los Angeles County Bar Association, Probate and Trust Law Section, Los Angeles (Jan. 11)
John W. Francis, State Bar Committee on Nonprofit Corporations and Unincorporated Associations, La Habra (Jan. 11)
Irwin D. Goldring, Executive Committee, State Bar Estate Planning, Trust and Probate Law Section, Los Angeles (Jan. 11)

Valerie J. Merritt, Executive Committee, State Bar Estate Planning,
Trust and Probate Law Section, Los Angeles (Jan. 11)
Barry D. Russ, Executive Committee, State Bar Family Law Section,
Los Angeles (Jan. 11)
Daniel A. Wingerd, The Common Fund, Redlands, California &
Fairfield, Connecticut (Jan. 11)
Shirley Yawitz, California Probate Referees Association, San
Francisco

ADMINISTRATIVE MATTERS

APPROVAL OF MINUTES OF NOVEMBER 30-DECEMBER 1, 1989 MEETING

The Commission approved the Minutes of the November 30-December 1, 1989, Commission meeting as submitted by the staff.

MEETING SCHEDULE

The Commission canceled the February meeting for lack of a quorum.

The Commission decided not to add time to the March meeting in Santa Barbara.

APPOINTMENT OF NEW COMMISSIONERS

The Commission noted that it has recently canceled or shortened meetings due to the difficulty of assembling a quorum because of vacancies on the Commission. The Chairperson will speak to the Governor and the Governor's appointments secretary about the need to fill the vacancies. The Commission briefly discussed possible appointees the Chairperson might mention, including the possibility of obtaining a Northern California appointee for geographical balance.

POLICY STATEMENT ON ACTIVITIES OF CONSULTANTS

The Commission approved the new policy statement concerning the activities of consultants set out in Memorandum 90-2. This material will be included in the Commission's Handbook of Practices and Procedures. The Commission also modified a related policy statement as follows:

PRESENTATIONS BY CONSULTANT TO OTHER PERSONS OR GROUPS

If the consultant makes any presentation of his or her background study and recommendations to any person, or legislative or other group, the consultant shall make clear at the time the presentation is made that:

(1) The consultant's recommendations are not recommendations of the Commission and do not represent the views or recommendations of the Commission.

(2) The Commission may or may not make recommendations on the particular matter and, if the Commission does make recommendations, those recommendations will be made in the Commission's printed report to the Legislature.

1990 LEGISLATIVE PROGRAM

The Executive Secretary made the following report on the 1990 Legislative Program.

Passed One House

Assembly Bill 831 (trustees fees and attorney fees)

Bill will be amended by Assembly Member Harris to add attorney fee provisions to bill before it is heard.

Approved by Committee in First House

Assembly Bill 759 (new Probate Code)

Approved by Assembly Committee on Judiciary on January 10, 1990. At the hearing on January 10, Assembly Member Friedman amended the bill to delete the chapter that provided that the attorney fees would be reasonable rather than be determined by a statutory schedule fees. This leaves the issue of attorney fees to be dealt with in Assembly Bill 831 or in another bill.

Introduced

Assembly Bill 2589 (Sher) In-law Inheritance - Introduced January 10, 1990.

Arrangements Made for Introduction

Urgency Probate Bill - Senator Lockyer has agreed to introduce this bill. The bill would effectuate the Commission's *Recommendation Relating to Disposition of Small Estate by Public Administrator* and would make a technical correction relating to the operative date of a 1989 enactment.

Comprehensive Probate Bill - Senator Lockyer has agreed to introduce this bill which will effectuate the following six Commission recommendations:

- (1) *Survival Requirement for Beneficiary of Statutory Will.*
- (2) *Execution or Modification of Lease Without Court Order.*
- (3) *Access to Decedent's Safe Deposit Box.*
- (4) *Limitation Period for Action Against Surety in Guardianship or Conservatorship Proceeding.*
- (5) *Court-Authorized Medical Treatment.*
- (6) *Priority of Conservator or Guardian for Appointment as Administrator.*

Senate Bill 1777 (Beverly) Uniform Statutory Powers of Attorney Bill -
Introduced January 11, 1990

Resolution to Continue Authority to Study Previously Authorized Topics
- Senator Lockyer has agreed to introduce this measure.

State Bar Arranging for Introduction

Creditors of Decedent

Other

Uniform TOD Security Registration Bill - Senator Beverly has requested the Legislative Counsel to prepare a draft of this bill for introduction (bill request deadline is January 26) and the bill must be introduced not later than March 2 (bill introduction deadline). Senator Beverly will not have the bill set for hearing until the Commission's recommendation is received. (The Commission has distributed this as a Tentative Recommendation).

Uniform Management of Institutional Funds Act - The Commission directed that the staff request the Legislative Counsel to prepare the staff draft of the Uniform Management of Institutional Funds Act for introduction, secure an author for the bill, and have the bill introduced. The Commission will determine at its March meeting whether it will propose the bill for enactment in 1990. For further discussion, see these Minutes, infra, under the heading "STUDY L-3012 - UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT."

STUDY F-641/L-3020 - DISPOSITION OF COMMUNITY PROPERTY

DONATIVE TRANSFERS AND REVOCATION OF CONSENT

The Commission considered Memorandum 89-106, relating to the MacDonald case and issues involved in designation of a beneficiary for community property. The Commission was concerned about attempting to develop rules before the Supreme Court has acted in the case. The Commission decided to defer the matter until it has received written comments on it from the Executive Committees of the State Bar Family Law and Probate Sections. The Commission requested representatives of those committees present at the meeting for written responses from the committees.

RIGHTS AND OBLIGATIONS ASSOCIATED WITH EMPLOYMENT RELATIONSHIP

The Commission considered Memorandum 90-9 relating to management and control of community property rights associated with the employment relationship. The Commission decided to defer the matter.

RIGHT OF SURVIVING SPOUSE TO DISPOSE OF COMMUNITY AND QUASI-COMMUNITY PROPERTY

The Commission considered Memorandum 90-10 relating to the right of a surviving spouse to deal with community and quasi-community property that passes from the deceased spouse. The Commission decided to circulate for comment as a tentative recommendation the drafts set out in the memorandum to protect a transferee of community property securities held in the name of the surviving spouse and to make a surviving spouse personally liable to a person having a superior right to property disposed of.

STUDY F-1000 - FAMILY RELATIONS LAW

The Commission considered Memorandum 90-5 and the attached staff draft of a questionnaire concerning matters that might be included in a Family Relations Code (or Act).

The Commission desires that there be a wide distribution of the questionnaire. For example, the questionnaire should be sent not only to persons on the Commission's mailing list who have indicated an interest in family law, but also to persons on the mailing list who have indicated an interest in probate law or other subjects. A press release should be sent to legal newspapers advising of the availability of the questionnaire. Commissioner Stodden suggested that the Los Angeles group of family law judges be sent copies of the questionnaire. The contact person for this group is Hugh McIssac, Director Family Court Services, (213) 974-5531. Would various family law sections of local bar associations distribute copies of the questionnaire to members of their sections? Can the Commission obtain a list of certified family law specialists? Can arrangements be made to send the questionnaire to all members of the probate law section of

the State Bar? Barry D. Russ, Los Angeles, Executive Committee of Family Law Section of the State Bar, indicated that he would cooperate in getting the questionnaire out to members of the section.

The staff should ask Susan Wilkinson to review and to suggest revisions in the revised draft before it is prepared to send out to interested persons and organizations. Her suggestions should be considered by the staff for possible incorporation into the questionnaire.

The staff should revise the questionnaire along the following lines:

(1) Keep the introduction short, so that persons receiving it are not "turned off" before they get to the questions to be answered.

(2) Where there is a reference to a Family Relations Code, the reference should be to Family Relations Code (or Act).

(3) The questionnaire should solicit background information concerning the person completing the questionnaire. Is the person a judge or lawyer? Does the person specialize in a particular field of law? Is the person a certified specialist in family law or another field? How many years has the person been engaged in practice? Does the person practice in a large or small firm? In a large metropolitan area? The staff might review the questionnaire on probate law for possible questions concerning the background of the person completing the questionnaire.

(4) It should be made clear near the beginning of the questionnaire that the Commission's assignment does not involve a review of the substance of the various provisions that might be included in the new code (or Act). Rather, preparation of the new code (or Act), if one is prepared, will primarily involve determining the provisions to be included in the new code (or Act), consolidating provisions where appropriate, reducing or eliminating redundancies where appropriate, using consistent language, making the provisions consistent with each other where appropriate, and improving the drafting and organization of the provisions. However, procedural revisions will be considered, such as whether revisions should be proposed to ensure that appropriate information is exchanged among courts and investigative and other agencies serving the courts and that related actions are integrated where appropriate.

(5) It should be made clear that the Commission is not making a study of whether there should be a new family relations court. This issue is now under study by a separate body, the Senate Task Force on Family Relations Court. The Commission will not be considering this issue and does not seek comments on the issue. Communications concerning the desirability of a new family relations court should be directed to the Senate Task Force.

(6) Are there any child victims provisions that might be included in the new code? If so, the provisions should be listed in the questionnaire.

(7) Under the heading "SUBSTANTIVE IMPROVEMENT OF FAMILY LAW STATUTES," the question might be rephrased to read:

Do you have any specific suggestions for consolidating related laws in this area, making them more consistent, or eliminating redundancies? Do you see any problems in making these types of revisions and, if so, what are the problems?

(8) The question concerning exchange of information might include a question concerning information that should not be exchanged and why the information should not be exchanged.

STUDY H-112 - COMMERCIAL LEASE LAW: USE RESTRICTIONS

The Commission considered Memorandum 90-4 and the attached draft of the tentative recommendation relating to use restrictions in commercial real property leases. The Commission approved the draft to circulate for comment, subject to the following changes:

§ 1997.040. Effect of use restriction on remedies for breach. In the Comment, the statement that a reasonable use "must be lawful and not materially different from that for which the premises are ordinarily used or for which they were constructed or adapted", was deleted.

§ 1997.210. Right of unrestricted use absent a restriction. The reference to "unrestricted use" in this section should be changed to "any reasonable use". The staff will make a corresponding change in the lead line.

§ 1997.230. Prohibition on change of use. The Comment will be expanded to indicate that a lease term absolutely prohibiting a change in use is not a violation of the law governing good faith and fair dealing.

Typographical errors. The staff noted that there are a few typographical errors in the draft (e.g., chapter heading and Section 1997.030 Comment) that the staff will correct before the draft is circulated for comment.

STUDY L-608 - DEPOSIT OF ESTATE PLANNING DOCUMENTS WITH ATTORNEY

The Commission considered Memorandum 89-88, the attached staff draft of a *Tentative Recommendation Relating to Deposit of Estate Planning Documents With Attorney*, and the First and Second Supplements. The Commission made the following decisions:

§ 704. Document

The Commission revised Section 704 as follows:

704. "Document" means any of the following:

- (a) A signed original will, declaration of trust, trust amendment, or other document modifying a will or trust.
- (b) A signed original power of attorney.
- (c) A signed original nomination of a conservator.
- (d) Any other signed original instrument ~~for which the attorney issues a receipt that expressly provides that the deposit is being made under~~ that the attorney and depositor agree in writing to make subject to this part.

§ 710. When attorney may accept a will for deposit

The Commission deleted Section 710, which would have permitted attorneys to accept wills for deposit only if the depositor made a specific, unsolicited, request. The Commission thought this was an ethical matter that should not be dealt with in this statute.

§ 722. Successor attorney not liable for failure to verify document

The Commission revised Section 722 as follows:

~~722. A successor attorney who accepts~~ The acceptance by an attorney of a document for safekeeping is not liable for failure to verify the completeness or correctness of information or documents received from a predecessor imposes no duty on the attorney to inquire into the content, validity, invalidity, or completeness of the document, or the correctness of any information in the document .

The Comment to Section 722 should note that the section does not relieve the drafter of the document from the duty of drafting competently.

§ 723. Payment of compensation and expenses

§ 724. No lien on document

The Commission combined Section 723 with Section 724, and revised the combined section as follows:

~~723. A depositor is not required to compensate the attorney or pay the attorney's~~ (a) If so provided in a written agreement signed by the depositor, the attorney may charge the depository for compensation and expenses incurred in safekeeping or delivery of the document unless expressly required to do so in a written agreement signed by the depositor .

(b) No lien arises for the benefit of the attorney on a document deposited with the attorney, even if provided by agreement.

~~724. No lien arises for the benefit of an attorney on a document deposited with the attorney, even if provided by agreement.~~

§ 730. Termination by depositor on demand

The Commission asked the staff to add a statement to the Comment that an attorney in fact acting under a durable power of attorney that confers general authority with respect to estate transactions may terminate a deposit under Civil Code Section 2467.

§ 733. Termination by attorney transferring document to another attorney or trust company

The Commission revised Section 733 as follows:

733. (a) An attorney may terminate a deposit by transferring the document to another attorney or to a trust company if ~~all~~ both of the following requirements are satisfied:

~~(1) The attorney intends to retire, resign, or become inactive.~~

~~(2) (1) The attorney does not have actual notice that the depositor has died.~~

~~(3) (2) The attorney has given reasonable mailed notice to the last known address of the depositor to reclaim the document and the depositor has failed to do so within a reasonable time 90 days .~~

(b) If the attorney has died, the ~~attorney's partner, personal representative, or person in possession of the attorney's property~~ following persons may terminate the deposit as provided in subdivision (a) : i

(1) The attorney's law partner, or, if the attorney is a law corporation, a shareholder of the corporation.

(2) If there is no person to act under paragraph (1), the attorney's personal representative.

(3) If there is no person to act under paragraph (1) or (2), the person entitled to collect the attorney's property.

(c) The attorney may not accept any fee or compensation from a transferee for transferring a document under this section.

~~(e) (d) Transfer of a document under this section is not a waiver or breach of any privilege or confidentiality associated with the document, and is not a violation of the rules of professional conduct. If the document is privileged under Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code, the document remains privileged after the transfer.~~

§ 734. Termination by depository after death of depositor

The Commission revised Section 734 as follows:

734. (a) Subject to ~~subdivision (b)~~ subdivisions (b) and (c) , after the death of the depositor an attorney may terminate a deposit by personal delivery of the document to the depositor's personal representative ~~if~~ .

(b) If the document is a trust, an attorney may terminate a deposit by personal delivery of the document either (1) to the clerk of the superior court in the proper county for commencement of a proceeding under Division 9 (commencing with Section 15000), to the depositor's personal representative or (2) to the trustee named in the document.

(b) (c) If the document is a will and the attorney has actual notice of the death of the depositor, an attorney may terminate a deposit only as provided in Section 8200.

Probate Code § 2586 (amended). Production of conservatee's will and other relevant estate plan documents

The Commission approved the following amendment to Section 2586:

2586. (a) As used in this section, "estate plan of the conservatee" includes but is not limited to the conservatee's will, any trust of which the conservatee is the settlor or beneficiary, any power of appointment created by or exercisable by the conservatee, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at the conservatee's death to another or others which the conservatee may have originated.

(b) Notwithstanding Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code (lawyer-client privilege), the court, in its discretion, may order that any person having possession of any document constituting all or part of the estate plan of the conservatee shall deliver such document to the court for examination by the court, and, in the discretion of the court, by the attorneys for the persons who have appeared in the proceedings under this article, in connection with the petition filed under this article.

(c) Unless the court otherwise orders, no person who examines any document produced pursuant to an order under this section shall disclose the contents of the document to any other person; and, if such disclosure is made, the court may adjudge the person making the disclosure to be in contempt of court.

(d) For good cause, the court may order that a document produced pursuant to an order under this section shall be delivered to some other custodian for safekeeping. The court may specify such conditions as it deems appropriate for the holding and safeguarding of the document.

With the foregoing revisions, the Commission approved the *Tentative Recommendation* for distribution for comment.

STUDY L-1029 - QUALIFIED DOMESTIC TRUSTS

The Commission considered Memorandum 90-8 relating to qualified domestic trusts. In light of the recently enacted federal curative legislation, the Commission decided that no California legislation is needed at this time, and withdrew its recommendation on the matter.

STUDY L-3012 - UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT

The Commission considered Memorandum 90-3 concerning the revision of the Commission's *Recommendation Relating to the Uniform Management of Institutional Funds Act*. The Commission considered the views of Deputy Attorney General Yeoryios G. Apallas, Jonathan A. Brown, Vice President of the Association of Independent California Colleges and Universities, and Daniel A. Wingerd, Associate Vice President of The Common Fund. (A handout prepared by Mr. Wingerd to illustrate the effect of different asset allocations in endowment funds is attached as Exhibit 1.) The Commission decided to seek preparation and introduction of a bill that would implement the staff recommendations set out in Memorandum 90-3. The Commission is aware, however, that the bill may need to be amended to deal with the objections of the Charitable Trust Division of the Attorney General's Office.

The following sections in the recommendation were revised as indicated:

§ 18502. Expenditure of asset net appreciation for current use

18502. The governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the ~~realized~~ net appreciation, realized and unrealized, in the fair value of the assets of an endowment fund over the historic dollar value of the fund as is prudent under the standard established by Section 18506. This section does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument, or the charter of the institution.

Comment. Section 18502 is the same in substance as Section 2 of the Uniform Management of Institutional Funds Act (1972). As to the construction of provisions drawn from

uniform acts, see Probate Code Section 2. The provision in the first sentence permitting the appropriation of net appreciation, whether realized or unrealized, supersedes the first sentence of former Education Code Section 94602. The second sentence of Section 18502 continues the third sentence of former Education Code Section 94602 without change. The second sentence of former Education Code Section 94602, which provided a rolling five-year averaging rule, is not continued.

§ 18507. Release of restriction in gift instrument

18507. (a) With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund.

(b) If written consent of the donor cannot be obtained by reason of the donor's death, disability, unavailability, or impossibility of identification, the governing board may apply in the name of the institution to the superior court of the county in which the principal activities of the institution are conducted, or other court of competent jurisdiction, for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. No court has jurisdiction to release a restriction on an institutional fund under this part unless the Attorney General is a party to the proceedings. If the court finds that the restriction is ~~illegal, impossible to fulfill,~~ obsolete or impracticable, it may by order release the restriction in whole or in part. A release under this subdivision may not change an endowment fund to a fund that is not an endowment fund.

(c) A release under this section may not allow a fund to be used for purposes other than the educational, religious, charitable, or other eleemosynary purposes of the institution affected.

(d) This section does not limit the application of the doctrine of cy pres.

Comment. Section 18507 restates former Education Code Section 94607 without substantive change. In the second sentence of subdivision (b), the phrase "release a restriction on" has been substituted for the phrase "modify any use of" in former Education Code Section 94607(b) for consistency with the remainder of this section. Section 18507 is the same in substance as Section 7 of the Uniform Management of Institutional Funds Act (1972), except for some variations in subdivision (b). As to the construction of provisions drawn from uniform acts, see Section 2.

Chairman Marzec abstained from voting on this subject.

STUDY N-101 - ADMINISTRATIVE ADJUDICATION

The Commission considered its consultant's background study relating to structural issues in administrative adjudication, together with Memorandum 90-6 and the First, Second, and Third Supplements to it, and a letter from the Association of California State Attorneys and Administrative Law Judges distributed at the meeting (attached to these Minutes as Exhibit 2). The consultant, Professor Michael Asimow, presented the study to the Commission and discussed the issues raised in the study with the Commission. The Commission made the following decisions concerning the issues raised in the study.

(1) The California Administrative Procedure Act should be comprehensive in its coverage, applying to statutorily required hearings by all state agencies and not limited to state licensing determinations. The act should include a range of formal and informal hearing procedures to accommodate different types of proceedings. The effort should be to achieve uniformity from agency to agency in a written code, although exceptions may need to be made. The 1981 Model Act will be used as a vehicle to raise issues in California law and as a source for possible revisions of California law. The staff will attempt to define the state agency coverage of the act.

(2) The Commission decided that there should not be a separation of adjudication from other agency functions as a general rule. There may be exceptions to this rule where there is a demonstrated problem, such as, perhaps, a separate tax court or a medical quality appeals board. However, the Commission believes more limited aspects of separation should be pursued, as suggested by its consultant, such as to make the findings of fact of the administrative law judge final except upon a showing of no substantial evidence, to require internal separation of functions within the agency, to require codification of precedents through rulemaking, and to authorize the agency to delegate to the administrative law judge final decision-making authority in appropriate cases. The Commission requested its consultant to proceed to prepare background material for it on these lines.

(3) The Commission deferred decision on the possibility of expanding the central panel of administrative law judges in the Office of Administrative Hearings. The Commission directed the staff to solicit further information on this issue from those who have volunteered it and to present the information in writing at a future Commission meeting.

(4) The Commission deferred decision on the possibility of applying the administrative procedure act to all state agency actions that affect individual rights. For now drafting should proceed on the basis that the act will apply only to situations where a hearing is statutorily or constitutionally required. When the draft is complete the Commission will consider whether it can or should be extended to other situations.

The Commission requested the consultant to provide the Commission with an outline of the remainder of the background study, with suggested priorities.

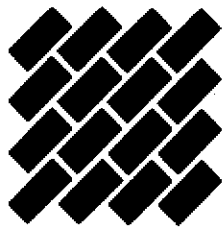
APPROVED AS SUBMITTED _____

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

Date

Chairperson

Executive Secretary



The Common Fund

Investment Management
for Educational Institutions

Annual Report Supplement

July 1, 1988—June 30, 1989

JUNE 30, 1989

Asset Allocation for College Endowments

	<u>CALIF. ENDOWMENTS *</u>	<u>NATL. ASSN. OF COLLEGE & UNIVERSITY BUS. OFFICERS</u>	<u>NACUBO & COMM. FUND SURVEY OF LARGE ENDOWMENTS **</u>
CASH	13%	10.8%	8.2%
BONDS	51%	28.0%	23.2%
STOCKS	35%	58.6%	44.1%
OTHER (Equity)	1%	3.6%	4.5%
	<u>100%</u>	<u>100%</u>	<u>100%</u>
	} 36%	} 62.2%	} 68.6%

* Excludes Stanford & U.C. System

** Endowments \$100 million or more

This Supplement lists the securities held in each separately managed portfolio on June 30, 1989. In addition, the major holdings of the mutual funds and partnerships in which The Common Fund invests are listed. Statements of investment policy prepared by the managers precede each list.

**Simulated Effects Of
Asset Allocation & Spending Rate
on
The 20-Year Growth of Endowment Spending & Principal**

SIMULATION
EFFECT ON GROWTH OF ENDOWMENT FROM
VARIABLE SPENDING RATES & 100% CASH MIX
 (No Contributions Added)

Spending Rate Variables
 Policy A: Spending 7%
 Policy B: Spending 5%

Asset Mix for Both Policies
 100% Cash-Equivalents

Inflation Assumption
 Straight-Line 6%

Capital Market Assumptions
Asset Med.Ret. Stand.Dev.
 Cash 7.0% 3.0%

.....
SIMULATION OF RETURNS

Policy A: 7% Spending Rate (Mkt. Values in Millions)

Policy B: 5% Spending Rate

YEAR	NOMINAL DOLLARS		REAL DOLLARS		NOMINAL DOLLARS		REAL DOLLARS	
	MKT.VAL	SPEND	MKT.VAL	SPEND	MKT.VAL	SPEND	MKT.VAL	SPEND
1990	10.0	700,000	10.0	700,000	10.0	500,000	10.0	500,000
1991	9.98	698,600	9.41	658,700	10.18	510,000	9.61	480,000
1992	9.95	696,500	8.86	620,200	10.37	518,500	9.23	461,500
1993	9.93	695,100	8.34	583,800	10.56	528,000	8.86	443,000
1994	9.90	693,000	7.84	548,800	10.75	537,500	8.52	426,000
1995	9.88	691,600	7.38	516,600	10.95	547,500	8.18	409,000
1996	9.86	690,200	6.95	486,500	11.15	557,500	7.86	393,000
1997	9.83	688,100	6.54	457,800	11.35	567,500	7.55	377,500
1998	9.81	686,700	6.15	430,500	11.56	578,000	7.25	362,500
1999	9.78	684,600	5.79	405,800	11.77	588,500	6.97	348,500
2000	9.76	683,200	5.45	381,500	11.99	599,500	6.69	334,500
2005	9.64	674,800	4.02	281,400	13.12	656,000	5.47	273,500
2010	9.53	667,100	2.97	207,900	14.37	718,500	4.48	224,000

SIMULATION
EFFECT ON GROWTH OF ENDOWMENT FROM
VARIABLE SPENDING RATES & 25/75 ASSET MIX
 (No Contributions Added)

Spending Rate Variables
 Policy A: Spending 7%
 Policy B: Spending 5%

Inflation Assumption
 Straight-line 6%

Asset Mix for Both Policies
 25% Domestic Equities
 25% Domestic Bonds
 50% 90-Day Treas.Bills

Capital Market Assumptions
Asset Med.Ret. Stand.Dev.

Stock 12.5% 18%
 Bond 8.5% 11%
 Cash 7.0% 3%

Total Portfolio Return 7 Risk
 8.75% 6.64%

.....
 SIMULATION OF RETURNS

Policy A: 7% Spending Rate (Values in \$000)

Policy B: 5% Spending Rate

YEAR	NOMINAL DOLLARS		REAL DOLLARS		NOMINAL DOLLARS		REAL DOLLARS	
	MKT.VAL	SPEND	MKT.VAL	SPEND	MKT.VAL	SPEND	MKT.VAL	SPEND
1989	10,000	700	10,000	700	10,000	500	10,000	500
1990	10,138	710	9,571	670	10,346	517	9,763	488
1991	10,288	720	9,155	641	10,712	536	9,538	477
1992	10,437	731	8,786	613	11,096	555	9,313	466
1993	10,587	741	8,388	587	11,487	574	9,096	455
1994	10,746	752	8,030	562	11,895	595	8,888	444
1995	10,896	763	7,680	538	12,312	616	8,680	434
1996	11,054	774	7,355	515	12,745	637	8,480	424
1997	11,221	785	7,039	493	13,203	660	8,280	414
1998	11,379	797	6,739	472	13,670	684	8,088	404
1999	11,545	808	6,447	451	14,153	707	7,905	395
2004	12,403	868	5,173	362	16,835	842	7,022	351
2009	13,336	934	4,157	291	20,034	1,000	6,248	312

SIMULATION
EFFECT ON GROWTH OF ENDOWMENT FROM
VARIABLE SPENDING RATES & 60/40 ASSET MIX
 (No Contributions Added)

Spending Rate Variables
 Policy A: Spending 7%
 Policy B: Spending 5%

Inflation Assumption
 Straight-line 6%

Asset Mix for Both Policies
 60% Domestic Equities
 40% Domestic Bonds

Capital Market Assumptions

Asset	Med.Ret.	Stand.Dev.
Stock	12.5%	18%
Bond	8.5%	11%

Total Portfolio Return & Risk

10.9% 13.2%

.....
SIMULATION OF RETURNS

Policy A: 7% Spending Rate

Policy B: 5% Spending Rate

DOLLARS YEAR	NOMINAL DOLLARS		REAL DOLLARS		NOMINAL DOLLARS		REAL	
	MKT.VAL.	SPEND	MKT.VAL.	SPEND	MKT.VAL.	SPEND	MKT.VAL.	SPEND
1989	10 mil	700,000	10 mil	700,000	10 mil	500,000	10 mil	500,000
1990	10.35 mil	724,500	9.77 mil	683,900	10.56 mil	528,000	9.97 mil	498,500
1991	10.72 mil	750,000	9.54 mil	667,800	11.16 mil	558,000	9.93 mil	496,500
1992	11.10 mil	777,000	9.32 mil	652,400	11.79 mil	589,500	9.90 mil	495,000
1993	11.49 mil	804,300	9.10 mil	637,000	12.45 mil	622,500	9.86 mil	493,000
1994	11.89 mil	832,300	8.89 mil	622,300	13.15 mil	657,500	9.83 mil	491,500
1995	12.31 mil	861,700	8.68 mil	607,600	13.89 mil	694,500	9.79 mil	489,500
1996	12.75 mil	892,500	8.48 mil	593,600	14.68 mil	734,000	9.76 mil	488,000
1997	13.20 mil	924,000	8.28 mil	579,600	15.50 mil	775,000	9.73 mil	486,500
1998	13.66 mil	956,200	8.09 mil	566,300	16.38 mil	819,000	9.69 mil	484,500
1999	14.14 MIL	989,000	7.90 mil	553,000	17.30 mil	865,000	9.66 mil	483,000
2004 (15)	16.82 mil	1,177mil	7.02 mil	491,400	22.76 mil	1,138mil	9.50 mil	475,000
2009 (20)	20.01 mil	1,401mil	6.24 mil	436,800	29.93 mil	1,497mil	9.33 mil	466,500

SIMULATION
EFFECT ON GROWTH OF ENDOWMENT FROM
VARIABLE SPENDING RATES & 70/30 ASSET MIX
 (No Contributions Added)

Spending Rate Variables
 Policy A: Spending 7%
 Policy B: Spending 5%

Inflation Assumption
 Straight-line 6%

Asset Mix, Both Policies
 Domestic Stock = 45%
 Domestic Bonds = 25%
 Internatl Stock = 10%
 Global Bonds = 5%
 Real Estate = 10%
 Vent. Capital = 5%

Capital Market Assumptions
Asset Med.Ret. Stand.Dev.
 Stock 12.5% 18%
 Bond 8.5% 11%
 Int.Stock 13.5% 20%
 Glob.Bnds 9.0% 12%
 Real Est. 12.0% 13%
 Vent.Cap. 20.0% 30%

.....
 TOTAL PORTFOLIO RETURN & RISK: Med.Ret. = 11.75%; Stand.Dev. = 11.97%

SIMULATION OF RETURNS

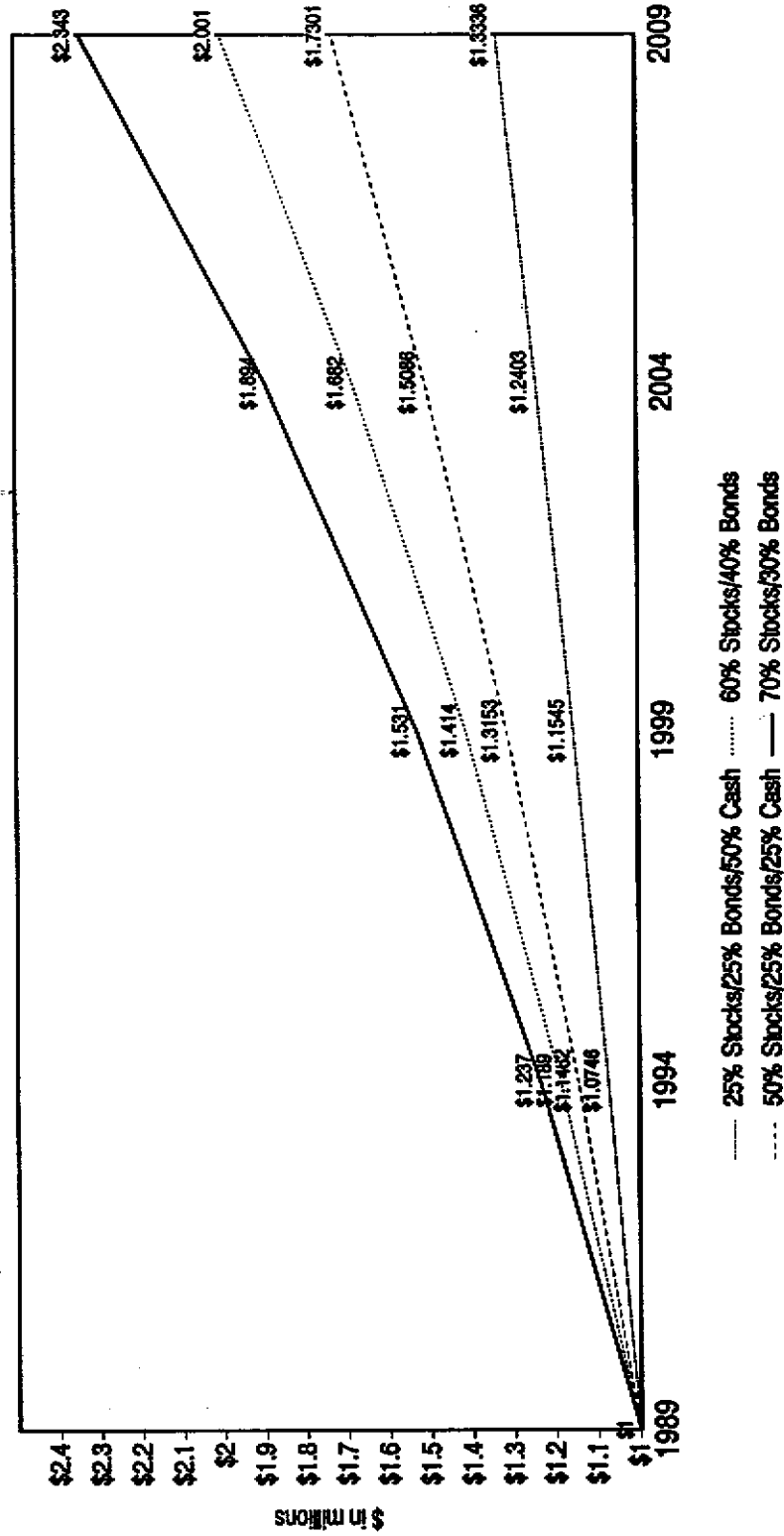
.....
Policy A: Spending Rate 7%

.....
Policy B: Spending Rate 5%

YEAR	NOMINAL DOLLARS		REAL DOLLARS		NOMINAL DOLLARS		REAL DOLLARS	
	MKT.VAL	SPEND	MKT.VAL	SPEND	MKT.VAL	SPEND	MKT.VAL	SPEND
1989	10 mil	700,000	10 mil	700,000	10 mil	500,000	10 mil	500,000
1990	10.43 mil	730,000	9.84 mil	688,000	10.65 mil	532,500	10.04 mil	502,000
1991	10.89 mil	762,000	9.69 mil	678,000	11.33 mil	566,500	10.09 mil	504,500
1992	11.36 mil	795,000	9.54 mil	668,000	12.07 mil	603,500	10.13 mil	506,500
1993	11.86 mil	830,000	9.39 mil	657,000	12.85 mil	642,500	10.18 mil	509,000
1994	12.37 mil	866,000	9.24 mil	647,000	13.68 mil	684,000	10.22 mil	511,000
1995	12.91 mil	903,000	9.10 mil	637,000	14.56 mil	728,000	10.26 mil	513,000
1996	13.47 mil	943,000	8.96 mil	627,000	15.50 mil	775,000	10.31 mil	515,500
1997	14.06 mil	984,000	8.82 mil	617,000	16.50 mil	825,000	10.35 mil	517,500
1998	14.67 mil	1,02 mil	8.68 mil	607,000	17.57 mil	878,500	10.40 mil	520,000
1999	15.31 mil	1,07 mil	8.55 mil	598,000	18.71 mil	935,500	10.45 mil	522,500
2004 (15)	18.94 mil	1.33 mil	7.90 mil	553,000	25.59 mil	1.26 mil	10.68 mil	534,000

Simulated Nominal Growth of \$1 million Endowment

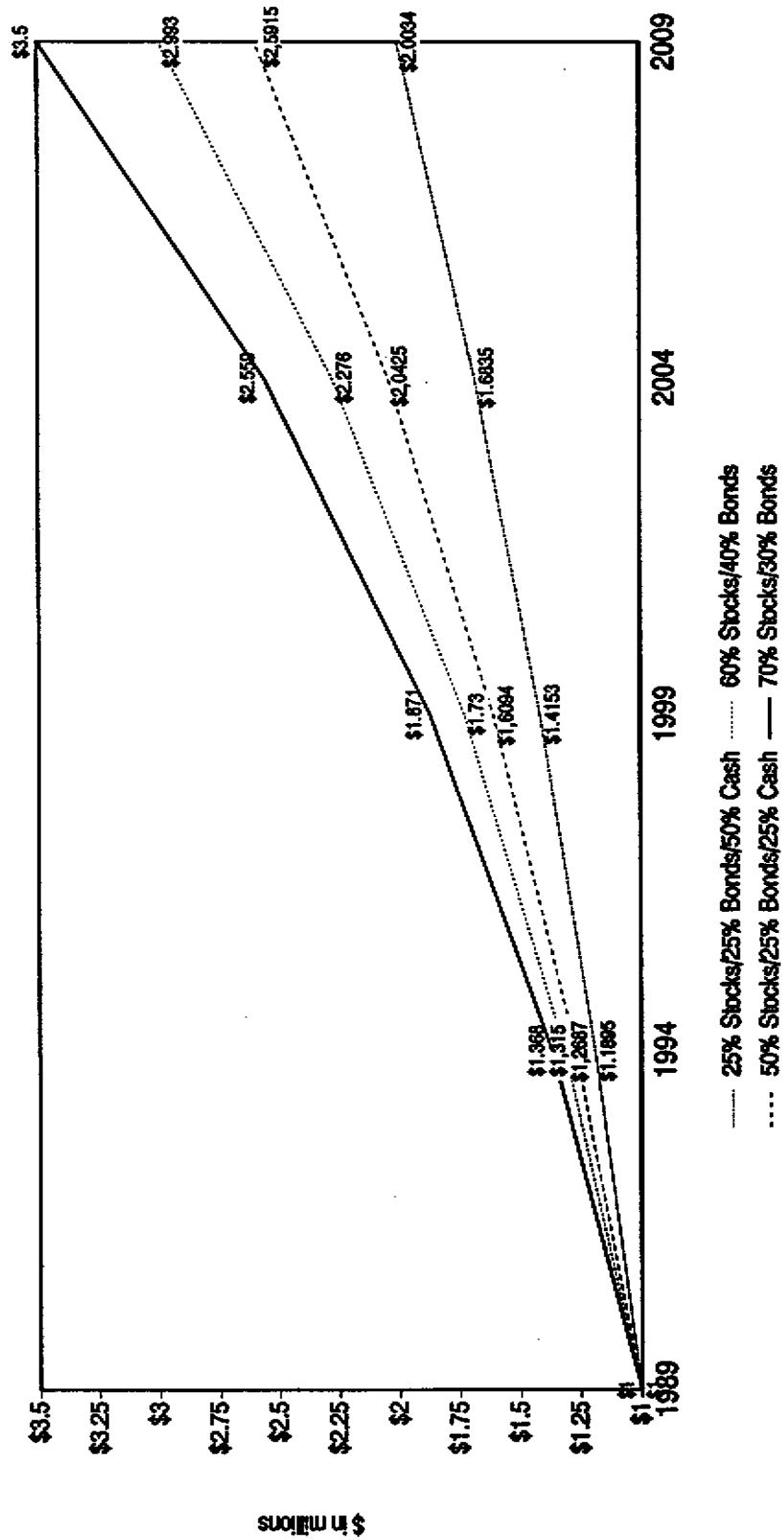
4 Asset Mix Alternatives 7% Spending Rate



Simulated Nominal Growth of \$1 million Endowment

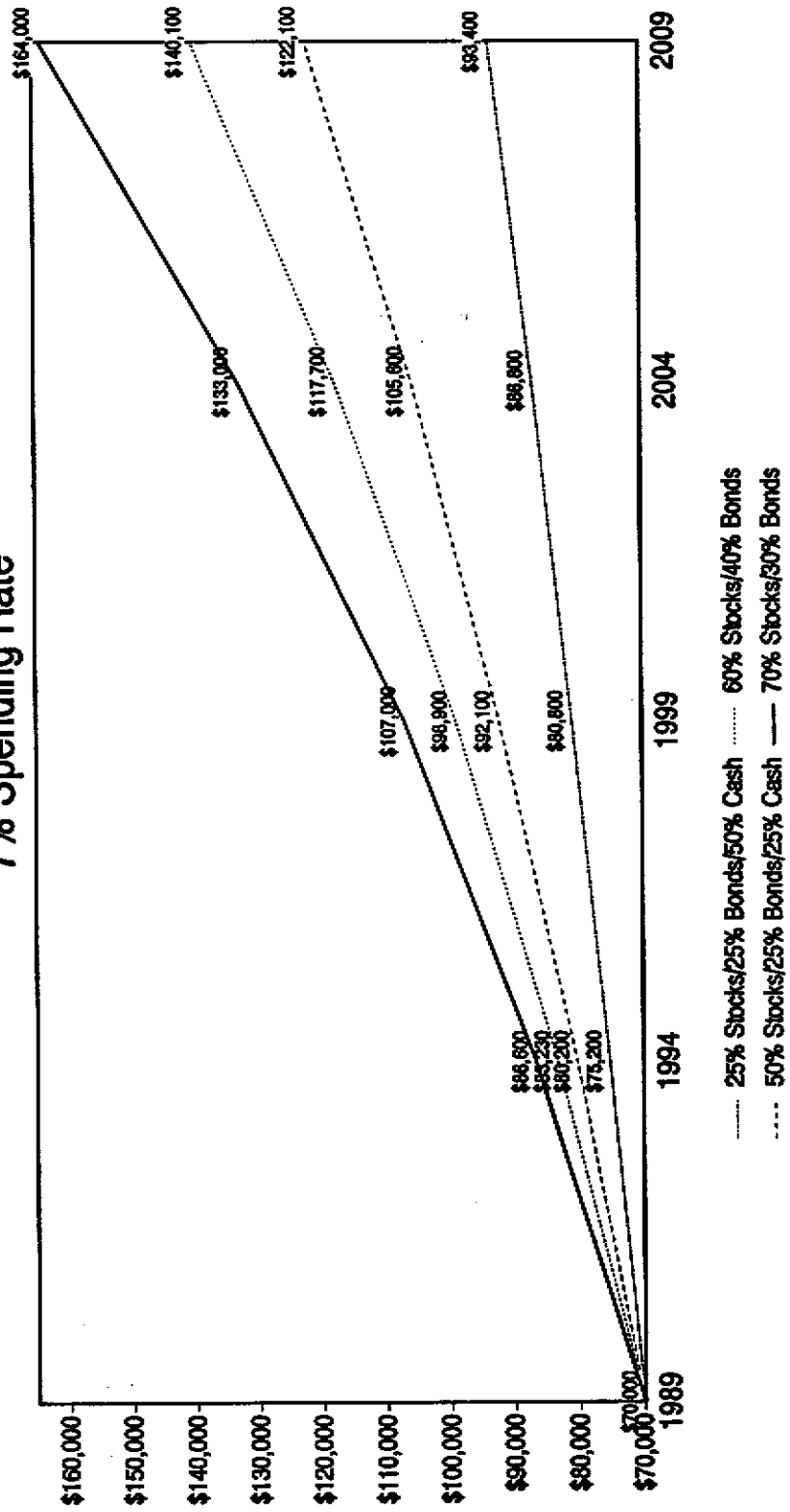
4 Asset Mix Alternatives

5% Spending Rate



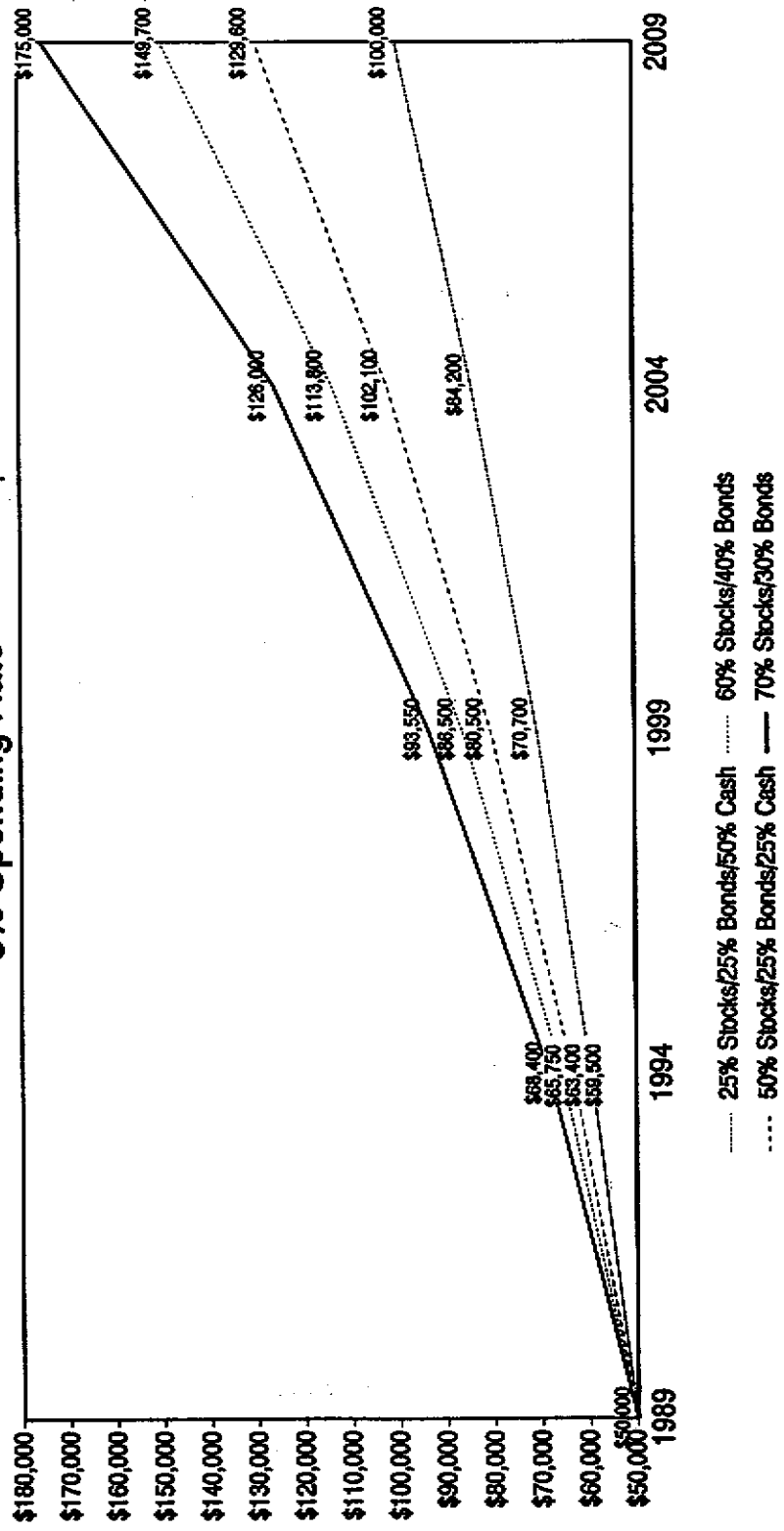
Simulated Growth of Endowment Spending

For a \$1 million Endowment 4 Asset Mix Alternatives 7% Spending Rate



Simulated Growth of Endowment Spending

For a \$1 million Endowment
4 Asset Mix Alternatives
5% Spending Rate





ASSOCIATION OF CALIFORNIA STATE ATTORNEYS
AND ADMINISTRATIVE LAW JUDGES

CALIFORNIA LAW REVISION COMMISSION

JAN 10 1990

RECEIVED

January 9, 1990

Nathaniel Sterling
Assistant Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Re: Response to Administrative Adjudication: Structural Issues

Dear Mr. Sterling:

The Association of California State Attorneys and Administrative Law Judges (ACSA) has developed an ad hoc committee to study the recommendations of Professor Asimow's initial report regarding the structural issues in administrative adjudication. This newly formed ad hoc committee has prepared the following initial response. We request that you consider this information when developing your findings on this topic.

In response to the first portion of the study regarding standardization of rules and procedures, ACSA is in full agreement. We do recognize that certain modifications to this standardization of rules will be necessary for each agency. However, we agree in concept. Additionally, we agree that the Model Administrative Procedures Act of 1981 should be used as the foundation of a revised Administrative Procedures Act which would apply statewide.

We do not concur with the conclusions reached regarding the separation of functions. As we reviewed this section of the report, it appears rife with statements without adequate support. The federal government and other states have moved toward a bifurcated system which we support. If there is no buffer between the decisionmakers and the politically appointed board members, commissioners or directors to which the decisionmakers report, there is serious danger of inequity in the decisions rendered by the adjudicators. ACSA feels the adjudicators should be independent of management in the decisionmaking process and this separation of functions should be born out in the findings of this study. Thus, there should be an administrative court, corps or physical and organizational separation for the administrative law judges in state service.

- 12 -

Headquarters	660 J Street, Suite 443	Sacramento, California 95814	(916) 442-2272
Los Angeles	505 North Brand Boulevard, Suite 780	Glendale, California 91203	(818) 246-0653
San Francisco	1390 Market Street, Suite 925	San Francisco, California 94102	(415) 861-5960

Telefax: Headquarters (916) 442-0651

Los Angeles: (818) 247-2348

San Francisco: (415) 861-5360

The procedures need to include identifiable due process. Communications between third parties and the adjudicator should be prohibited. Without such a prohibition there will be a lack of due process provided for the litigants. Additionally, there are internal problems within each agency which go much deeper than a survey could indicate. We suggest that information be developed through ACSA's administrative law judges who are directly involved with the integral mechanics of each of the departments mentioned in this study. ACSA is of the opinion that many of the internal problems prevent the judges from discharging their functions as impartial decisionmakers, thus depriving the public of a fair hearing and due process. After all, a fair hearing is the ultimate goal of these administrative hearings. Additionally, the Board of Prison Terms (BPT) was not considered in this study. The Deputy Commissioners at BPT conduct administrative hearings pursuant to the Penal Code.

We agree in concept with Section 3 regarding summary proceedings and conference hearings. However, this area needs further development. We would like to assist in the amplification of codified procedures which allow summary proceedings and conference hearings. Presently the discussion is imprecise and the selection of classes of hearings which fall under these categories is questionable. Additionally, we question the application of due process in these proceedings. If there is no independent decisionmaker assigned to each hearing, then the litigant is left to return to the original decisionmaking body to review the ruling in question. This hardly gives the litigant a fair hearing or even the appearance of a fair hearing.

ACSA offers the assistance of its administrative law judges and learned colleagues to assist Professor Asimow in further developing and understanding the internal functions of the various agencies. ACSA is concerned that interference with the administrative law judge's proposed decision should be of paramount concern but is not treated as such in these findings. Additionally, the internal procedures of the various departments differ, are informal and can be modified to meet any given agenda. There should be safeguards to inhibit or prohibit this.

In closing, we would like to request the opportunity to submit further information regarding this study, not only on the structural issues, but also on all other areas being studied. If you wish to meet with the ACSA ad hoc committee, please so notify ACSA and we will arrange such a meeting. We look forward to your response to our comments.

Sincerely,



Donald B. Jarvis, Co-Chairman
ACSA Ad Hoc Committee
on Administrative Adjudication