

Memorandum 91-20

Subject: Priorities, Schedule for Work, and New Topic Suggestions

BACKGROUND

It has been the Commission's practice annually to review the topics on its calendar and determine priorities for work during the coming year and thereafter.

Last year after reviewing topics and priorities, the Commission determined to give highest priority to administrative law and the drafting of a new Family Code, and to complete work on various Probate Code projects. During the year the Commission in fact devoted a substantial portion of its meeting time to administrative law. The staff also devoted substantial resources to the Family Code project, although it is not yet ready for Commission review. The Commission completed the pending Probate Code projects, and the major portion of the Commission's legislative program for 1991 relates to the Probate Code.

Recently the Commission has decided to schedule consideration of administrative law matters for its Sacramento meetings, in order to facilitate participation of interested state agencies. The Commission has also decided not to consider Probate Code matters unless it first has comments of the State Bar Probate Section, with the result that one meeting was shortened and one was cancelled when no administrative law matters were scheduled and the Probate Section was unable to comment in time for the meeting. Now is an appropriate time for the Commission to review its topics and priorities in light of the slowdown on administrative law and probate law.

It is also timely to review the other topics on the Commission's calendar, together with additional suggestions for Commission study that have been made, with the view to setting priorities and beginning preparations for other studies. In some cases, a research consultant may be needed on a particular topic, and the process of obtaining a

consultant can commence, assuming the current freeze on consultant contracts terminates on July 1. In cases where an expert consultant is not needed, the staff can begin to collect material relating to each topic that will be studied in the next few years so that it will be available when the staff begins to prepare material on the topic for Commission consideration. In addition, interested persons and organizations need to know whether they can look to the Commission to prepare needed legislation on particular topics or whether they should look to other methods of obtaining the needed legislation. Finally, the Commission can determine any additional topics (not now authorized for Commission study) that the Commission wishes to study in the future. We can request the Legislature for authority to study these additional topics.

TOPICS CURRENTLY AUTHORIZED FOR COMMISSION STUDY

There are 26 topics on the Commission's Calendar of Topics that have been authorized for study by the Commission. Exhibit 1 contains a detailed discussion of the topics. The discussion indicates the status of each topic, the need for future work, and the past Commission recommendations concerning the topic. You should read Exhibit 1 with care. If you wish the Commission to discuss any portion of Exhibit 1, please bring the matter up for discussion at the meeting.

PRIORITIES AND SCHEDULE FOR WORK

Exhibit 1 indicates various aspects of authorized studies that might be given active consideration. Any decision concerning priorities made at this time will, of course, be subject to change in the light of future developments and legislative indications as to topics to be given priority.

Historically, the Commission has functioned most efficiently when conducting at least one major study concurrently with several smaller studies. With respect to major studies, the Legislature has indicated which matters it believes should be given priority--administrative law and family relations law. Minor studies can be worked into the agenda along with the major studies as Commission and staff time permits.

Administrative Law

The Commission is actively engaged in this study, taking up issues as the consultant delivers background reports. The Commission's decision to schedule administrative law discussions primarily in Sacramento will slow work on this project substantially. In addition, it is clear that there are very difficult issues in this project which will take more time than usual to resolve. These issues should not be rushed. This will be a long term project. The slowdown will also give agencies more time to study the materials produced and give us their reactions. The slowdown will enable the Commission to devote its resources to other topics that can show a more immediate short term result. Some of the other topics are suggested below.

The staff recommends that the slowdown on the administrative law project continue. Given the slower pace than anticipated on the project, it is premature to begin planning for the second phase of the administrative law study--judicial review.

Family Code

The staff is devoting substantial resources to work on preparation of portions of the new Family Code, consistent with the legislative directive. Much of the work is routine reorganization and renumbering and cleanup that will require few Commission decisions. When the staff has completed a sufficiently large and coherent chunk for Commission review, that will be scheduled, along with Commission consideration of any policy decisions that may be presented by the material. We plan to have a staff working draft of a substantial portion of the new code available by the time of the May 1991 meeting.

This project will continue to consume substantial amounts of staff time during the coming year but relatively little Commission time, freeing the Commission for consideration of other matters that may involve more substantial policy decisions.

The Executive Secretary is currently devoting substantially full time to this project. He will be retiring in July, however. It is the staff's hope that the Commission will authorize, and will have sufficient budget to fund, a contract with Mr. DeMouilly to continue work on the new Code on a contract basis. This would enable the Commission to take advantage of his expertise at a fraction of the

price it would cost to have the staff do the work, and would free the staff to work on other matters where the Commission itself must be making policy decisions on an ongoing basis.

We anticipate that there will be a number of projects in the family law area that the Commission and staff will need to address during the coming year, including:

(1) Donative transfers of community property (problems caused by the MacDonald case). This is a very important study, of interest to both family law and estate planning practitioners. We receive frequent calls in the office making inquiry whether the Commission will be addressing these problems. We hope to receive Professor Kasner's study on this subject in time for consideration at the April meeting with the view to development of corrective legislation for the 1992 session.

(2) Community property in joint tenancy form. The Commission has retained Professor Kasner as a consultant on this project as well. We expect to receive his report by the end of August. This is another important project of interest to both family law and estate planning practitioners with significant tax and other consequences, and the staff would give it a priority when it is received.

(3) Marital property agreements. Currently there is statutory regulation of premarital agreements but no guidance as to the requirements for and effect of marital property agreements. This would be a difficult project, but it would be worthwhile if the Commission is interested in wrestling with it. The staff has mixed feelings about it.

Probate Code

Although we would like to think that our work on probate law and procedure is largely completed, there are a number of projects that will continue to occupy the Commission during the coming year. Major backburner studies that the Commission has been interested in and that should be addressed are:

(1) Rights of creditors against nonprobate assets. This is an important project. It is on the agenda for the April meeting and the staff believes the Commission can make a significant contribution to development of the law in this area.

(2) Development of uniform rules of construction for probate and nonprobate transfers. The Commission has been interested in this concept from the beginning of the Probate Code project. We have had studies of California law prepared by Professor Susan French on this topic. We have deferred work on the topic while the Uniform Law Commissioners were developing proposed legislation on it. The Uniform Law Commissioners have now promulgated their proposals and it is timely for us to reactivate this project.

(3) Development of a comprehensive powers of attorney statute. This is a useful consolidation of the law and resolution of issues that have surfaced over the years. The Commission has made initial policy decisions, and a staff draft is available for review.

Other minor probate matters continue to be raised by lawyers and should be addressed, but will not take much Commission or staff time.

Real Property

The Commission has on hand a study prepared for it by a consultant naming a number of real property matters that need legislative attention. The Commission has dipped into this study to do the marketable title legislation. There is one marketable title matter the Commission still has pending--elimination of obsolete restrictive covenants burdening marketability of real property. This is a difficult problem, but is one that should be addressed, if the Commission is interested.

Another real property matter that the academics agree should be addressed is repeal of Civil Code Section 1464, relating to covenants that run with the land; it is said to be a trap for lawyers and has been on the Commission's calendar of topics for many years. This is a small project we could easily work into the agenda for review at an appropriate time.

There are a number of other matters identified in the consultant's study that would merit Commission consideration when time permits.

NEW TOPICS

During the past year the Commission received two suggestions for study of new topics. As it turns out, both suggestions relate to topics already on the Commission's calendar. The only issue, therefore, is whether the Commission wants to devote some resources to these suggested matters for study, either now or sometime in the future.

Simplified Procedures for Actions to Quiet Title

The quiet title statute was enacted on recommendation of the Commission in 1980. See Code Civ. Proc. §§ 760.010-764.080. We have received a letter from Alvin G. Buchignani of San Francisco, suggesting more simplified procedures, "particularly in relationship to the service of process in such actions, with a view to reducing costs and expenses in connection with the proceedings." See Exhibit 2.

The staff has called Mr. Buchignani to see whether he had any specific suggestions in mind. He was concerned with the situation where a person having an unrecorded interest cannot be ascertained or located, for example where a property interest passed to a successor from a decedent without any order for distribution in probate. He suggests the statutes might define what is in a reasonably diligent search, for purposes of obtaining court authorization to serve unknown persons by publication. He noted that different courts impose different search requirements.

The staff believes this is a due process issue. The Commission's original study took into account the constitutional notice and opportunity to be heard requirements. A judgment obtained in compliance with the statute as enacted, burdensome though it may be in some circumstances, probably would withstand attack on due process grounds. The staff does not believe it would be a productive endeavor for the Commission to reexamine whether service requirements may be further reduced, and recommends the Commission not study this matter.

Wage Garnishment Withholding Period

The Wage Garnishment Law (Code Civ. Proc. §§ 706.010-706.154) was enacted on Commission recommendation in 1978 and has been revised several times on Commission recommendation. In 1989, the 100-day limitation on the wage garnishment withholding period was deleted from Section 706.022, not on Commission recommendation. This is the only change made by 1989 Cal. Stat. ch 263. Other parts of the wage garnishment law, however, are written in terms of the 100-day withholding period. These provisions were not adjusted and technical problems are resulting concerning, for example, the employer's duty to withhold, the levying officer's duties to return the writ of execution underlying the earnings withholding order, the amount to be collected, and the duty to withhold under a suspended order after satisfaction of an order with priority.

Lt. Anthony J. Pisciotta, Chairman of the Civil Procedure Sub-Committee of the California State Sheriffs' Association, has written asking the Commission to study this matter. (See letter attached as Exhibit 3.) The staff also received a telephone call from Professor Stefan Riesenfeld, a Commission consultant, suggesting that the Commission study problems associated with repeal of the 100-day withholding period.

The staff recommends that the Commission study this problem with a view toward preparing legislation for the 1992 session. This is an appropriate area for Commission study because the Commission recommended the Wage Garnishment Law and has worked extensively in the creditors' remedies area. Traditionally, the Commission has assumed some responsibility for maintaining statutes enacted on Commission recommendation, particularly where the issues are technical and unlikely to be resolved by any interest group. This appears to be the case with regard to the wage garnishment withholding period. The repeal of the 100-day limit was presumably instigated by representatives of creditors. Cleaning up the technical difficulties created by that repeal does not have the same appeal.

We do not anticipate that very much Commission time would be involved in studying this matter. The staff is familiar with the Wage Garnishment Law and, assuming the solutions to the technical problems

raised by the elimination of the 100-day withholding period are not too difficult to discover, we do not anticipate that very much staff time would be involved either. We will also be able to draw on the expertise of the levying officers and the Judicial Council staff. It should also be recognized that the repeal of the 100-day limit is a legislative policy decision that would not be subject to review in the course of this study.

CONCLUSION

The Commission needs to set its priorities and work schedule for 1991. The staff in this memorandum makes the following suggestions:

(1) The administrative law slowdown is appropriate.

(2) Development of the Family Code is more staff than Commission work. If funds are available, Mr. DeMouilly could be retained as a consultant after his retirement to do much of the staff work, thereby freeing the staff to work on more substantive projects.

(3) The most important issues the Commission should deal with during the coming year are donative transfers of community property (McDonald case) and community property in joint tenancy form.

(4) The Commission will have time during the coming year to work on a number of smaller projects. Of the matters on the Commission's calendar, the areas of family law, probate law, and real property law offer a number of opportunities for worthwhile reforms. Specific projects the staff suggests, if the Commission is interested, include:

Marital property agreements. (Difficult)

Rights of creditors against nonprobate assets. (Manageable)

Development of uniform rules of construction for probate and nonprobate transfers. (Manageable)

Development of a comprehensive powers of attorney statute.

(In Progress)

Elimination of obsolete restrictive covenants burdening marketability of real property. (Difficult)

Repeal of Civil Code Section 1464, relating to covenants that run with the land. (Easy)

Other minor property law clarification and clean up matters identified in consultant's study. (Easy)

(5) Both new topic suggestions received by the Commission during the past year are already matters on the Commission's agenda. The only new matter the staff would take up is correction of problems created by repeal of the 100-day withholding period in wage garnishment; this matter is fairly technical and should take little Commission time.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

EXHIBIT 1

BACKGROUND INFORMATION CONCERNING AUTHORIZED TOPICS

The following discussion gives background information concerning each of the topics authorized for study by the Commission. These studies were authorized or directed by concurrent resolution adopted by both houses of the Legislature. The topic the Commission is authorized or directed to study is set out and underscored below, followed by a discussion of the topic.

CREDITORS' REMEDIES. Whether the law relating to creditors' remedies (including, but not limited to, attachment, garnishment, execution, repossession of property (including the claim and delivery statute, self-help repossession of property, and the Commercial Code repossession of property provisions), civil arrest, confession of judgment procedures, default judgment procedures, enforcement of judgments, the right of redemption, procedures under private power of sale in a trust deed or mortgage, possessory and nonpossessory liens, and related matters) should be revised. (Authorized by 1983 Cal. Stat. res. ch. 40. See also 1974 Cal. Stat. res. ch. 45; 1972 Cal. Stat. res. ch. 27; 1957 Cal. Stat. res. ch. 202; 1 Cal. L. Revision Comm'n reports, "1957 Report" at 15 (1957).)

This study was first authorized in 1957 at the request of the Commission in response to a suggestion from a State Bar Committee. The study was a major study. Work on the topic was deferred for a number of years during which the Commission drafted the Evidence Code and worked on other topics. Beginning in 1971, the Commission submitted a series of recommendations covering specific aspects of the topic and in 1980 submitted a tentative recommendation proposing a comprehensive statute covering enforcement of judgments. The comprehensive statute was enacted. The Commission has retained the topic on its Calendar of Topics so that the Commission would be authorized to submit recommendations to deal with technical and substantive defects in the Enforcement of Judgments Law and to deal with additional aspects of the topic. Since the enactment of the Enforcement of Judgments Law, numerous recommendations have been submitted to the Legislature to make technical and substantive revisions in that law or to deal with additional aspects of the creditors' remedies topic.

Exemptions. Code of Civil Procedure Section 703.120 requires that the Law Revision Commission by July 1, 1993, and every ten years thereafter, review the exemptions from execution and recommend any changes in the exempt amounts that appear proper.

Judicial and nonjudicial foreclosure of real property liens. This is a topic that the Commission has recognized in the past is in need of study. A study of judicial and nonjudicial foreclosures would be a major study. A background study, prepared by an expert consultant, might be needed if the Commission were to study this matter. The staff would make a preliminary study of the matter with a view to determining whether an expert consultant is necessary or whether the staff could prepare the necessary background study.

Default in a civil action. One aspect of the creditors' remedies topic that is specifically noted in the detailed description of the topic is default judgment procedures. From time to time, the Commission has received letters suggesting that this area of law is in need of study so that the existing provisions can be reorganized and improved in substance. This study probably would not be as difficult as the study of foreclosure, but nevertheless may be a study where an expert consultant would be required.

The Commission has submitted the following recommendations relating to this topic:

Recommendation Relating to Attachment, Garnishment, and Exemptions From Execution: Discharge From Employment, 10 Cal. L. Revision Comm'n Reports 1147 (1971); 10 Cal. L. Revision Comm'n Reports 1126-1127 (1971). The recommended legislation was enacted. See 1971 Cal. Stat. ch. 1607.

Recommendation Relating to Attachment, Garnishment, and Exemptions from Execution: Employees' Earnings Protection Law, 10 Cal. L. Revision Comm'n Reports 701 (1971); 11 Cal. L. Revision Comm'n Reports 1024 (1973). The recommended legislation was not enacted. The Commission submitted a revised recommendation to the 1973 Legislature. See Recommendation Relating to Wage Garnishment and Related Matters, 11 Cal. L. Revision Comm'n Reports 101 (1973). See also 11 Cal. L. Revision Comm'n Reports 1123 (1973); 12 Cal. L. Revision Comm'n Reports 530 n.1 (1974). The recommended legislation was not enacted. The Commission submitted a revised recommendation to the 1975 Legislature. See Recommendation Relating to Wage Garnishment Exemptions, 12 Cal. L. Revision Comm'n Reports 901 (1974). See also 13 Cal. L. Revision Comm'n Reports 2012 (1976). The recommended legislation was not enacted. Two additional recommendations were made in 1976. See Recommendation Relating to Wage Garnishment Procedure, 13 Cal. L.

Revision Comm'n Reports 601 (1976), and *Recommendation Relating to Wage Garnishment*, 13 Cal. L. Revision Comm'n Reports 1703 (1976). See also 14 Cal. L. Revision Comm'n Reports 13 (1978); 14 Cal. L. Revision Comm'n Reports 261 (1978); 14 Cal. L. Revision Comm'n Reports 223-24 (1978). The recommended legislation was enacted in part. See 1978 Cal. Stat. ch. 1133. See also 15 Cal. L. Revision Comm'n Reports 1024 (1980). Additional parts of the recommended legislation were enacted. See 1979 Cal. Stat. ch. 66.

Recommendation and Study Relating to Civil Arrest, 11 Cal. L. Revision Comm'n Reports 1 (1973); 11 Cal. L. Revision Comm'n Reports 1123 (1973). The recommended legislation was enacted. See 1973 Cal. Stat. ch. 20.

Recommendation Relating to the Claim and Delivery Statute, 11 Cal. L. Revision Comm'n Reports 301 (1973); 11 Cal. L. Revision Comm'n Reports 1124 (1973). The recommended legislation was enacted. See 1973 Cal. Stat. ch. 526.

Recommendation Relating to Turnover Orders Under the Claim and Delivery Law, 13 Cal. L. Revision Comm'n Reports 2079 (1976); 13 Cal. L. Revision Comm'n Reports 1614 (1976). The recommended legislation was enacted. See 1976 Cal. Stat. ch. 145.

Recommendation Relating to Prejudgment Attachment, 11 Cal. L. Revision Comm'n Reports 701 (1973); 12 Cal. L. Revision Comm'n Reports 530 (1974). The recommended legislation was enacted. See 1974 Cal. Stat. ch. 1516.

Recommendation Relating to Revision of the Attachment Law, 13 Cal. L. Revision Comm'n Reports 801 (1976); 13 Cal. L. Revision Comm'n Reports 1612 (1976). The recommended legislation was enacted. See 1976 Cal. Stat. ch. 437.

Recommendation Relating to the Attachment Law--Effect of Bankruptcy Proceedings; Effect of General Assignments for the Benefit of Creditors, 14 Cal. L. Revision Comm'n Reports 61 (1978); 14 Cal. L. Revision Comm'n Reports 12 (1978). The recommended legislation was enacted. See 1977 Cal. Stat. ch. 499.

Recommendation Relating to Use of Court Commissioners Under the Attachment Law, 14 Cal. L. Revision Comm'n Reports 93 (1978); 14 Cal. L. Revision Comm'n Reports 224 (1978). The recommended legislation was enacted. See 1978 Cal. Stat. ch. 273.

Recommendation Relating to Technical Revisions in the Attachment Law, 14 Cal. L. Revision Comm'n Reports 241 (1978); 14 Cal. L. Revision Comm'n Reports 224 (1978). The recommended legislation was enacted. See 1978 Cal. Stat. ch. 273.

Recommendation Relating to Effect of New Bankruptcy Law on the Attachment Law, 15 Cal. L. Revision Comm'n Reports 1043 (1980); 15 Cal. L. Revision Comm'n Reports 1024 (1980). The recommended legislation was enacted. See 1979 Cal. Stat. ch. 177.

Recommendation Relating to Attachment, 16 Cal. L. Revision Comm'n Reports 701 (1982); 16 Cal. L. Revision Comm'n Reports 2025 (1982). The recommended legislation was enacted. See 1982 Cal. Stat. ch. 1198. See also 1982 *Creditors' Remedies Legislation With Official Comments--The Enforcement of Judgments Law; The Attachment Law*, 16 Cal. L. Revision Comm'n Reports 1001 (1982).

Recommendation Relating to Enforcement of Sister State Money Judgments, 11 Cal. L. Revision Comm'n Reports 451 (1973); 12 Cal. L. Revision Comm'n Reports 534 (1974). The recommended

legislation was enacted. See 1974 Cal. Stat. ch. 211. See also *Recommendation Relating to Sister State Money Judgments*, 13 Cal. L. Revision Comm'n Reports 1669 (1976); 14 Cal. L. Revision Comm'n Reports 12 (1978). The recommended legislation was enacted. See 1977 Cal. Stat. ch. 232.

Recommendation Relating to Use of Keepers Pursuant to Writs of Execution, 14 Cal. L. Revision Comm'n Reports 49 (1978); 14 Cal. L. Revision Comm'n Reports 12 (1978). The recommended legislation was enacted. See 1977 Cal. Stat. ch. 155.

Recommendation Relating to Interest Rate on Judgments, 15 Cal. L. Revision Comm'n Reports 7 (1980); 15 Cal. L. Revision Comm'n Reports 1427 (1980); 16 Cal. L. Revision Comm'n Reports 2025 (1982); 16 Cal. L. Revision Comm'n Reports (1982). The recommended legislation was enacted. See 1982 Cal. Stat. ch. 150.

Recommendation Relating to Married Women as Sole Traders, 15 Cal. L. Revision Comm'n Reports 21 (1980); 15 Cal. L. Revision Comm'n Reports 1426 (1980). The recommended legislation was enacted. See 1980 Cal. Stat. ch. 123.

Recommendation Relating to State Tax Liens, 15 Cal. L. Revision Comm'n Reports 29 (1980); 15 Cal. L. Revision Comm'n Reports 1427 (1980). The recommended legislation was enacted. See 1980 Cal. Stat. ch. 600. Additional revisions to the enacted legislation were recommended. See 15 Cal. L. Revision Comm'n Reports 24 (1982). The recommended legislation was enacted. See 1982 Cal. Stat. ch. 202.

Recommendation Relating to Probate Homestead, 15 Cal. L. Revision Comm'n Reports 401 (1980); 15 Cal. L. Revision Comm'n Reports 1428 (1980). The recommended legislation was enacted. See 1980 Cal. Stat. ch. 119.

Recommendation Relating to Confession of Judgment, 15 Cal. L. Revision Comm'n Reports 1053 (1980); 15 Cal. L. Revision Comm'n Reports 1024 (1980). The recommended legislation was enacted. See 1979 Cal. Stat. ch. 568.

Recommendation Relating to Agreements for Entry of Paternity and Support Judgments, 15 Cal. L. Revision Comm'n Reports 1237 (1980); 15 Cal. L. Revision Comm'n Reports 1426 (1980). The recommended legislation was enacted. See 1980 Cal. Stat. ch. 682.

Recommendation Relating to Assignment for the Benefit of creditors, 15 Cal. L. Revision Comm'n Reports 1117 (1980); 15 Cal. L. Revision Comm'n Reports 1427 (1980). The recommended legislation was enacted. See 1980 Cal. Stat. ch. 135.

Recommendation Relating to Enforcement of Claims and Judgments Against Public Entities, 15 Cal. L. Revision Comm'n Reports 1257 (1980); 15 Cal. L. Revision Comm'n Reports 1426-27 (1980). The recommended legislation was enacted. See 1980 Cal. Stat. ch. 215.

Recommendation Relating to Enforcement of Obligations After Death, 15 Cal. L. Revision Comm'n Reports 1327 (1980); 15 Cal. L. Revision Comm'n Reports 1426 (1980). The recommended legislation was enacted. See 1980 Cal. Stat. ch. 124.

Tentative Recommendation Proposing the Enforcement of Judgments Law, 15 Cal. L. Revision Comm'n Reports 2001 (1980). See also 16 Cal. L. Revision Comm'n Reports 24 (1982); 16 Cal. L. Revision Comm'n Reports 2024 (1982). The recommended legislation

was enacted. See 1982 Cal. Stat. chs. 497, 1364. See also 1982 *Creditors' Remedies Legislation With Official Comments--The Enforcement of Judgments Law; The Attachment Law*, 16 Cal. L. Revision Comm'n Reports 1001 (1982).

Recommendation Relating to Creditors' Remedies, 16 Cal. L. Revision Comm'n Reports 2175 (1982); 17 Cal. L. Revision Comm'n Reports 824-25 (1984). The recommended legislation was enacted. See 1983 Cal. Stat. ch. 155.

Recommendation Relating to Creditors' Remedies, 17 Cal. L. Revision Comm'n Reports 975 (1984); 18 Cal. L. Revision Comm'n Reports 23 (1986). The recommended legislation was enacted. See 1984 Cal. Stat. ch. 538.

The Commission recommended additional technical and clarifying changes to the Enforcement of Judgments Law but did not print its recommendations. The recommended legislation was enacted. See 1985 Cal. Stat. ch. 41.

Recommendation Relating to Statutory Bonds and Undertakings, 16 Cal. L. Revision Comm'n Reports 501 (1982); 16 Cal. L. Revision Comm'n Reports 2025-26 (1982). The recommended legislation was enacted. See 1982 Cal. Stat. chs. 517, 998. See also *Recommendation Relating to Conforming Changes to the Bond and Undertaking Law*, 16 Cal. L. Revision Comm'n Reports 2239 (1982); 17 Cal. L. Revision Comm'n Reports 825 (1984). The recommended legislation was enacted. See 1983 Cal. Stat. ch. 18.

Recommendation Relating to Creditors' Remedies, 19 Cal. L. Revision Comm'n Reports 1251 (1988). The recommended legislation was enacted. See 1989 Cal. Stat. ch. 1416.

PROBATE CODE. Whether the California Probate Code should be revised, including, but not limited to, whether California should adopt, in whole or in part, the Uniform Probate Code. (Authorized by 1980 Cal. Stat. res. ch. 37.)

Essentially all of the work of redrafting the Probate Code is completed, although there are many loose ends and cleanup projects left to do.

Definition of community property, quasi-community property, and separate property. The Commission has received a number of letters addressed to problems in the definition of marital property for probate purposes. We understand the State Bar Probate and Family Law Sections are working on this jointly.

Uniform rules on survival requirements, antilapse provisions, revocation, and change of beneficiaries for wills and will substitutes. We have on hand studies prepared by Professor French on these matters. The Uniform Law Commission has just completed work in this area. The Commission has deferred work on this matter pending completion of the Uniform Law Commission project.

Other matters the Commission has deferred for future study. In the process of preparing the new Probate Code the Commission has identified a number of matters in need of further study. These are all matters of a substantive nature that the Commission felt were important but that could not be addressed quickly in the context of the code rewrite. The Commission has reserved these issues for study on an ongoing basis. Matters under current study by the Commission include right of surviving spouse to dispose of community and quasi-community property, community property in joint tenancy form, and right of creditors to reach nonprobate assets. Other topics on the "back burner" list include:

- Statutory 630 Affidavit Form
- Uniform Transfers to Minors Act
 - Powers of Appointment
- Adoption in Closing Classes
- Interest on Lien on Estate Property (Attorney Fees)
- Tort & Contract Liability of Personal Representative (L-3011)
- Liens on Joint Tenancy Property
- Pamphlet on Fiduciary Duties

The Commission has submitted the following recommendations relating to this topic:

Recommendation Relating to Uniform Durable Power of Attorney Act, 15 Cal. L. Revision Comm'n Reports 351 (1980); 16 Cal. L. Revision Comm'n Reports 25 (1982). The recommended legislation was enacted. See 1981 Cal. Stat. ch. 511.

Recommendation Relating to Non-Probate Transfers, 15 Cal. L. Revision Comm'n Reports 1605 (1980); 16 Cal. L. Revision Comm'n Reports 25 (1982). The recommended legislation was enacted in part. See 1982 Cal. Stat. ch. 269 (financial institutions given express authority to offer pay-on-death accounts). See also *Recommendation Relating to Nonprobate Transfers*, 16 Cal. L. Revision Comm'n Reports 129 (1982); 17 Cal. L. Revision Comm'n Reports 823 (1984). The recommended legislation was enacted in part (credit unions and industrial loan companies). See 1983 Cal. Stat. ch. 92.

Recommendation Relating to Missing Persons, 16 Cal. L. Revision Comm'n Reports 105 (1982); 17 Cal. L. Revision Comm'n Reports 822-23 (1984). The recommended legislation was enacted. See 1983 Cal. Stat. ch. 201.

Recommendation Relating to Emancipated Minors, 16 Cal. L. Revision Comm'n Reports 183 (1982); 17 Cal. L. Revision Comm'n Reports 823 (1984). The recommended legislation was enacted. See 1983 Cal. Stat. ch. 6.

Recommendation Relating to Notice in Limited Conservatorship Proceedings, 16 Cal. L. Revision Comm'n Reports 199 (1982); 17 Cal. L. Revision Comm'n Reports 823 (1984). The recommended legislation was enacted. See 1983 Cal. Stat. ch. 72.

Recommendation Relating to Disclaimer of Testamentary and Other Interests, 16 Cal. L. Revision Comm'n Reports 207 (1982); 17 Cal. L. Revision Comm'n Reports 823 (1984). The recommended legislation was enacted. See 1983 Cal. Stat. ch. 17.

Recommendation Relating to Holographic and Nuncupative Wills, 16 Cal. L. Revision Comm'n Reports 301 (1982); 16 Cal. L. Revision Comm'n Reports 2026 (1982). The recommended legislation was enacted. See 1982 Cal. Stat. ch. 187.

Tentative Recommendation Relating to Wills and Intestate Succession, 16 Cal. L. Revision Comm'n Reports 2301 (1982); 17 Cal. L. Revision Comm'n Reports 822 (1984). The recommended legislation was enacted. See 1983 Cal. Stat. ch. 842. See also *Recommendation Relating to Revision of Wills and Intestate Succession Law*, 17 Cal. L. Revision Comm'n Reports 537 (1984); 18 Cal. L. Revision Comm'n Reports 19 (1986). The recommended legislation was enacted. See 1984 Cal. Stat. ch. 892.

Recommendation Relating to Independent Administration of Decedent's Estate; Recommendation Relating to Distribution of Estates Without Administration; Recommendation Relating to Bonds for Personal Representatives, 17 Cal. L. Revision Comm'n Reports 405, 421, and 483 (1984). These three recommendations were combined in one bill. See also 18 Cal. L. Revision Comm'n Reports 19 (1986). The recommended legislation was enacted. See 1984 Cal. Stat. ch. 451.

Recommendation Relating to Simultaneous Deaths, 17 Cal. L. Revision Comm'n Reports 443 (1984); 18 Cal. L. Revision Comm'n Reports 20 (1986). The recommended legislation was not enacted.

Recommendation Relating to Notice of Will, 17 Cal. L. Revision Comm'n Reports 461 (1984); 18 Cal. L. Revision Comm'n Reports 20 (1986). The recommended legislation was not enacted.

Recommendation Relating to Garnishment of Amounts Payable to Trust Beneficiary, 17 Cal. L. Revision Comm'n Reports 471 (1984); 18 Cal. L. Revision Comm'n Reports 19-20 (1986). The recommended legislation was enacted. See 1984 Cal. Stat. ch. 493.

Recommendation Relating to Recording Affidavit of Death, 17 Cal. L. Revision Comm'n Reports 493 (1984); 18 Cal. L. Revision Comm'n Reports 20 (1986). The recommended legislation was enacted. See 1984 Cal. Stat. ch. 527.

Recommendation Relating to Execution of Witnessed Wills, 17 Cal. L. Revision Comm'n Reports 509 (1984); 18 Cal. L. Revision Comm'n Reports 20 (1986). The recommended legislation was not enacted.

Recommendation Relating to Uniform Transfers to Minors Act, 17 Cal. L. Revision Comm'n Reports 601 (1984); 18 Cal. L. Revision Comm'n Reports 19 (1986). The recommended legislation was enacted. See 1984 Cal. Stat. ch. 243. An amendment to the 1984 legislation was submitted to the 1985 Legislature though no recommendation was printed. The recommended legislation was enacted. See 1985 Cal. Stat. ch. 90 (authority of donor to designate successor custodians).

Recommendation Relating to Transfer Without Probate of Certain Property Registered by the State, 18 Cal. L. Revision Comm'n Reports 129 (1986); *Recommendation Relating to Distribution of Will or Trust*, 18 Cal. L. Revision Comm'n Reports 269 (1986);

Recommendation Relating to Effect of Adoption or Out of Wedlock Birth on Rights at Death, 18 Cal. L. Revision Comm'n Reports 289 (1986). These three recommendations, together with additional technical and clarifying revisions to previously enacted probate legislation, were combined in one bill. The recommended legislation was enacted. See 1985 Cal. Stat. ch. 982. See also 1985 Cal. Stat. ch. 359.

Recommendation Relating to Disposition of Estate Without Administration, 18 Cal. L. Revision Comm'n Reports 1005 (1986); *Recommendation Relating to Small Estate Set-Aside*, 18 Cal. L. Revision Comm'n Reports 1101 (1986); *Recommendation Relating to Proration of Estate Taxes*, 18 Cal. L. Revision Comm'n Reports 1127 (1986). These three recommendations were combined in one bill. The recommended legislation was enacted. See 1986 Cal. Stat. ch. 783.

Recommendation Proposing the Trust Law, 18 Cal. L. Revision Comm'n Reports 501 (1986). The recommended legislation was enacted. See 1986 Cal. Stat. ch. 820. Follow-up legislation was proposed in *Recommendation Relating to Technical Revisions in the Trust Law*, 18 Cal. L. Revision Comm'n Reports 1823 (1986). The recommended legislation was enacted. See 1987 Cal. Stat. ch. 128.

Recommendation Relating to Notice in Guardianship and Conservatorship Proceedings, 18 Cal. L. Revision Comm'n Reports 1793 (1986); *Recommendation Relating to Preliminary Provisions and Definitions of the Probate Code*, 18 Cal. L. Revision Comm'n Reports 1807 (1986); *Recommendation Relating to Marital Deduction Gifts*, Appendix 5 of 1987 Annual Report; *Recommendation Relating to Administration of Estates of Missing Persons*, Appendix 6 of 1987 Annual Report; *Recommendation Relating to Supervised Administration of Decedent's Estate*, 1 Cal. L. Revision Comm'n Reports 5 (1988); *Recommendation Relating to Independent Administration of Estates Act*, 19 Cal. L. Revision Comm'n Reports 205 (1988); *Recommendation Relating to Creditor Claims Against Decedent's Estate*, 19 Cal. L. Revision Comm'n Reports 299 (1988); *Recommendation Relating to Notice in Probate Proceedings*, 19 Cal. L. Revision Comm'n Reports 357 (1988). These eight recommendations were combined in one bill. The recommended legislation was enacted. See 1987 Cal. Stat. ch. 923.

Recommendation Relating to Public Guardians and Administrators, 19 Cal. L. Revision Comm'n Reports 707 (1988); *Recommendation Relating to Inventory and Appraisal*, 19 Cal. L. Revision Comm'n Reports 741 (1988); *Recommendation Relating to Opening Estate Administration*, 19 Cal. L. Revision Comm'n Reports 787 (1988); *Recommendation Relating to Abatement*, 19 Cal. L. Revision Comm'n Reports 865 (1988); *Recommendation Relating to Accounts*, 19 Cal. L. Revision Comm'n Reports 877 (1988); *Recommendation Relating to Litigation Involving Decedents*, 19 Cal. L. Revision Comm'n Reports 899 (1988); *Recommendation Relating to Rules of Procedure in Probate*, 19 Cal. L. Revision Comm'n Reports 917 (1988); *Recommendation Relating to Distribution and Discharge*, 19 Cal. L. Revision Comm'n Reports 953 (1988); *Recommendation Relating to Nondomiciliary Decedents*, 19 Cal. L. Revision Comm'n Reports 993 (1988); *Recommendation Relating to Interest and Income During Administration*, 19 Cal. L. Revision Comm'n Reports 1019

(1988); *Comments to Conforming Revisions and Repeals*, 19 Cal. L. Revision Comm'n Reports 1031 (1988); *Recommendation Relating to 1988 Probate Cleanup Bill*, 19 Cal. L. Revision Comm'n Reports 1167, 1191-1200 (1988). These twelve recommendations were combined in two bills. The recommended legislation was enacted. See 1988 Cal. Stat. chs. 113 and 1199.

Recommendation Relating to No Contest Clauses, 20 Cal. L. Revision Comm'n Reports 7 (1990); *Recommendation Relating to 120-Hour Survival Requirement*, 20 Cal. L. Revision Comm'n Reports 21 (1990); *Recommendation Relating to Brokers' Commissions on Probate Sales*, 20 Cal. L. Revision Comm'n Reports 237-242 (1990); *Recommendation Relating to Bonds of Guardians and Conservators*, 20 Cal. L. Revision Comm'n Reports 235 (1990). These four recommendations were combined in one bill. The recommended legislation was enacted. See 1989 Cal. Stat. ch. 544.

Recommendation Relating to Multiple-Party Accounts, 20 Cal. L. Revision Comm'n Reports 95 (1990). The recommended legislation was enacted. See 1989 Cal. Stat. ch. 397.

Recommendation Relating to 1989 Probate Cleanup Bill, 20 Cal. L. Revision Comm'n Reports 201, 227-232 (1990). The recommended legislation was enacted. See 1989 Cal. Stat. ch. 21.

Recommendation Relating to Compensation of Attorneys and Personal Representatives, 20 Cal. L. Revision Comm'n Reports 31 (1990); *Recommendation Relating to Trustees' Fees*, 20 Cal. L. Revision Comm'n Reports 279 (1990). These two recommendations were combined in one bill and enacted except for portion relating to compensation of attorneys. 1990 Cal. Stat. ch. 79 (1990).

Recommendation Relating to Notice to Creditors, 20 Cal. L. Revision Comm'n Reports 165 (1990). Enacted in part. 1989 Cal. Stat. ch. 544. Resubmitted to 1990 legislative session as *Recommendation Relating to Notice to Creditors in Estate Administration*, 20 Cal. L. Revision Comm'n Reports 507 (1990) and remainder enacted. 1990 Cal. Stat. ch. 140.

Recommendation Relating to Repeal of Probate Code Section 6402.5 (In-Law Inheritance), 20 Cal. L. Revision Comm'n Reports 571 (1990). Not enacted. To be resubmitted to 1991 legislative session.

Recommendation Relating to Disposition of Small Estate by Public Administrator, 20 Cal. L. Revision Comm'n Reports 529 (1990). Enacted. 1990 Cal. Stat. ch. 324.

Recommendation Relating to Survival Requirement for Beneficiary of Statutory Will, 20 Cal. L. Revision Comm'n Reports 549 (1990); *Recommendation Relating to Execution or Modification of Lease Without Court Order*, 20 Cal. L. Revision Comm'n Reports 557 (1990); *Recommendation Relating to Limitation Period for Action Against Surety in Guardianship or Conservatorship Proceeding*, 20 Cal. L. Revision Comm'n Reports 565 (1990); *Recommendation Relating to Court-Authorized Medical Treatment*, 20 Cal. L. Revision Comm'n Reports 537 (1990); *Recommendation Relating to Priority of Conservator or Guardian for Appointment as Administrator*, 20 Cal. L. Revision Comm'n Reports 607 (1990). *Recommendation Relating to Notice in Probate Where Address Unknown*, 20 Cal. L. Revision Comm'n Reports 2245 (1990);

Recommendation Relating to Jurisdiction of Superior Court in Trust Matters, 20 Cal. L. Revision Comm'n Reports 2253 (1990). These seven recommendations were enacted as 1990 Cal. Stat. ch. 710.

Recommendation Relating to Access to Decedent's Safe Deposit Box, 20 Cal. L. Revision Comm'n Reports 597 (1990). Introduced at 1990 legislative session but not enacted. Will be resubmitted in revised form in the 1991 legislative session as *Recommendation Relating to Access to Decedent's Safe Deposit Box*, 20 Cal. L. Revision Comm'n Reports 2859 (1990).

Recommendations Relating to Powers of Attorney, 20 Cal. L. Revision Comm'n Reports 401 (1990). Enacted. 1990 Cal. Stat. ch. 986.

Recommendation Relating to New Probate Code, 20 Cal. L. Revision Comm'n Reports 1001 (1990). Enacted. 1990 Cal. Stats. ch. 79.

Recommendation Relating to Uniform Management of Institutional Funds Act, 20 Cal. L. Revision Comm'n Reports 2265 (1990). Enacted. 1990 Cal. Stats. 1307.

Recommendation Relating to TOD Beneficiary Designation for Vehicles and Certain Other State-Registered Property, 20 Cal. L. Revision Comm'n Reports 2883 (1990). Introduced in 1991 legislative session as SB 271 (Kopp).

Recommendation Relating to Debts That Are Contingent, Disputed, or Not Due, 20 Cal. L. Revision Comm'n Reports 2707 (1990); *Recommendation Relating to Remedies of Creditor Where Personal Representative Fails to Give Notice*, 20 Cal. L. Revision Comm'n Reports 2719 (1990); *Recommendation Relating to Repeal of Civil Code Section 704 (Passage of Ownership of U.S. Bonds on Death)*, 20 Cal. L. Revision Comm'n Reports 2729 (1990); *Recommendation Relating to Disposition of Small Estate Without Probate*, 20 Cal. L. Revision Comm'n Reports 2737 (1990); *Recommendation Relating to Right of Surviving Spouse to Dispose of Community Property*, 20 Cal. L. Revision Comm'n Reports 2769 (1990); *Recommendation Relating to Litigation Involving Decedents*, 20 Cal. L. Revision Comm'n Reports 2785 (1990); *Recommendation Relating to Compensation in Guardianship and Conservatorship Proceedings*, 20 Cal. L. Revision Comm'n Reports 2837 (1990); *Recommendation Relating to Gifts in View of Impending Death*, 20 Cal. L. Revision Comm'n Reports 2869 (1990). These eight recommendations will be submitted to the 1991 legislative session as a single bill.

Recommendation Relating to Elimination of Seven-Year Limit for Durable Power of Attorney for Health Care, 20 Cal. L. Revision Comm'n Reports 2605 (1990). This recommendation will be submitted to the 1991 legislative session.

Recommendation Relating to Recognition of Trustee's Powers, 20 Cal. L. Revision Comm'n Reports 2849 (1990); *Recommendation Relating to Recognition of Agent's Authority Under Statutory Form Power of Attorney*, 20 Cal. L. Revision Comm'n Reports 2629 (1990). These two recommendations will be submitted to the 1991 legislative session as a single bill.

Recommendation Relating to Uniform Statutory Rule Against Perpetuities, 20 Cal. L. Revision Comm'n Reports 2501 (1990). This recommendation will be submitted to the 1991 legislative session.

REAL AND PERSONAL PROPERTY. Whether the law relating to real and personal property (including, but not limited to, a Marketable Title Act, covenants, servitudes, conditions, and restrictions on land use or relating to land, possibilities of reverter, powers of termination, Section 1464 of the Civil Code, escheat of property and the disposition of unclaimed or abandoned property, eminent domain, quiet title actions, abandonment or vacation of public streets and highways, partition, rights and duties attendant upon termination or abandonment of a lease, powers of appointment, and related matters) should be revised. (Authorized by 1983 Cal. Stat. res. ch. 40, consolidating various previously authorized aspects of real and personal property law into one comprehensive topic.)

Application of Marketable Title Act to Obsolete Restrictive Covenants. During the past five years, the Commission has made a series of recommendations designed to improve the marketability of title to property. Provisions were enacted upon Commission recommendations designed to remove clouds on title created by (1) ancient mortgages and deeds of trust, (2) dormant mineral rights, (3) unexercised options, (5) powers of termination, (6) unperformed contracts for sale of real property, and (7) abandoned easements. The Commission plans to monitor adoption of the Uniform Dormant Mineral Interest Act in other jurisdictions, and if there appears to be widespread acceptance, will again raise the issue of adoption of the act in California. The Commission has long planned to undertake a study to determine whether and how the marketable title statute should be made applicable to obsolete restrictive covenants. The staff probably could prepare the necessary background study on this rather difficult matter.

Other title matters. The Commission has a background study outlining many other aspects of real and personal property law that are in need of study. Reference to this background study will permit the Commission to determine additional areas that might be studied.

The Commission has submitted the following recommendations relating to this topic:

Recommendation and Study Relating to Taking Possession and Passage of Title in Eminent Domain Proceedings, 3 Cal. L. Revision Comm'n Reports at B-1 (1961). See also 3 Cal. L. Revision Comm'n Reports at 1-5 (1961). This recommendation was enacted. 1961 Cal. Stat. chs. 1612 (tax apportionment) and 1613 (taking possession and passage of title).

Recommendation and Study Relating to Evidence in Eminent Domain Proceedings, 3 Cal. L. Revision Comm'n Reports at A-1 (1961). This recommendation was submitted to the Legislature several times and was enacted in 1965. 1965 Cal. Stat. ch. 1151.

Recommendation and Study Relating to the Reimbursement for Moving Expenses When Property Is Acquired for Public Use, 3 Cal. L. Revision Comm'n Reports at C-1 (1961). The substance of this recommendation was enacted in 1965. 1965 Cal. Stat. chs. 1649, 1650.

Recommendation and Study Relating to Condemnation Law and Procedure: Number 4--Discovery in Eminent Domain Proceedings, 4 Cal. L. Revision Comm'n Reports 701 (1963); 4 Cal. L. Revision Comm'n Reports 213 (1963). The recommended legislation was not enacted. See also *Recommendation Relating to Discovery in Eminent Domain Proceedings*, 8 Cal. L. Revision Comm'n Reports 19 (1967); 8 Cal. L. Revision Comm'n Reports 1318 (1967). The recommended legislation was enacted. See 1967 Cal. Stat. ch. 1104 (exchange of valuation data).

Recommendation Relating to Recovery of Condemnee's Expenses on Abandonment of an Eminent Domain Proceeding, 8 Cal. L. Revision Comm'n Reports 1361 (1967); 9 Cal. L. Revision Comm'n Reports 19 (1969). The recommended legislation was enacted. See 1968 Cal. Stat. ch. 133.

Recommendation Relating to Arbitration of Just Compensation, 9 Cal. L. Revision Comm'n Reports 123 (1969); 10 Cal. L. Revision Comm'n Reports 1018 (1971). The recommended legislation was enacted. See 1970 Cal. Stat. ch. 417.

Recommendation Relating to Condemnation Law and Procedure: Conforming Changes in Improvement Acts, 12 Cal. L. Revision Comm'n Reports 1001 (1974); 12 Cal. L. Revision Comm'n Reports 534 (1974). The recommended legislation was enacted. See 1974 Cal. Stat. ch. 426.

Recommendation Proposing the Eminent Domain Law, 12 Cal. L. Revision Comm'n Reports 1601 (1974); 13 Cal. L. Revision Comm'n Reports 2010 (1976); *Tentative Recommendations Relating to Condemnation Law and Procedure: The Eminent Domain Law, Condemnation Authority of State Agencies, and Conforming Changes in Special District Statutes*, 12 Cal. L. Revision Comm'n Reports at 1, 1051, and 1101 (1974). The recommended legislation was enacted. See 1975 Cal. Stat. chs. 581, 582, 584, 585, 586, 587, 1176, 1239, 1240, 1275, 1276. See also 1976 Cal. Stat. ch. 22.

Recommendation Relating to Relocation Assistance by Private Condemnors, 13 Cal. L. Revision Comm'n Reports 2085 (1976); 13 Cal. L. Revision Comm'n Reports 1614-15 (1976). The recommended legislation was enacted. See 1976 Cal. Stat. ch. 143.

Recommendation Relating to Condemnation for Byroads and Utility Easements, 13 Cal. L. Revision Comm'n Reports 2091 (1976); 13 Cal. L. Revision Comm'n Reports 1615 (1976). The recommended legislation was enacted in part (utility easements). See 1976 Cal. Stat. ch. 994.

Recommendation Relating to Escheat, 8 Cal. L. Revision Comm'n Reports 1001 (1967); 9 Cal. L. Revision Comm'n Reports 16-18 (1969). Most of the recommended legislation was enacted. See 1968 Cal. Stat. chs. 247 (escheat of decedent's estate) and 356 (unclaimed property act).

Recommendation Relating to Unclaimed Property, 11 Cal. L. Revision Comm'n Reports 401 (1973); 11 Cal. L. Revision Comm'n Reports 1124 (1973). The recommended legislation was not enacted. See also *Recommendation Relating to Escheat of Amounts Payable on Travelers Checks, Money Orders, and Similar Instruments*, 12 Cal. L. Revision Comm'n Reports 613 (1974); 13 Cal. L. Revision Comm'n Reports 2012 (1976). The recommended legislation was enacted. See 1975 Cal. Stat. ch. 25.

See *Recommendation and Study Relating to Abandonment or Termination of a Lease*, 8 Cal. L. Revision Comm'n Reports 701 (1967); 8 Cal. L. Revision Comm'n Reports 1319 (1967). The recommended legislation was not enacted. See also *Recommendation Relating to Real Property Leases*, 9 Cal. L. Revision Comm'n Reports 401 (1969); 9 Cal. L. Revision Comm'n Reports 98 (1969). The recommended legislation was not enacted. See also *Recommendation Relating to Real Property Leases*, 9 Cal. L. Revision Comm'n Reports 153 (1969); 10 Cal. L. Revision Comm'n Reports 1018 (1971). The recommended legislation was enacted. See 1970 Cal. Stat. ch. 89.

Recommendations Relating to Landlord-Tenant Relations, 11 Cal. L. Revision Comm'n Reports 951 (1973). This report contains two recommendations: *Abandonment of Leased Real Property and Personal Property Left on Premises Vacated by Tenant*. See also 12 Cal. L. Revision Comm'n Reports 536 (1974). The recommended legislation was enacted. See 1974 Cal. Stat. chs. 331, 332.

Recommendation Relating to Damages in Action for Breach of Lease, 13 Cal. L. Revision Comm'n Reports 1679 (1976); 14 Cal. L. Revision Comm'n Reports 13 (1978). The recommended legislation was enacted. See 1977 Cal. Stat. ch. 49.

Recommendation Relating to Partition of Real and Personal Property, 13 Cal. L. Revision Comm'n Reports 401 (1976); 13 Cal. L. Revision Comm'n Reports 1610-12 (1976). The recommended legislation was enacted. See 1976 Cal. Stat. ch. 73.

Recommendation Relating to Review of Resolution of Necessity by Writ of Mandate, 14 Cal. L. Revision Comm'n Reports 83 (1978); 14 Cal. L. Revision Comm'n Reports 224 (1978). The recommended legislation was enacted. See 1978 Cal. Stat. ch. 286.

Recommendation Relating to Evidence of Market Value of Property, 14 Cal. L. Revision Comm'n Reports 105 (1978); 14 Cal. L. Revision Comm'n Reports 225 (1978). The recommended legislation was enacted in part. See 1978 Cal. Stat. ch. 294. *Recommendation Relating to Application of Evidence Code Property Valuation Rules in Noncondemnation Cases*, 15 Cal. L. Revision

Comm'n Reports 301 (1980); 15 Cal. L. Revision Comm'n Reports 1429 (1980). The recommended legislation was enacted. See 1980 Cal. Stat. ch. 381.

Recommendation Relating to Ad Valorem Property Taxes in Eminent Domain Proceedings, 14 Cal. L. Revision Comm'n Reports 291 (1978); 15 Cal. L. Revision Comm'n Reports 1025 (1980). The recommended legislation was enacted. See 1978 Cal. Stat. ch. 31.

Recommendation Relating to Vacation of Public Streets, Highways, and Service Easements, 15 Cal. L. Revision Comm'n Reports 1137 (1980); 15 Cal. L. Revision Comm'n Reports 1429 (1980). The recommended legislation was enacted. See 1980 Cal. Stat. ch. 1050. See also 17 Cal. L. Revision Comm'n Reports 825 (1984). The recommended follow-up legislation was enacted. See 1983 Cal. Stat. ch. 69.

Recommendation Relating to Special Assessment Liens on Property Acquired for Public Use, 15 Cal. L. Revision Comm'n Reports 1101 (1980); 15 Cal. L. Revision Comm'n Reports 1428 (1980). The recommended legislation was enacted. See 1980 Cal. Stat. ch. 122. See also 16 Cal. L. Revision Comm'n Reports 25 (follow up legislation). The recommended legislation was enacted. See 1981 Cal. Stat. ch. 139.

Recommendation Relating to Quiet Title Actions, 15 Cal. L. Revision Comm'n Reports 1187 (1980); 15 Cal. L. Revision Comm'n Reports 1428 (1980). The recommended legislation was enacted. See 1980 Cal. Stat. ch. 44.

Recommendation Relating to Marketable Title of Real Property, 16 Cal. L. Revision Comm'n Reports 401 (1982); 16 Cal. L. Revision Comm'n Reports 2026 (1982). The recommended legislation was enacted. See 1982 Cal. Stat. ch. 1268.

Recommendation Relating to Severance of Joint Tenancy, 17 Cal. L. Revision Comm'n Reports 941 (1984); 18 Cal. L. Revision Comm'n Reports 23 (1986). The recommended legislation was enacted. See 1984 Cal. Stat. ch. 519.

Recommendation Relating to Effect of Quiet Title and Partition Judgments, 17 Cal. L. Revision Comm'n Reports 947 (1984); 18 Cal. L. Revision Comm'n Reports 22 (1986). The recommended legislation was enacted. See 1984 Cal. Stat. ch. 20.

Recommendation Relating to Dormant Mineral Rights, 17 Cal. L. Revision Comm'n Reports 957 (1984); 18 Cal. L. Revision Comm'n Reports 22 (1986). The recommended legislation was enacted. See 1984 Cal. Stat. ch. 240.

Recommendation Relating to Rights Among Cotenants In Possession and Out of Possession of Real Property, 17 Cal. L. Revision Comm'n Reports 1023 (1984); 18 Cal. L. Revision Comm'n Reports 23 (1986). The recommended legislation was enacted. See 1984 Cal. Stat. ch. 241.

Recommendation Relating to Recording Severance of Joint Tenancy, 18 Cal. L. Revision Comm'n Reports 249 (1986). The recommended legislation was enacted. See 1985 Cal. Stat. ch. 157.

Recommendation Relating to Abandoned Easements, 18 Cal. L. Revision Comm'n Reports 257 (1986). The recommended legislation was enacted. See 1985 Cal. Stat. ch. 157.

Recommendation Relating to Commercial Real Property Leases, 20 Cal. L. Revision Comm'n Reports 251 (1990). The recommended legislation was enacted. See 1989 Cal. Stat. ch. 982.

Recommendation Relating to Commercial Real Property Leases: Remedies for Breach of Assignment or Sublease Covenant, 20 Cal. L. Revision Comm'n Reports 2405 (1990); *Recommendation Relating to Commercial Real Property Leases: Use Restrictions*, 20 Cal. L. Revision Comm'n Reports 2421 (1990). These two recommendations have been submitted to the 1991 legislative session as SB 256 (Beverly).

FAMILY LAW. Whether the law relating to family law (including, but not limited to, community property) should be revised. (Authorized by 1983 Cal. Stat. res. ch. 40. See also 1978 Cal. Stat. res. ch. 65; 16 Cal. L. Revision Comm'n Reports 2019 (1982); 14 Cal. L. Revision Comm'n Reports 22 (1978).)

The area of family law is in need of study to clarify the law and to make needed substantive changes in the law. This field of law is very controversial. The Commission has submitted a number of recommendations and has several background studies available.

Donative transfers and revocation of consent. The Commission has retained a consultant, Professor Jerry Kasner, to deal with problems created by the Supreme Court MacDonald case, involving donative transfers of community property made by one spouse with the consent of the other and whether such a consent, once given, is irrevocable.

Marital agreements made during marriage. California now has the Uniform Premarital Agreements Act and detailed provisions concerning agreements relating to rights upon death of one of the spouses. However, there is no general statute governing marital agreements during marriage. Such a statute would be useful and the development of the statute might involve controversial issues. Also, the issue whether the right to support can be waived in a premarital agreement should be considered.

Disposition of marital property. The Commission submitted a recommendation on this matter on which an interim hearing was held by the Senate Judiciary Committee. Recent legislation sponsored by the Commission on Status of Women has been enacted that affects this area. The area is still active, and the Commission has decided to defer further consideration of this matter.

Stepparent liability. The Commission is responsible for a number of statutes that impact on the liability of a stepparent for support of a stepchild, particularly the statutes governing liability of marital property for debts. The staff has received the manuscript of an article by Professor Mary-Lynne Fisher entitled "Stepparent Responsibility for Child Support," which is critical of the statutes in a number of respects. At some point the Commission should review this article to determine whether any additional changes in these statutes appear desirable.

The Commission has submitted the following recommendations relating to this topic:

Recommendation Relating to Federal Military and Other Pensions as Community Property, 16 Cal. L. Revision Comm'n Reports 47 (1982); 16 Cal. L. Revision Comm'n Reports 2027 (1982). The recommended resolution was adopted. See 1982 Cal. Stat. res. ch. 44.

Recommendation Relating to Division of Joint Tenancy and Tenancy in Common Property at Dissolution of Marriage, 16 Cal. L. Revision Comm'n Reports 2165 (1982); 17 Cal. L. Revision Comm'n Reports 823-24 (1984). The recommended legislation was enacted. See 1983 Cal. Stat. ch. 342. The Commission has prepared follow up legislation to deal with the application of the 1983 statute to cases pending when that statute took effect. *Recommendation Relating to Civil Code Sections 4800.1 and 4800.2*, 18 Cal. L. Revision Comm'n Reports, 383 (1986). One of two recommended measures was enacted (Application of Civil Code Sections 4800.1 and 4800.2). See 1986 Cal. Stat. ch. 49.

Recommendation Relating to Liability of Marital Property for Debts, 17 Cal. L. Revision Comm'n Reports 1 (1984). See also 17 Cal. L. Revision Comm'n Reports 824 (1984); 18 Cal. L. Revision Comm'n Reports 20-21 (1986). The recommended legislation was enacted. See 1984 Cal. Stat. ch. 1671.

Recommendation Relating to Marital Property Presumptions and Transmutations, 17 Cal. L. Revision Comm'n Reports 205 (1984); 18 Cal. L. Revision Comm'n Reports 21 (1986). The recommended legislation was enacted in part (transmutations). See 1984 Cal. Stat. ch. 1733.

Recommendation Relating to Reimbursement of Educational Expenses, 17 Cal. L. Revision Comm'n Reports 229 (1984); 18 Cal. L. Revision Comm'n Reports 22 (1986). The recommended legislation was enacted. See 1984 Cal. Stat. ch. 1661.

Recommendation Relating to Special Appearance in Family Law Proceedings, 17 Cal. L. Revision Comm'n Reports 243 (1984); 18 Cal. L. Revision Comm'n Reports 21 (1986). The recommended legislation was enacted. See 1984 Cal. Stat. ch. 156.

Recommendation Relating to Liability of Stepparent for Child Support, 17 Cal. L. Revision Comm'n Reports 251 (1984); 18 Cal. L. Revision Comm'n Reports 21 (1986). The recommended legislation was enacted. See 1984 Cal. Stat. ch. 249.

Recommendation Relating to Awarding Temporary Use of Family Home, 17 Cal. L. Revision Comm'n Reports 261 (1984); 18 Cal. L. Revision Comm'n Reports 21 (1986). The recommended legislation was enacted. See 1984 Cal. Stat. ch. 463.

Recommendation Relating to Disposition of Community Property, 17 Cal. L. Revision Comm'n Reports 269 (1984); 18 Cal. L. Revision Comm'n Reports 22 (1986). The recommended legislation was not enacted but the subject matter of the Commission's recommendation was referred for interim study by the Senate Judiciary Committee.

Recommendation Relating to Effect of Death of Support Obligor, 17 Cal. L. Revision Comm'n Reports 824 (1984); 18 Cal. L. Revision Comm'n Reports 21-22 (1986). The recommended legislation was enacted in part. See 1984 Cal. Stat. ch. 19. See also *Recommendation Relating to Provision for Support if Support Obligor Dies*, 18 Cal. L. Revision Comm'n Reports 119 (1986). The recommended legislation was enacted. See 1985 Cal. Stat. ch. 362.

Recommendation Relating to Dividing Jointly Owned Property Upon Marriage Dissolution, 18 Cal. L. Revision Comm'n Reports 147 (1986). The recommended legislation was enacted. See 1985 Cal. Stat. ch. 362.

Recommendation Relating to Litigation Expenses in Family Law Proceedings, 18 Cal. L. Revision Comm'n Reports 351 (1986). The recommended legislation was enacted. See 1985 Cal. Stat. ch. 362.

PREJUDGMENT INTEREST. Whether the law relating to the award of prejudgment interest in civil actions and related matters should be revised. (Authorized by 1971 Cal. Stat. res. ch. 75.)

This topic was added to the Commission's Calendar of Topics by the Legislature (not on recommendation of the Commission) because some members of the Legislature believed that prejudgment interest should be recoverable in personal injury actions. This topic was never given priority by the Commission. The Commission doubted that a recommendation by the Commission would carry much weight, given the positions of the Trial Lawyers Association and the Insurance Companies and other potential defendants on the issue. Provisions providing for prejudgment interest in personal injury actions (not recommended by the Commission) were enacted in 1982. See Civil Code Section 3291.

CLASS ACTIONS. Whether the law relating to class actions should be revised. (Authorized by 1975 Cal. Stat. res. ch. 15. See also 12 Cal. L. Revision Comm'n Reports 524 (1974).)

This topic was added to the Commission's Calendar of Topics upon request of the Commission. However, the Commission never gave the topic any priority because the State Bar and the Uniform Law Commissioners were reviewing the Uniform Class Actions Act which was approved by the National Conference of Commissioners on Uniform State Laws in 1976. As of September 1985, only two states--Iowa and North Dakota--have enacted the Uniform Act. The staff doubts that the Commission could produce a statute in this area that would have a reasonable chance for enactment, given the controversial nature of the issues involved in drafting such a statute.

OFFERS OF COMPROMISE. Whether the law relating to offers of compromise should be revised. (Authorized by 1975 Cal. Stat. res. ch. 15. See also 12 Cal. L. Revision Comm'n Reports 525 (1974).)

This topic was added to the Commission's Calendar of Topics at the request of the Commission in 1975. The Commission was concerned with Section 998 of the Code of Civil Procedure (withholding or augmenting costs following rejection or acceptance of offer to allow judgment). The Commission noted several instances where the language of Section 998 might be clarified and suggested that the section did not deal adequately with the problem of a joint offer to several plaintiffs. The Commission raised the question whether some provision should be made for the case involving multiple plaintiffs. Since then Section 3291 of the Civil Code has been enacted to allow recovery of interest where the plaintiff makes an offer pursuant to Section 998.

The Commission has never given this topic any priority, but it is one that might be considered by the Commission sometime in the future on a nonpriority basis when staff and Commission time permit work on the topic.

DISCOVERY IN CIVIL ACTIONS. Whether the law relating to discovery in civil cases should be revised. (Authorized by 1975 Cal. Stat. res. ch. 15. See also 12 Cal. L. Revision Comm'n Reports 526 (1974).)

The Commission requested authority to study this topic in 1974. The Commission noted that the existing California discovery statute was based on the Federal Rules of Civil Procedure and that the federal rules had been amended to deal with specific problems which had arisen under the rules. The Commission believed the federal revisions should be studied to determine whether the California statute should be modified in light of the changes in the federal rules.

Although the Commission considered the topic to be an important one, the Commission decided not to give the study priority because the California State Bar was actively studying the matter and the Commission did not want to duplicate the efforts of the California State Bar. A joint commission of the California State Bar and the Judicial Council produced a new discovery act that was enacted into law. The Commission should consider whether this topic should be dropped from its agenda.

PROCEDURE FOR REMOVAL OF INVALID LIENS. Whether a summary procedure should be provided by which property owners can remove doubtful or invalid liens from their property, including a provision for payment of attorney's fees to the prevailing party. (Authorized by 1980 Cal. Stat. res. ch. 37.)

This topic was added to the Commission's Calendar of Topics by the Legislature (not recommended for addition by Commission) because of the problem created by unknown persons filing fraudulent lien documents on property owner by public officials or others to create a cloud on the title of the property. The Commission has never given this topic any priority, but it is one that might be considered on a nonpriority basis in the future when staff and Commission time permit. The staff has done a preliminary analysis of this matter that shows a number of remedies are available under existing law. The question is whether these remedies are adequate.

SPECIAL ASSESSMENT LIENS FOR PUBLIC IMPROVEMENTS. Whether acts governing special assessments for public improvements should be simplified and unified. (Authorized by 1980 Cal. Stat. res. ch. 37.)

There are a great number of statutes that provide for special assessments for public improvements of various types. The statutes overlap and duplicate each other and contain apparently needless inconsistencies. The Legislature added this topic to the Commission's Calendar of Topics with the objective that the Commission might be able to develop one or more unified acts to replace the variety of acts that now exist. (A number of years ago, the Commission examined the improvement acts and recommended the repeal of a number of obsolete ones. That recommendation was enacted.) This legislative assignment would be a worthwhile project but would require a substantial amount of staff time.

INJUNCTIONS. Whether the law on injunctions and related matters should be revised. (Authorized by 1984 Cal. Stat. res. ch. 42.)

This topic was added to the Commission's Calendar of Topics by the Legislature in 1984. The topic was added because comprehensive legislation was proposed for enactment and it was easier for the Legislature to refer the matter to the Commission than to make a careful study of the legislation. The Commission has decided that due to limited funds, it will not give priority to this study, unless there is a legislative directive indicating the need for prompt action on this matter.

INVOLUNTARY DISMISSAL FOR LACK OF PROSECUTION. Whether the law relating to involuntary dismissal for lack of prosecution should be revised. (Authorized by 1978 Cal. Stat. res. ch. 85. See also 14 Cal. L. Revision Comm'n Reports 23 (1978).)

The Commission recommended a comprehensive statute on this topic. *Recommendation Relating to Dismissal for Lack of Prosecution*, 16 Cal. L. Revision Comm'n Reports 2205 (1982); *Revised Recommendation Relating to Dismissal for Lack of Prosecution*, 17 Cal. L. Revision Comm'n

Reports 905 (1984). See also 18 Cal. L. Revision Comm'n Reports 23 (1986). The recommended legislation was enacted. See 1984 Cal. Stat. ch. 1705.

This topic was retained on the Calendar of Topics so that the Commission would have authority to recommend any clean up legislation that might be needed. The staff will follow the experience under the new statute and report any problems with it to the Commission.

STATUTES OF LIMITATIONS FOR FELONIES. Whether the law relating to statutes of limitations applicable to felonies should be revised. (Authorized by 1981 Cal. Stat. ch. 909, § 3.)

The Commission submitted a recommendation for a comprehensive statute on this topic. *Recommendation Relating to Statutes of Limitation for Felonies*, 17 Cal. L. Revision Comm'n Reports 301 (1984); 18 Cal. L. Revision Comm'n Reports 23-24 (1986). The recommended legislation was enacted. See 1984 Cal. Stat. ch. 1270.

The Commission retained this topic on its Calendar of Topics so that any needed clean up legislation could be submitted.

RIGHTS AND DISABILITIES OF MINORS AND INCOMPETENT PERSONS. Whether the law relating to the rights and disabilities of minors and incompetent persons should be revised. (Authorized by 1979 Cal. Stat. res. ch. 19. See also 14 Cal. L. Revision Comm'n Reports 217 (1978).)

The Commission has submitted a number of recommendations under this topic authorization and it is anticipated that more will be submitted under this topic authorization as the need for those recommendations becomes apparent. We have recently received an inquiry concerning the Commission's study of, and the need to revise, Civil Code Sections 38, 39, and 40, relating to capacity to make a contract. The statutes relating to rights of minors will be consolidated and coordinated in the process of preparing the new Family code.

The Commission has submitted the following recommendations relating to this topic:

Recommendation and Study Relating to Powers of Appointment, 9 Cal. L. Revision Comm'n Reports 301 (1969); 9 Cal. L. Revision Comm'n Reports 98 (1969). The recommended legislation was

enacted. See 1969 Cal. Stat. chs. 113, 155. A clarifying revision to the powers appointment statute was submitted to the 1978 Legislature. See 14 Cal. L. Revision Comm'n Reports 225, 257 (1978). The recommended legislation was enacted. See 1978 Cal. Stat. ch. 266. See also *Recommendation Relating to Revision of Powers of Appointment Statute*, 15 Cal. L. Revision Comm'n Reports 1668 (1980); 16 Cal. L. Revision Comm'n Reports 25 (1982). The recommended legislation was enacted. See 1981 Cal. Stat. ch. 63.

Recommendation Relating to Emancipated Minors, 16 Cal. L. Revision Comm'n Reports 183 (1982); 17 Cal. L. Revision Comm'n Reports 823 (1984). The recommended legislation was enacted. See 1983 Cal. Stat. ch. 6.

Recommendation Relating to Uniform Durable Power of Attorney for Health Care Decisions, 17 Cal. L. Revision Comm'n Reports 101 (1984); 17 Cal. L. Revision Comm'n Reports 822 (1984). The recommended legislation was enacted. See 1983 Cal. Stat. ch. 1204.

Recommendation Relating to Statutory Forms for Durable Powers of Attorney, 17 Cal. L. Revision Comm'n Reports 701 (1984); 18 Cal. L. Revision Comm'n Reports 18-19 (1986). The recommended legislation was enacted. See 1984 Cal. Stat. chs. 312, 602.

Recommendation Relating to Durable Powers of Attorney, 18 Cal. L. Revision Comm'n Reports 305 (1986). The recommended legislation was enacted. See 1985 Cal. Stat. ch. 403.

CHILD CUSTODY, ADOPTION, GUARDIANSHIP, AND RELATED MATTERS. Whether the law relating to custody of children, adoption, guardianship, freedom from parental custody and control, and related matters should be revised. (Authorized by 1972 Cal. Stat. res. ch. 27. See also 10 Cal. L. Revision Comm'n Reports 1122 (1971); 1956 Cal. Stat. res. ch. 42; 1 Cal. L. Revision Comm'n Reports, "1956 Report" at 29 (1957).)

Child custody. The Commission has in hand a study of this topic prepared by the Commission's consultant, the late Professor Brigitte M. Bodenheimer. See Bodenheimer, *The Multiplicity of Child Custody Proceedings--Problems of California Law*, 23 Stan. L. Rev. 703 (1971). The Commission has not considered this study.

Adoption. There is a need to review the substantive provisions relating to adoption. The Commission has planned to undertake the drafting of a new adoption statute and to give the matter some priority. The Uniform Law Commissioners have a special drafting committee working on a new Uniform Adoption Act. The Commission has deferred the study of adoption until the work of the Uniform Commissioners becomes available. The Commission also has in hand an obsolete study of this topic prepared by the Commission's consultant, the late Professor Brigitte M. Bodenheimer. See Bodenheimer, *New*

Trends and Requirements in Adoption Law and Proposals for Legislative Change, 49 So. Cal. L. Rev. 10 (1975). A bill was enacted in 1990 that improved the drafting and substance of the law relating to adoption.

The Commission has submitted the following recommendations relating to this topic:

Recommendation Relating to Guardianship-Conservatorship Law, 14 Cal. L. Revision Comm'n Reports 501 (1978); 15 Cal. L. Revision Comm'n Reports 1024-25 (1980). See also *Guardianship-Conservatorship Law With Official Comments*, 15 Cal. L. Revision Comm'n Reports 451 (1980). The recommended legislation was enacted. See 1979 Cal. Stat. chs. 165, 726, 730. See also 15 Cal. L. Revision Comm'n Reports 1427 (1980) (*Guardianship-Conservatorship Law--technical and clarifying revisions*). The recommended legislation was enacted. See 1980 Cal. Stat. ch. 246.

Recommendation Relating to Revision of Guardianship-Conservatorship Law, 15 Cal. L. Revision Comm'n Reports 1463 (1980); 16 Cal. L. Revision Comm'n Reports 24-25 (1982). The recommended legislation was enacted. See 1981 Cal. Stat. ch. 9.

Recommendation Relating to Uniform Veterans Guardianship Act, 15 Cal. L. Revision Comm'n Reports 1289 (1980); 15 Cal. L. Revision Comm'n Reports 1428 (1980). The recommended legislation was enacted. See 1980 Cal. Stat. ch. 89.

Recommendation Relating to Uniform Durable Power of Attorney Act, 15 Cal. L. Revision Comm'n Reports 351 (1980); 16 Cal. L. Revision Comm'n Reports 25 (1982). The recommended legislation was enacted. See 1981 Cal. Stat. ch. 511.

EVIDENCE. Whether the Evidence Code should be revised. (Authorized by 1965 Cal. Stat. res. ch. 130)

The California Evidence Code was enacted upon recommendation of the Commission. Since then, the Federal Rules of Evidence have been adopted. Those rules draw heavily from the California Evidence Code, and in drafting the federal rules the drafters made changes in provisions taken from California. The California statute might be conformed to some of these federal provisions. In addition, there is a substantial body of experience under the Evidence Code. That experience might be reviewed to determine whether any technical or substantive revisions in the Evidence Code are needed. The Commission has available a background study that reviews the federal rules and notes changes that might be made in the California code in light of the federal rules. However, the study was prepared 10 years ago and

probably should be updated before it is considered by the Commission. In addition, a background study by an expert consultant of the experience under the California Evidence Code (enacted more than 20 years ago) might be useful before the Commission undertakes a review of the Evidence Code.

The Commission has submitted the following recommendations relating to this topic:

Recommendation Proposing an Evidence Code, 7 Cal. L. Revision Comm'n Reports 1 (1965). A number of tentative recommendations and research studies were published and distributed for comment prior to the preparation of the recommendation proposing the Evidence Code. See 6 Cal. L. Revision Comm'n Reports at 1, 101, 201, 601, 701, 801, 901, 1001, and Appendix (1964). See also *Evidence Code With Official Comments*, 7 Cal. L. Revision Comm'n Reports 1001 (1965). The recommended legislation was enacted. See 1965 Cal. Stat. ch. 299 (Evidence Code).

Recommendations Relating to the Evidence Code: Number 1--Evidence Code Revisions; Number 2--Agricultural Code Revisions; Number 3--Commercial Code Revisions, 8 Cal. L. Revision Comm'n Reports 101, 201, 301 (1967). See also 8 Cal. L. Revision Comm'n Reports 1315 (1967). The recommended legislation was enacted. See 1967 Cal. Stat. chs. 650 (Evidence Code revisions), 262 (Agricultural Code revisions), 703 (Commercial Code revisions).

Recommendation Relating to the Evidence Code: Number 4--Revision of the Privileges Article, 9 Cal. L. Revision Comm'n Reports 501 (1969); 9 Cal. L. Revision Comm'n Reports 98 (1969). The recommended legislation was not enacted; *Recommendation Relating to Psychotherapist-Patient Privilege*, 14 Cal. L. Revision Comm'n Reports 127 (1978); 14 Cal. L. Revision Comm'n Reports 225 (1978). The recommended legislation was passed by the Legislature but vetoed by the Governor. See also *Recommendation Relating to Psychotherapist-Patient Privilege*, 15 Cal. L. Revision Comm'n Reports 1307 (1980). This revised recommendation was not submitted to the Legislature. Portions of the revised recommendation were enacted in 1985. 1985 Cal. Stat. chs. 545, 1077.

Recommendation Relating to the Evidence Code: Number 5--Revisions of the Evidence Code, 9 Cal. L. Revision Comm'n Reports 137 (1969); 10 Cal. L. Revision Comm'n Reports 1018 (1971). Some of the recommended legislation was enacted. See 1970 Cal. Stat. chs. 69 (*res ipsa loquitur*), 1397 (psychotherapist-patient privilege).

See also report concerning *Proof of Foreign Official Records*, 10 Cal. L. Revision Comm'n Reports 1022 (1971) and 1970 Cal. Stat. ch. 41.

Recommendation Relating to Erroneously Ordered Disclosure of Privileged Information, 11 Cal. L. Revision Comm'n Reports 1163 (1973); 12 Cal. L. Revision Comm'n Reports 535 (1974). The recommended legislation was enacted. See 1974 Cal. Stat. ch. 227.

Recommendation Relating to Evidence Code Section 999-The "Criminal Conduct" Exception to the Physician-Patient Privilege, 11 Cal. L. Revision Comm'n Reports 1147 (1973); 12 Cal. L. Revision Comm'n Reports 535 (1974). The recommended legislation was not enacted. A revised recommendation was submitted to the 1975 Legislature. See *Recommendation Relating to the Good Cause Exception to the Physician-Patient Privilege*, 12 Cal. L. Revision Comm'n Reports 601 (1974); 13 Cal. L. Revision Comm'n Reports 2012 (1976). The recommended legislation was enacted. See 1975 Cal. Stat. ch. 318.

Recommendation Relating to View by Trier of Fact in a Civil Case, 12 Cal. L. Revision Comm'n Reports 587 (1974); 13 Cal. L. Revision Comm'n Reports 2011 (1976). The recommended legislation was enacted. See 1975 Cal. Stat. ch. 301.

Recommendation Relating to Admissibility of Copies of Business Records in Evidence, 13 Cal. L. Revision Comm'n Reports 2051 (1976); 13 Cal. L. Revision Comm'n Reports 2012 (1976). The recommended legislation was not enacted.

Recommendation Relating to Evidence of Market Value of Property, 14 Cal. L. Revision Comm'n Reports 105 (1978); 14 Cal. L. Revision Comm'n Reports 225 (1978). The recommended legislation was enacted. See 1978 Cal. Stat. ch. 294.

Recommendation Relating to Protection of Mediation Communications, 18 Cal. L. Revision Comm'n Reports, 241 (1986). The recommended legislation was enacted. See 1985 Cal. Stat. ch. 731.

ARBITRATION. Whether the law relating to arbitration should be revised. (Authorized by 1968 Cal. Stat. res. ch. 110. See also 8 Cal. L. Revision Comm'n Reports 1325 (1967).)

The present California arbitration statute was enacted in 1961 upon Commission recommendation. See *Recommendation and Study Relating to Arbitration*, 3 Cal. L. Revision Comm'n Reports at G-1 (1961). See also 4 Cal. L. Revision Comm'n Reports 15 (1963). See also 1961 Cal. Stat. ch. 461. The topic was retained on the Commission's Calendar of Topics so that the Commission has authority to recommend any needed technical or substantive revisions in the statute.

MODIFICATION OF CONTRACTS. Whether the law relating to modification of contracts should be revised. (Authorized by 1974 Cal. Stat. res. ch. 45. See also 1957 Cal. Stat. res. ch. 202; 1 Cal. L. Revision Comm'n Reports, "1957 Report" at 21 (1957).)

The Commission recommended legislation on this topic that was enacted in 1975 and 1976. See *Recommendation and Study Relating to Oral Modification of Written Contracts*, 13 Cal. L. Revision Comm'n

Reports 301 (1976); 13 Cal. L. Revision Comm'n Reports 2011 (1976). One of the two legislative measures recommended was enacted. See 1975 Cal. Stat. ch. 7; *Recommendation Relating to Oral Modification of Contracts*, 13 Cal. L. Revision Comm'n Reports 2129 (1976); 13 Cal. L. Revision Comm'n Reports 1616 (1976). The recommended legislation was enacted. See 1976 Cal. Stat. ch. 109.

This topic is continued on the Commission's Calendar of Topics so that the Commission has authority to recommend any needed technical or substantive revisions in the legislation enacted upon Commission recommendation.

GOVERNMENTAL LIABILITY. Whether the law relating to sovereign or governmental immunity in California should be revised. (Authorized by 1977 Cal. Stat. res. ch. 17. See also 1957 Cal. Stat. res. ch. 202.)

The comprehensive governmental tort liability statute was enacted upon Commission recommendation in 1963 and additional legislation on this topic was enacted in the following years upon Commission recommendation. The topic is retained on the Commission's Calendar of Topics so that the Commission has authority to make additional recommendations concerning this topic to make substantive and technical improvements in the statutes enacted upon Commission recommendation and to make recommendations to deal with situations not dealt with by the existing statutes. Other groups have been active in this field in recent years.

The Commission has submitted the following recommendations relating to this topic:

Recommendations Relating to Sovereign Immunity: Number 1--Tort Liability of Public Entities and Public Employees; Number 2--Claims, Actions and Judgments Against Public Entities and Public Employees; Number 3--Insurance Coverage for Public Entities and Public Employees; Number 4--Defense of Public Employees; Number 5--Liability of Public Entities for Ownership and Operation of Motor Vehicles; Number 6--Workmen's Compensation Benefits for Persons Assisting Law Enforcement or Fire Control Officers; Number 7--Amendments and Repeals of Inconsistent Special Statutes, 4 Cal. L. Revision Comm'n Reports 801, 1001, 1201, 1301, 1401, 1501, and 1601 (1963). See also 4 Cal. L. Revision Comm'n Reports 211-13 (1963). Most of the recommended legislation was enacted. See 1963 Cal. Stat. chs. 1681 (tort liability of public entities and public employees), 1715 (claims, actions and

judgments against public entities and public employees), 1682 (insurance coverage for public entities and public employees), 1683 (defense of public employees), 1684 (workmen's compensation benefits for persons assisting law enforcement or fire control officers), 1685 (amendments and repeals of inconsistent special statutes), 1686 (amendments and repeals of inconsistent special statutes), 2029 (amendments and repeals of inconsistent special statutes). See also *A Study Relating to Sovereign Immunity*, 5 Cal. L. Revision Comm'n Reports 1 (1963).

Recommendation Relating to Sovereign Immunity: Number 8--Revisions of the Governmental Liability Act, 7 Cal. L. Revision Comm'n Reports 401 (1965); 7 Cal. L. Revision Comm'n Reports 914 (1965). The recommended legislation was enacted. See 1965 Cal. Stat. chs. 653 (claims and actions against public entities and public employees), 1527 (liability of public entities for ownership and operation of motor vehicles).

Recommendation Relating to Sovereign Immunity: Number 9--Statute of Limitations in Actions Against Public Entities and Public Employees, 9 Cal. L. Revision Comm'n Reports 49 (1969); 9 Cal. L. Revision Comm'n Reports 98 (1969). See also *Proposed Legislation Relating to Statute of Limitations in Actions Against Public Entities and Public Employees*, 9 Cal. L. Revision Comm'n Reports 175 (1969); 10 Cal. L. Revision Comm'n Reports 1021 (1971). The recommended legislation was enacted. See 1970 Cal. Stat. ch. 104.

Recommendation Relating to Sovereign Immunity: Number 10--Revisions of the Governmental Liability Act, 9 Cal. L. Revision Comm'n Reports 801 (1969); 10 Cal. L. Revision Comm'n Reports 1020 (1971). Most of the recommended legislation was enacted. See 1970 Cal. Stat. ch. 662 (entry to make tests) and 1099 (liability for use of pesticides, liability for damages from tests).

Recommendation Relating to Payment of Judgments Against Local Public Entities, 12 Cal. L. Revision Comm'n Reports 575 (1974); 13 Cal. L. Revision Comm'n Reports 2011 (1976). The recommended legislation was enacted. See 1975 Cal. Stat. ch. 285.

Recommendation Relating to Undertakings for Costs, 13 Cal. L. Revision Comm'n Reports 901 (1975); 13 Cal. L. Revision Comm'n Reports 1614 (1976). The recommended legislation was not enacted.

Recommendation Relating to Notice of Rejection of Late Claim Against Public Entity, 16 Cal. L. Revision Comm'n Reports 2251 (1982); 17 Cal. L. Revision Comm'n Reports 824 (1984). The recommended legislation was enacted. See 1983 Cal. Stat. ch. 107.

Recommendation Relating to Security for Costs, 14 Cal. L. Revision Comm'n Reports 319 (1978); 15 Cal. L. Revision Comm'n Reports 1025 (1980). The recommended legislation was enacted. See 1980 Cal. Stat. ch. 114.

INVERSE CONDEMNATION. Whether the decisional, statutory, and constitutional rules governing the liability of public entities for inverse condemnation should be revised (including, but not limited to, liability for damages resulting from flood control projects) and whether the law relating to the liability of private persons under similar circumstances should be revised. (Authorized by 1971 Cal. Stat. res. ch. 74. See also 1970 Cal. Stat. res. ch. 46; 1965 Cal. Stat. res. ch. 130.)

The Commission has made recommendations to deal with specific aspects of this topic but has never made a study looking toward the enactment of a comprehensive statute, primarily because inverse condemnation liability has a constitutional basis and because it is unlikely that any significant legislation could be enacted.

The Commission has submitted the following recommendations relating to this topic:

Recommendation Relating to Inverse Condemnation: Insurance Coverage, 10 Cal. L. Revision Comm'n Reports 1031 (1971); 10 Cal. L. Revision Comm'n Reports 1126 (1971). The recommended legislation was enacted. See 1971 Cal. Stat. ch. 140.

Recommendation Relating to Sovereign Immunity: Number 10--Revisions of the Governmental Liability Act, 9 Cal. L. Revision Comm'n Reports 801 (1969); 10 Cal. L. Revision Comm'n Reports 1020 (1971). Most of the recommended legislation was enacted. See 1970 Cal. Stat. chs. 622 (entry to make tests) and 1099 (liability for use of pesticides, liability for damages from tests).

Proposed Legislation Relating to Statute of Limitations in Actions Against Public Entities and Public Employees, 9 Cal. L. Revision Comm'n Reports 175 (1969); 10 Cal. L. Revision Comm'n Reports 1021 (1971). The recommended legislation was enacted. See 1970 Cal. Stat. ch. 104.

Recommendation Relating to Payment of Judgments Against Local Public Entities, 12 Cal. L. Revision Comm'n Reports 575 (1974); 13 Cal. L. Revision Comm'n Reports 2011 (1976). The recommended legislation was enacted. See 1975 Cal. Stat. ch. 285.

See also Van Alstyne, California Inverse Condemnation Law, 10 Cal. L. Revision Comm'n Reports 1 (1971).

LIQUIDATED DAMAGES. Whether the law relating to liquidated damages in contracts generally, and particularly in leases, should be revised. (Authorized by 1973 Cal. Stat. res. ch. 39. See also 1969 Cal. Stat. res. ch. 224.)

The Commission submitted a series of recommendations proposing enactment of a comprehensive liquidated damages statute. Ultimately, the statute was enacted. The topic is retained on the Calendar of Topics so that the Commission has authority to recommend any needed technical or substantive changes in the statute.

The Commission has submitted the following recommendations relating to this topic:

Recommendation and Study Relating to Liquidated Damages, 11 Cal. L. Revision Comm'n Reports 1201 (1973); 12 Cal. L. Revision Comm'n Reports 535 (1974). The recommended legislation was not enacted. See also *Recommendation Relating to Liquidated Damages*, 13 Cal. L. Revision Comm'n Reports 2139 (1976); 13 Cal. L. Revision Comm'n Reports 1616 (1976). The recommended legislation was passed by the Legislature but vetoed by the Governor. See also *Recommendation Relating to Liquidated Damages*, 13 Cal. L. Revision Comm'n Reports 1735 (1976); 14 Cal. L. Revision Comm'n Reports 13 (1978). The recommended legislation was enacted. See 1977 Cal. Stat. ch. 198.

PAROL EVIDENCE RULE. Whether the parol evidence rule should be revised. (Authorized by 1971 Cal. Stat. res. ch. 75. See also 10 Cal. L. Revision Comm'n Reports 1031 (1971).)

The Commission has submitted the following recommendation relating to the topic. *Recommendation Relating to Parol Evidence Rule*, 14 Cal. L. Revision Comm'n Reports 143 (1978); 14 Cal. L. Revision Comm'n Reports 224 (1978). The recommended legislation was enacted. See 1978 Cal. Stat. ch. 150. The topic is retained on the Calendar of Topics so that the Commission is authorized to recommend any technical or substantive changes in the statute.

PLEADINGS IN CIVIL ACTIONS. Whether the law relating to pleadings in civil actions and proceedings should be revised. (Authorized by 1980 Cal. Stat. res. ch. 37.)

The Commission submitted a recommendation proposing a comprehensive statute relating to pleading. *Recommendation and Study Relating to Counterclaims and Cross-Complaints, Joinder of Causes of*

Action, and Related Provisions, 10 Cal. L. Revision Comm'n Reports 499 (1971). The topic is continued on the Calendar of Topics so that the Commission is authorized to recommend technical and substantive changes in the pleading statute. See 11 Cal. L. Revision Comm'n Reports 1024 (1973) (technical change).

ADMINISTRATIVE LAW. Whether there should be changes to administrative law. (Authorized by 1987 Cal. Stat. res. ch. 47.)

This topic is under active consideration by the Commission.

PAYMENT AND SHIFTING OF ATTORNEYS' FEES BETWEEN LITIGANTS. Whether the law relating to the payment and the shifting of attorneys' fees between litigants should be revised. (Authorized by 1988 Cal. Stat. res. ch. 20.)

The Commission requested authority to study this matter pursuant to a suggestion by the California Judges Association. The Commission has deferred work on this subject pending receipt from the CJA of an indications of the problems they see in the law governing payment and shifting of attorneys' fees between litigants.

FAMILY CODE. Conduct a review of all statutes relating to the adjudication of child and family civil proceedings, with specified exceptions, and make recommendations to the Legislature regarding the establishment of a Family Relations Code. (Authorized by 1988 Cal. Stat. res. ch. 70.)

The Legislature requested the Commission to study this matter giving it the same priority as the administrative law study. Unlike other topics on the Commission's calendar that affect family relations (Probate Code, family law, rights and disabilities of minors and incompetent persons, child custody, adoption, guardianship, and related matters), the present study is primarily a consolidation of statutes and procedures, and not primarily a study of substantive changes. The staff is actively working on this matter.

DEC 6 1990

RECEIVED

ALVIN G. BUCHIGNANI

ATTORNEY AT LAW

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December 6, 1990

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4733

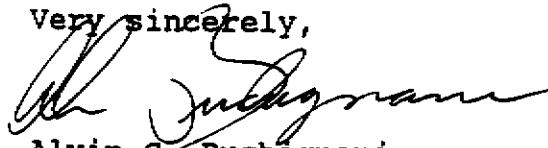
Re: Application of Marketable Title Statute to
Executory Interests

Dear Ladies & Gentlemen,

I believe the above recommendation is a good one, and concur with its adoption, basically on the ground that it would improve the marketability of titles.

As a corollary, I would like to see more simplified procedures for actions to quiet title, particularly in relationship to the service of process in such actions, with a view to reducing costs and expenses in connection with the proceedings.

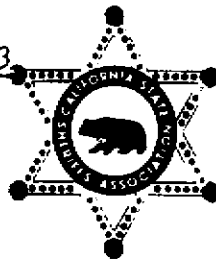
Very sincerely,


Alvin G. Buchignani

AGB/pzg

JAN 31 1991

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California State Sheriffs' Association

Organization Founded by the Sheriffs in 1894

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Sheriff
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* * *

Executive Director
Sue Muncy

January 30, 1991

Mr. John H. De Mouly
Executive Secretary
California Law Revision Commission
4000 Middlefield Rd., Suite D2
Palo Alto, CA 94303-4739

Dear Mr. De Mouly,

I write you at the suggestion of Pam Hulse of the Judicial Council, and on behalf of the California States Sheriffs' Association Civil Procedures Subcommittee, to request the review of specific language and procedures of the new wage garnishment law. In discussing the new law with levying officers throughout the State numerous areas of concern were identified with respect to the Civil Code of Procedure laws related to wage garnishments, and the employer's instructions of the Earnings Withholding Order (Wage Garnishment) form.

I will list for you the specific areas of concern.

1. Withholding Period

The following is an excerpt from the employer's instruction:

"Your duty to withhold does not end if the employee no longer works for you, for any reason, if the employee returns to work during the withholding period the withholding must be resumed."

Under the old law, the withholding period was 100 days. Pursuant to the new law effective January 1, 1990 neither the levying officer nor the employer is able to determine the maximum duration of the withholding period. Additionally, the levying officers have no idea as to how long they should keep the writ before returning it to court, when they no longer receive collections from the employer.

2. Interruption of Wage Garnishment by an Order of Higher Priority.

Levying officers have received inquiries from employers who are uncertain as to whether they should eventually resume collection on the first order after the order of higher priority is fully satisfied. Again, the levying officer is placed in a position of not knowing how long they should hold the writ before returning it to court.

3. Writ Return to Court Pursuant to CCP 699.560 and it's impact on an Earnings Withholding Order.

The existing language in CCP 699.560 does not address the procedure of continuous collection under the wage garnishment law. There presently is a contradiction between the procedures set forth by the Judicial Council allowing the continuous collection of a judgment regardless of the time necessary to collect the total amount, and CCP 699.560 which sets two years from date of issuance as the maximum time the levying officer should hold the writ, except for Sub-section (a) and (b). There needs to be an additional sub-section allowing the writ to be held under an earnings withholding order.

4. Full Satisfaction of Judgment by an Earnings Withholding Order.

At the present time the earnings withholding order is designed to collect only the amount of money noted on the order which includes the judgment amount, service fee, levying officer's assessment fee and interest calculated to the date of service.

Under the existing wage garnishment law, a creditor is unable to collect interest beyond the date of service without re-levying at a later time. As a result of this situation, the majority of writs are returned to court partially satisfied, and it appears unlikely that all the interest can ever be fully collected with the present procedures, unless the daily interest on the remaining balance, is collected by the employer.

In closing, I hope that I have sufficiently described the areas that I request review of and in the event you should need additional information, please contact me at my office (415) 554-7231.

Thank you for your time and consideration in this matter.

Very truly,



ANTHONY J. PISCIOTTA, Lieutenant
Chairman, Civil Procedures Sub-Committee
Room 333, City Hall
San Francisco, CA 94102

cc: Civil Committee
CSSA Office
Judicial Council of California

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):

TELEPHONE NO.:

LEVYING OFFICER (Name and Address):

ATTORNEY FOR (Name):

Name of court, judicial district or branch court, if any:

PLEASE REFER TO THIS NUMBER WHEN CORRESPONDING WITH SHERIFF.

LEVYING OFFICER FILE NUMBER

COURT CASE NUMBER

PLAINTIFF:

DEFENDANT:

EARNINGS WITHHOLDING ORDER (WAGE GARNISHMENT)

TO THE EMPLOYER: (Name and address of employer)

Name and address of employee

SOCIAL SECURITY NUMBER (IF KNOWN)

EMPLOYEE: KEEP YOUR COPY OF THIS LEGAL PAPER.

EMPLEADO: GUARDE ESTE PAPEL OFICIAL Y NO LO PRESTE.

EMPLOYER: Enter the following date to assist your record keeping.

Date this order was received by employer (specify the date of personal delivery by levying officer or the date mail receipt was signed):

1. A judgement creditor has obtained this order to collect a court judgement against your employee. You are directed to withhold part of the earnings of the employee (see instructions on reverse of this form). Pay the withheld sums to the levying officer (name and address above).

If the employee works for you now, you must give the employee a copy of this order and the Employee Instructions within 10 days after receiving this order.

Complete both copies of the form Employer's Return and mail them to the levying officer within 15 days after receiving this order, whether or not the employee works for you.

INTEREST CALCULATED TO DATE OF SERVICE, INTEREST AFTER SERVICE UNKNOWN TO EMPLOYER AND NOT COLLECTED

2. The total amount due is \$ _____ Count 10 calendar days from the date when you received this order. If your employee's pay period ends before the tenth day, do not withhold earnings payable for that pay period. Do withhold from earnings that are payable for any pay period ending on or after that tenth day.

Continue withholding for all pay periods until you withhold the amount due. The levying officer will notify you of an assessment you should withhold in addition to the amount due. Do not withhold more than the total of these amounts. Never withhold any earnings payable before the beginning of the earnings withholding period.

3. The judgment was entered in the above court on (date): _____ The judgment creditor (if different from the plaintiff) is (name): _____

4. The EMPLOYER'S INSTRUCTIONS on the reverse tell you how much of the employee's earnings to withhold each pay day and answer other questions you may have.

Date: _____
(Type or print name)

(Signature)

LEVYING OFFICER REGISTERED PROCESS SERVER

(Employer's Instructions on reverse)

EARNINGS WITHHOLDING ORDERS

The instructions in paragraph 1 on the reverse of this form describe your primary duties to provide information to your employee and the levying officer.

Your other duties are **TO WITHHOLD THE CORRECT AMOUNT OF EARNINGS (if any) and PAY IT TO THE LEVYING OFFICER** during the withholding period.

The withholding period is the period covered by the Earnings Withholding Order (this order). The withholding period begins ten (10) calendar days after you receive the order and continues until the total amount due, plus the levying officer assessment, is withheld.

It may end sooner if (1) you receive a written notice signed by the levying officer specifying an earlier termination date, or (2) an order of higher priority (explained on the reverse of the **EMPLOYER'S RETURN**) is received.

You are entitled to rely on and should obey all written notices signed by the levying officer.

The **Form - Employer's Return** describes several situations that could affect the withholding period for this order. If you receive more than one Earnings Withholding Order during a withholding period, review that form (Employer's Return) for instructions.

Your duty to withhold does not end if the employee no longer works for you, for any reason; if the employee returns to work during the withholding period, the withholding must be resumed.

WHAT TO DO WITH THE MONEY

The amounts withheld during the withholding period must be paid to the levying officer by the 15th of the next month after each payday. If you wish to pay more frequently than monthly, each payment must be made within ten (10) days after the close of the pay period.

Be sure to mark each check with the case number, the levying officer's name and number, if different, and the employee's name so the money will be applied to the correct account.

WHAT IF YOU STILL HAVE QUESTIONS?

The garnishment laws contained in the Code of Civil Procedure beginning with section 706.010, Sections 706.022, 706.023, and 706.104 explain the employer's duties.

The Federal Wage Garnishment Law and federal rules provide the basic protections on which the California law is based. Inquiries about the federal law will be answered by mail, telephone or personal interview at any office of the Wage and Hour Division of the U.S. Department of Labor. Offices are listed in the telephone directory under the U.S. Department of Labor in the U.S. Government listing.

THE CHART BELOW AND THESE INSTRUCTIONS DO NOT APPLY TO ORDERS FOR THE SUPPORT OF A SPOUSE, FORMER SPOUSE, OR CHILD.

The chart below shows **HOW MUCH TO WITHHOLD** when the federal minimum wage is \$3.80 per hour. When the **FEDERAL** minimum wage changes on April 1, 1991, the levying officer will provide a chart showing the new withholding rates.

FEDERAL MINIMUM WAGE: \$3.80 per hour (April 1, 1990-April 1, 1991)

PAY PERIOD	Daily	Weekly	Every Two Weeks	Twice a Month	Monthly
DISPOSABLE EARNINGS	\$0-\$114.00	\$0-\$114.00	\$0-\$228.00	\$0-\$247.00	\$0-\$494.00
WITHHOLD	None	None	None	None	None
DISPOSABLE EARNINGS	\$114.01-\$152.00	\$114.01-\$152.00	\$228.01-\$301.00	\$247.01-\$329.00	\$494.01-\$658.67
WITHHOLD	Amount above \$114.00	Amount above \$114.00	Amount above \$228.00	Amount above \$247.00	Amount above \$494.00
DISPOSABLE EARNINGS	\$152.01 or More	\$152.01 or More	\$304.01 or More	\$329.34 or More	\$658.68 or More
WITHHOLD	Maximum of 25% of Disposable Earnings	Maximum of 25% of Disposable Earnings	Maximum of 25% of Disposable Earnings	Maximum of 25% of Disposable Earnings	Maximum of 25% of Disposable Earnings

COMPUTATION INSTRUCTIONS

State and federal law limits the amount of earnings that can be withheld. The limitations are based on the employee's disposable earnings, which are different from gross pay or take-home pay.

To determine the **CORRECT AMOUNT OF EARNINGS TO BE WITHHELD** (if any), compute the employee's *disposable earnings*.

(A) Earnings include any money, (whether called wages, salary, commissions, bonuses or anything else) that is paid by an employer to an employee for personal services. Vacation or sick pay is subject to withholding as it is received by the employee. Tips are generally not included as earnings since they are not paid by the employer.

(B) *Disposable earnings* are the earnings left after subtracting the part of the earnings a state or federal law requires an employer to withhold. Generally these required deductions are (1) federal income tax, (2) federal social security, (3) state income tax, (4) state disability insurance, and (5) payments to public employee retirement systems. Disposable earnings will change when the required deductions change.

After the employee's *disposable earnings* are known, use the chart below to determine what amount should be withheld. In the column listed under the employee's pay period, find the employee's *disposable earnings*. The amount shown below that is the amount to be withheld. For example, if the employee is paid *disposable earnings* of \$400 twice a month (semi-monthly), the correct amount to withhold is 25 percent each payday, or \$100.

The chart below is based on the minimum wage which was effective January 1, 1981. It will change if the minimum wage changes. Restrictions are based on the minimum wage effective at the time the earnings are payable.

Occasionally, the employee's earnings will also be subject to an Order Assigning Salary or Wages, an order available from family law courts for child support only. The amount required to be withheld for that order should be deducted from the amount to be withheld for this order.

—IMPORTANT WARNINGS—

1. IT IS AGAINST THE LAW TO FIRE THE EMPLOYEE BECAUSE OF EARNINGS WITHHOLDING ORDERS FOR THE PAYMENT OF ONLY ONE INDEBTEDNESS. No matter how many orders you receive, so long as they all relate to a single indebtedness (no matter how many debts are represented in that judgment) the employee may not be fired.

2. IT IS ILLEGAL TO AVOID AN EARNINGS WITHHOLDING ORDER BY POSTPONING OR ADVANCING THE PAYMENT OF EARNINGS. The employee's pay period must not be changed to prevent the order from taking effect.

3. IT IS ILLEGAL NOT TO PAY AMOUNTS WITHHELD FOR THE EARNINGS WITHHOLDING ORDER TO THE LEVYING OFFICER. Your duty is to pay the money to the levying officer who will pay the money in accordance with the laws that apply to this case.

IF YOU VIOLATE ANY OF THESE LAWS, YOU MAY BE HELD LIABLE TO PAY CIVIL DAMAGES AND YOU MAY BE SUBJECT TO CRIMINAL PROSECUTION!