

Memorandum 90-19

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. Because essentially all the Commission's time has been consumed by the top priority given to probate law and procedure, we have reviewed other priorities only infrequently over the past few years.

We are at the point where essentially all of the probate work has been completed and we are just opening up the next major topics--administrative law and family relations law. Now is an appropriate time to schedule the Commission's and staff's work on these topics.

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. 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 relevant material 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 portion 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 and effectively when conducting two major studies concurrently with several minor studies. With respect to the 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 has divided the administrative law study into four phases, in the following order of priority: (1) administrative adjudication, (2) judicial review, (3) rulemaking, (4) non-judicial oversight. The Commission has commenced work on the first phase, and has made initial decisions on structural issues in administrative adjudication. Its consultant is preparing additional background

reports on specific adjudication issues. A copy of the consultant's outline of specific issues and proposed schedule for completion of the work is attached as Exhibit 2.

Consistent with the high priority to be given administrative law, the staff plans to schedule administrative adjudication matters for initial consideration as they are produced by the consultant, and to follow up with drafts and any necessary further research as soon as possible. It appears that the majority of the time of one staff member will be needed for this job, although additional support may be necessary in later phases of the study. Our objective is a complete tentative recommendation on administrative adjudication to be circulated for comment in summer of 1991, with legislation introduced in the 1992 legislative session.

The Commission will also need to begin planning for the next phase of the administrative law study--judicial review. Later this year the staff will have suggestions for the Commission concerning whether an expert consultant is needed for this phase of the study and what sort of lead time is required in order to have the necessary background material ready when the Commission is in a position to take it up.

Family Relations

On the family relations law study the Commission has circulated a questionnaire to help it determine the scope of the study. We anticipate an analysis of the questionnaire responses and staff suggestions for proceeding at the April 1990 Commission meeting.

Assuming the Commission's decision is to proceed with drafting a broad-based family relations code or act, this project will require a substantial amount of staff time, and there will be a large volume of material produced for Commission review. It is premature to estimate our schedule on the project.

However, it is clear that the Commission will not be able to complete this project expeditiously unless it commits itself to more meeting time. During the past few years the Commission has not been consistently unable to keep pace with the staff's production. This is due in part to allocating only 9½ hours to each Commission meeting, typically starting late and ending early, and having to cancel meetings

for lack of a quorum. The Commission has requested addition of an attorney to its staff so that the family relations project can be completed expeditiously, and the 1990-91 budget bill includes funds for this purpose. Having augmented its staff to go into high gear on family relations law, the Commission must respond by devoting the time necessary to do the job.

The staff recommends that the Commission increase its meeting time, beginning with the July 1990 meeting, such as by adding a Saturday morning to the scheduled meeting dates, or by extending the hours for the scheduled meeting dates, or by somehow ensuring that the scheduled meeting hours are fully utilized. In addition to the family relations materials that will start to appear by July, we will also need to clean up the backlog of probate and other materials now in preparation. When the Commission is unable to keep up on the high priority matters, the staff is forced to keep busy by working on low priority matters. This is happening right now, as the discussion below on minor studies indicates. And the problem will worsen with increased staff unless the Commission responds.

Probate Code

Highest priority for work on minor studies during 1990 should be given to Probate Code matters. This involves primarily cleanup work after enactment of the new Probate Code that have been and that continue to be called to the Commission's attention. In addition, there are important probate matters that are not an integral part of the Probate Code and that the Commission has deferred until after completion of work on the code. This includes such matters as the Uniform Statutory Rule Against Perpetuities (which the Commission deferred until this year), debts that are contingent, disputed, or not due, litigation involving a decedent, donative transfers and revocation of consent, and rights of creditors against trust and other nonprobate assets. See Exhibit 1 for a partial listing of such topics.

These projects will involve quite a bit of time of each staff member, but not a majority of the time of any one staff member. The amount of material here is substantial and the matters are important. For the immediate future these matters will continue to dominate the

meeting agendas, but will be worked in only on a time-available basis once the major administrative law and family relations matters begin to demand more of the Commission's attention.

Real Property

The Commission has circulated its tentative recommendations on commercial lease law assignment and sublease remedies and use restrictions. During 1990 the Commission needs to find time to complete work on these by reviewing comments on the tentative recommendations and preparing final recommendations. This will require relatively little Commission or staff resources.

The staff does not recommend initiating any other studies in this area at this time.

Attorneys' Fees

The project on shifting of attorneys' fees between litigants is one that the Commission has felt is important, but that has received lower priority due to the preemptive effects of completion of the Probate Code and commencement of the administrative law and family relations project. Nonetheless, because staff time is presently available, the staff is devoting time to background work on this project. We plan to devote a substantial amount of time of one staff member to this project on a continued low priority basis.

Injunctions

This is a matter the Commission has assigned a low priority to. Nonetheless, because of a surplus of staff time, we are devoting a substantial amount of time of one staff member to background work on this project.

NEW TOPICS

During 1989 the Commission received three suggestions for study of new topics. As it turns out, all three 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.

Community or Separate Property Classification of Personal Injury Damage Awards

Existing California law governing the community or separate property classification of an award of personal injury damages suffered by a spouse during marriage is the result of a 1966 Commission recommendation. See *Recommendation and Study Relating to Whether Damages for Personal Injury to a Married Person Should be Separate or Community Property*, 8 Cal. L. Revision Comm'n Reports 401 (1966). A very rough generalization of the law is that such an award is community property if the injury was sustained while the spouses were married and living together. But at dissolution of marriage the award is assigned to the injured spouse unless the award has been commingled with other community assets or unless the court, taking into account a number of factors such as the circumstances and needs of the spouses, determines that the interests of justice require another disposition. Although the court may make another disposition, at least one half of the award must go to the injured spouse. Civil Code §§ 4800(b)(4) and 5126. Practitioners tell us that this scheme generally works pretty well and yields equitable results.

We have received a letter from Douglas W. Schroeder of Santa Ana and a copy of a law review article written by him (Exhibit 3), arguing that California alone of all the community property states classifies personal injury damage awards as community property rather than as the separate property of the injured spouse, and that personal injury damages such as pain and suffering (as opposed to economic damages such as loss of earnings) should always be the separate property of the injured spouse and never subject to division.

A major problem with Mr. Schroeder's proposal is that personal injury damage awards are not usually segregated between economic and noneconomic damages. Mr. Schroeder proposes to handle this problem by allowing the court to consider any special verdict or general verdict with interrogatories, any judgment, decree, or finding of fact by the

court in the personal injury action, and any written settlement or compromise agreement (unless executed under circumstances that indicate a lack of trustworthiness).

The Commission is authorized to study community property law. Mr. Schroeder offers the assistance of a law review research staff on this matter if the Commission is interested in inquiring further into it. This would be a fairly substantial, though manageable, low priority project if the Commission is interested in pursuing it.

Defendant's Request for Plaintiff's Statement of Nature and Amount of Damages Sought

If an action is brought in superior court for personal injury or wrongful death damages, legislation enacted in 1974 precludes the complaint (or cross-complaint) from stating the amount of damages sought; however, the plaintiff (or cross-complainant) must notify the defendant (or cross-defendant) of the amount sought on demand of the defendant (or cross-defendant). If the defendant makes no demand, the plaintiff must notify the defendant anyway at least 60 days before the trial date or, if the defendant has not answered, before a default may be taken. Code Civ. Proc. §§ 425.10, 425.11.

Judge Robert C. Todd of Orange County (Exhibit 4) writes to us that this statutory scheme is worthless, since the defendant's request for a statement of the amount of damages sought is typically met with a response such as, "Special damages in an amount unknown at this time, but which amount will be made available to defendants when said amount is known." Judge Todd states that nothing in the statute even hints that a responding plaintiff must act in good faith in providing a response. He believes the provision can be made useful and actually help the attorneys evaluate their cases in a more concise fashion. "More importantly, it will be of a great deal of help to judges when it comes to matters of negotiation during settlement conferences and just prior to the time of trial." He notes that this is potentially more useful than an offer of compromise under Code of Civil Procedure Section 998 since Section 998 is narrower in its coverage, "whereas a

specific delineation of financial claims pursuant to section 425.11 will give all parties, including the Court, the full picture as to what it is the financial exposure may be."

Judge Todd's proposed solution is threefold:

(1) Specify the contents of the plaintiff's statement of damages sought. "The responsive statement shall set forth the amount, then known to that party, being claimed as to each different item of damages including, but not limited to, loss of income, medical expenses, pain and suffering, expenses of last illness and death, general damages, punitive damages, costs and attorneys fees."

(2) If the plaintiff fails to respond, the court may consider sanctions pursuant Code of Civil Procedure Sections 128.5 and 177.5

(3) Coverage of the section should be revised to accommodate indemnity cross-complaints.

The Commission is authorized to study pleadings in civil actions, and the present pleading statute is a Commission product, though not the 1974 enactments that are at issue here. The staff wonders, however, whether there is really a problem in practice that practitioners are concerned about, and whether Judge Todd's proposals will add anything to the law that is not already inherent in it. If the Commission decides to investigate this, it could be done on a low priority basis without a great deal of Commission or staff resources.

Discovery After Judicial Arbitration

The judicial arbitration statute provides that in the case of a judicial arbitration where the amount in controversy is less than \$50,000, if a trial de novo is sought, there may be no further discovery "other than that permitted by Section 2037." Code Civ. Proc. § 1141.24. Section 2037 of the Code of Civil Procedure provided for exchange of expert witness lists, but as John R. Sommer of Los Angeles (Exhibit 5) points out, Section 2037 has been repealed. The new statute providing for exchange of expert witness lists is Code of Civil Procedure Section 2034.

It would be desirable to correct the reference in Section 1141.24 of the judicial arbitration statute so it refers to the new discovery statute rather than the repealed discovery statute. Unfortunately, new

Section 2034 includes more than the revised contents of former Section 2037. It also incorporates the revised contents of former Sections 2037.1 through 2937.9, relating to production of reports and writings of expert witnesses, limitation of testimony by undisclosed expert witnesses, supplementation of expert witness lists, and deposition of expert witnesses.

The staff believes that the reference to former Section 2037 was intended to pick up Sections 2037.1 to 2037.9 as well, but we have no authority for this other than the logic that it doesn't make much sense to exchange expert witness lists unless you're allowed to do something with them. For this reason the staff believes the reference to former Section 2037 can be revised to refer to new Section 2034, without problems.

The Commission is authorized to study both arbitration and discovery, as well as to recommend technical and minor substantive revisions without specific authorization. If the Commission wishes, we can write this up as a brief tentative recommendation and circulate it for comment. If the comments show the tentative recommendation to be sound, we can offer it to a legislator for inclusion some larger bill on discovery or civil procedure.

CONCLUSION

The Commission needs to set its priorities and work schedule for 1990. The staff in this memorandum makes the following suggestions:

(1) Highest priority should be given to the major studies of administrative law and family relations law. These will involve staff time immediately but will probably not involve substantial amounts of Commission time until beginning in the second half of the year.

(2) Meanwhile, the next priority should be given to completion of work on miscellaneous substantive issues in probate law. There are a substantial number of these, and they should be worked into the Commission's agenda as time permits.

(3) Relatively little Commission or staff time is needed to complete work on the ongoing commercial lease law study. This should be completed during 1990 and should not be a problem.

(4) Until we reach full speed on the administrative law and family relations law studies, the staff is doing background work on the major but lower-priority studies of injunctions and shifting attorneys' fees between litigants.

(5) The Commission should increase its meeting time beginning in the second half of the year in order to meet its commitment to expedite work on the family relations law study.

(6) All three new topic suggestions received by the Commission during 1989 are already matters on the Commission's agenda, and whether the Commission takes them up is a matter of priorities. Given the demands on the Commission's time, the only new matter the staff would take up is correction of the statute governing discovery after judicial arbitration; this matter can be handled simply and easily with little investment of Commission or staff 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.

Powers of appointment and powers of attorney. This is a project to prepare a comprehensive powers of attorney statute and to combine that statute and the powers of appointment statute in a new division of

the Probate Code. The "Directive to Physicians" might also be included in the new division. This project would require some staff and Commission time but is not a major project.

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 is also working in this area. The Commission has asked Professor French for a list of problems that require immediate attention, with the idea of working on some of them but deferring consideration of a comprehensive statute until the Uniform Law Commission has completed its work; Professor French has not responded.

Creditor rights in nonprobate assets and other matters affecting nonprobate assets. A major area the Commission has been concerned with from time to time is rights of creditors against nonprobate assets. The State Bar Probate Section has worked on a trust claims statute, but has not obtained enactment of it or sought to apply the procedure to other types of nonprobate assets. The study mentioned above of uniform rules on survival, antilapse, revocation, and change of beneficiaries is another aspect of this project. Of interest is the following statement from the Report of the New York Law Revision Commission for 1989, at pp. 20-21:

The Commission also continues to look into the problems surrounding nonprobate assets. A widespread system for transferring assets outside of probate has developed in the United States during the last fifty years. Although the instruments used in lieu of wills to accomplish these transfers (will substitutes) have many characteristics similar to wills, they are treated differently from wills, often with inequitable results. The Commission has been and is studying specific problems relating to these will substitutes, such as the rights of a divorced spouse, rights of afterborn children and the rights of a decedent's creditors to all or a part of these assets. The Commission has recently broadened its examination beyond the areas of concern already under study to determine whether under current New York law certain inconsistencies between the law of wills and the law of testamentary substitutes (and certain internal inconsistencies within the law of will substitutes) are, in fact, necessary and, if not, what legislation would be an appropriate remedy.

The Commission's study of the liability of a decedent's "Totten" trust account, or joint bank account, for payment of estate debts and administration expenses, listed among its projects for the past several years, as well as the Commission's studies of problems involving after-born children where parents fail to make the changes in beneficiaries under pensions and under life insurance policies, are now included in this combined study of will substitutes.

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 after completion of the new Probate Code. Matters under current study by the Commission include Uniform TOD Security Registration, right of surviving spouse to dispose of community and quasi-community property, and debts that are contingent, disputed, or not due. The Commission has obtained the services of Chuck Collier as a consultant on the Uniform Rule Against Perpetuities Act. Other topics on the "back burner" list include:

- Statutory 630 Affidavit Form
- Uniform Transfers to Minors Act
 - Co-custodians
 - Powers of Appointment
- Creditor's Right To Reach Nonprobate Assets
- Directive to Physicians (Uniform Act)
- Community Property With Right of Survivorship
- Litigation Involving Decedent
- Adoption in Closing Classes
- Interest on Lien on Estate Property (Attorney Fees)
- Tort & Contract Liability of Personal Representative (L-3011)
- Standard of Conduct of Agent under Durable Power of Attorney
- Liens on Joint Tenancy Property
- Use of Affidavit Procedure to Substitute Parties in Pending Action
- 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. The recommended legislation will be acted on in 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).

Recommendation Relating to Repeal of Probate Code Section 6402.5 (In-Law Inheritance), 20 Cal. L. Revision Comm'n Reports 571 (1990). See AB 2589 (1990).

Recommendation Relating to Disposition of Small Estate by Public Administrator, 20 Cal. L. Revision Comm'n Reports 529 (1990). See SB 1774 (1990).

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 Access to Decedent's Safe Deposit Box*, 20 Cal. L. Revision Comm'n Reports 597 (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). These six recommendations are combined in SB 1775 (1990).

Recommendations Relating to Powers of Attorney, 20 Cal. L. Revision Comm'n Reports 401 (1990). See SB 1777 (1990).

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.)

Commercial lease law. The Commission is currently working in the area of commercial lease law, and has circulated tentative recommendations relating to assignment and sublease remedies and use restrictions.

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 sometime in the future 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.

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. A recent Court of Appeal case, MacDonald, has raised issues concerning donative transfers of community property made by one spouse with the consent of the other and whether such a consent, once given, is irrevocable. The case is being reviewed by the Supreme Court. The Commission has solicited the views of the State Bar Family Law and Probate Sections on the matter.

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 Commission has decided to defer further consideration of this matter pending legislative action on a bill by Assemblywoman Speier that would affect the area.

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. One possible study would be to prepare a comprehensive statute relating to the rights of minors to

medical treatment. The existing statutes are poorly organized and a comprehensive statute dealing with this matter would be useful. Also a study on the right of a minor to contract might be worthwhile.

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. See Exhibit 6.

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 and there is a need for a well drafted, well organized adoption statute. 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 is now before the legislature that would improve 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 was added at the 1987 session at the request of the Commission, in response to a suggestion from the Los Angeles County Bar Association. The Commission has made initial determinations on the first phase of the study, relating to administrative adjudication, and has a consultant preparing background reports on specific aspects of this topic. We plan to take up the consultant's background reports as they are produced.

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.

FAMILY RELATIONS 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.)

This is the newest topic on the Commission's agenda. 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.

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SCHOOL OF LAW
405 HILGARD AVENUE
LOS ANGELES, CALIFORNIA 90024-1478

January 16, 1990

CA LAW REV. COMM'N

JAN 22 1990

RECEIVED

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

Dear Nat,

At the Commission's meeting on January 12, I agreed to provide an outline of the issues to be covered in the second phase of my work on a new administrative procedure act-- adjudication procedures. Here is a list of the issues that must be resolved, together with my tentative conclusions about how they should be resolved.

1. Administrative adjudication: the final decision. These issues are the most critical and difficult to resolve. They relate closely to the questions discussed at the January 12 meeting. Fundamentally, the issue here is to assure fair adjudication despite the merger of rulemaking, law enforcement, and adjudication in the same agency. As you recall, the Commission agreed with me that there should be no presumption in favor of splitting adjudication from other agency functions (although that expedient should be considered on a case-by-case basis, for example a Tax Court).

a. Finality of the ALJ decision. All ALJ decisions must be made available to the parties who should have an opportunity to argue orally or in writing before the final agency decision. An ALJ decision that is not appealed to the agency heads should be final.

b. ALJ fact findings. The ALJ's findings of fact must be sustained by the agency unless they are not supported by substantial evidence (but the ALJ's conclusions on mixed questions of law and fact and the ALJ's determinations of discretion, law or policy would not be entitled to such finality). This would be a fundamental change in the law, would give much

greater finality to the ALJ's decisions, and would, I think, respond to much of the dissatisfaction with the present system.

c. Internal separation of functions. Agency staff members who have engaged in investigation or prosecution of a case should not be allowed to take part in the decisional function in the case by making off-the-record communications to agency decisionmakers or their decisional advisers. This recommendation will impose an internal separation of functions on administrative agencies by requiring them to split their staffs into adversaries (investigators and prosecutors) and decisional advisers. At the same time, the recommendation should make clear that all adjudicators, including ALJs, can obtain technical assistance from agency staff members who are not adversaries in a given case (so long as such assistance does not involve factual inputs).

d. Delegation. Agencies should have clear authority to delegate final decision of classes of cases to ALJs or to form intermediate review boards below the agency head level to make final decisions in cases. Agency heads should have power to decline to review ALJ decisions so that the agency's review function becomes discretionary rather than mandatory. Agencies that now conduct hearings at the agency-head level should have clear authority to delegate the trial function to ALJs. Agencies should have power to experiment with alternative dispute resolution techniques which might be less adversarial and time consuming than existing practices.

e. Opinions. Agencies should be required to make a statement of findings of fact, legal conclusions, and reasons for their decisions.

f. Precedent decisions. Agencies should be required to maintain a system of precedent decisions in which important adjudicatory decisions are published and indexed.

g. Emergencies. As tentatively decided by the Commission at its January 12 meeting, there should be a procedure for agencies to make decisions in emergencies without the usual time-consuming hearing processes (but should be required to provide those processes after taking action).

2. Agency adjudication--the hearing process.

a. Less formal adjudicative models. Agencies should have power to extract legal and policy issues from adjudication and to resolve them through rulemaking. Similarly, as tentatively decided by the Commission at the January 12 meeting, they should have power to resolve cases through conference proceedings if the cases do not involve disputed issues of material fact (or the facts can be adequately developed through written presentations). They should have power to resolve

cases through summary proceedings if they involve relatively trivial issues.

b. Settlement. ALJs should have power to facilitate settlements.

c. Discovery. Agencies should have power to experiment with discovery processes but there should be no general imposition of discovery beyond what is provided in the present APA (i.e. parties can obtain a list of witnesses, inspect agency files and make copies of documents, and take depositions of persons who will not be available at the hearing).

d. Evidence and official record.

i. Hearsay and other evidence rules. An ALJ should admit any evidence, whether or not admissible under the Evidence Code, if it is the sort of evidence on which responsible persons rely in serious affairs. An ALJ should have discretion to exclude evidence that is not relevant or is duplicative of other evidence in the record. Contrary to existing law, a decision need not be supported by evidence that would be admissible under the Evidence Code (such as hearsay). However, a decision supported exclusively by hearsay would not be supported by substantial evidence if the particular evidence is not of the sort that responsible persons would rely upon in serious affairs.

ii. Official notice. The official notice provisions of federal law and the 1981 Model Act are broader than those in existing California law. Agency fact finders should have broader power to take official notice of facts, but parties should always have a chance to rebut such facts.

iii. Burden of proof. The "clear and convincing evidence" standard applied by some cases to license revocation cases should be abolished. The standard should generally be preponderance of the evidence. However, in important and difficult cases (such as ratemaking or those involving environmental issues) the agency should have discretion to experiment with different burdens of presentation and persuasion.

iv. Telephone hearings. Agencies should have discretion to hold hearings by the use of conference telephone calls.

v. Transcripts. Agencies should have discretion to tape record hearings rather than use court reports.

3. Impartiality of agency decisionmakers.

a. Ex parte contacts. The act should prohibit off-the-record contacts by persons outside the agency with all

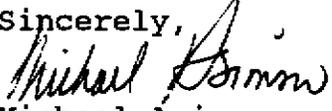
agency adjudicators--ALJs, agency heads, and decisional advisers.

b. Bias. The act should spell out the standards and procedures for disqualification of agency adjudicators for bias and should provide for disqualification of elected adjudicators who have received campaign contributions from persons involved in adjudication. There should be a procedure for appointment of backup adjudicators where disqualification renders an agency unable to decide a case.

4. Definition of state agencies. I hope the Commission's staff can assist with a definition of "state agency" that appropriately distinguishes state from local agencies.

In terms of priorities, I would expect to work first on the first group of issues (relating to the finality of agency decisions and the relationship between ALJs and agency heads). These are the most important and most conceptually difficult of the issues that I have mentioned here. My target would be to complete work on that first group of issues by the end of the summer. The balance of the issues would be completed by the end of 1990.

Please let me have your comments on the foregoing.

Sincerely,

Michael Asimow
Professor of Law

HENRY J. BOGUST
 RONALD A. DWYER
 ROGER J. BRODERICK*
 WILLIAM J. FAURENHAIMER*
 VINCENT FISH*
 DARRYL A. DEQUIR
 JOHN A. DALY
 THOMAS A. WONG, JR.*
 DAVID CLARK
 HOWARD J. BLAVIN
 PETER P. BROTZEN
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 RICHARD B. WARSK
 CRAIG N. BEARDSLEY
 RICHARD H. RABKIN
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 DOUGLAS W. SCHROEDER
 RITA HONGDOVEN MILLER
 PHILLIP H. DARLING
 MARTHA M. ESCUTIA
 MAILE P. CHINA
 DAVID N. SHAVER
 DAVID C. READ
 *MOTHE H. HOWETT

*DENOTES PROFESSIONAL CORPORATION

CHASE, ROTCHFORD, DRUKKER & BOGUST

A LAW CORPORATION

THE RAMONA BUILDING

120 WEST FIFTH STREET, THIRD FLOOR

SANTA ANA, CALIFORNIA 92701

TELEPHONE (714) 972-1433

FAX (714) 972-1205

CABLE ADDRESS LUCHA

TELECOPIER EXTENSION 122

November 7, 1989

LUCIUS K. CHASE - 1971-1949
 HUGH B. ROTCHFORD - 1908-1989
 RICHARD T. DRUKKER - 1918-1971
 RANSOM W. CHASE - 1904-1963

LOS ANGELES OFFICE

FIFTH FLOOR

700 SOUTH FLOWER STREET

LOS ANGELES, CALIFORNIA 90017

TELEPHONE (213) 626-8711

SAN BERNARDINO - RIVERSIDE OFFICE

600 NORTH ARROWHEAD AVENUE, SUITE 201

SAN BERNARDINO, CALIFORNIA 92401

TELEPHONE (714) 688-0133

OF COUNSEL

RICHARD B. COYLE

FRANCOIS ROGER FAVRE

LAWRENCE D. DE COSTER

REFER TO:

Mr. Edwin K. Marzec, Esquire
 Chairperson, California Law Revision Commission
 1333 Ocean Avenue
 Santa Monica, California 90401

Re: Proposals for reform pertaining to community property
 classification of personal injury damage awards (Civil
 Code §§5126 and 4800(b)(4).)

Dear Mr. Marzec:

I am writing to you in your capacity as Chairperson of the Law Revision Commission with respect to the issue of California's current statutory scheme regarding the community property classification of personal injury damage awards. I note that the Commission is undertaking a survey of family law provisions, and I believe that this topic may be germane to that consideration. I have recently authored an in-depth law review article on this subject which addresses the inequities which inhere in the current provisions and which proposes a workable scheme for statutory reform. A reprint of this article is enclosed for your reference.

California currently stands alone among the eight community property states by employing an all-or-nothing rule whereby a married person is deprived of his or her interest in sums recovered for non-economic damages (viz., pain, suffering, and disfigurement) for personal injuries. California's classification scheme has been severely criticized by commentators and the courts of sister states (including a recent opinion by the Supreme Court of Washington) as ignoring the inherently personal nature of pain and suffering. While the community estate may have a legitimate interest in a portion of the personal injury recovery, California's statutes make no

Mr. Edwin K. Marzec, Esquire
Chairperson, California Law Revision Commission
November 7, 1989
Page 2

effort whatsoever to secure to the injured individual those damages recovered for personal suffering despite the fact that it is the injured person alone who must live with the specter of pain, whether transient or constant, whether temporary or permanent.

The quintessential example of the inequity in the current provisions is found in the case of the personal injury damage award to a man who is married at the time of a permanent disfiguring and disabling injury to his genitals. (See e.g., Placide v. Placide (La. App. 1981) 408 So.2d 330.) In our state, the damage award to this man is considered community property which may be subjected to equal division upon dissolution of the marital community. While California does attempt to preserve his interest to some extent by stating that personal injury recoveries will be subject to division only where the "interests of justice" require--and then at least one-half of a non-commingled award must be distributed to the injured spouse--the current provisions are insufficient to protect the personal interests of married persons who suffer personal injuries and by themselves endure the torment of pain and disfigurement. (It is significant to note that the consultant to the Law Revision Commission study in 1967 noted that "most couples probably commingle the [personal injury] recovery with community property and may thus convert it into community property." (8 Cal. Law. Rev'n. Comm'n. 1385, 1390.) California's scheme provides no protection to the injured person in this event.)

Albeit a misguided attempt, the California legislature has ventured toward recognition of the injured individual's right to his recovery for personal injuries. Civil Code sections 4800(b)(4) and 5126 have been amended several times approaching, but never achieving, a scheme which recognizes the inherently personal nature of injury to one's mind and body while also considering the marital community's interest in economic losses (viz., loss of past earnings, medical expenses). Each of the other seven community property states has recognized that recoveries for damage to one's body (which one takes into and carries out of the marriage) should be treated as the separate property of the injured spouse. Likewise, the other states provide to the community damages representing lost earnings and medical expenses. It is California alone who still classifies these awards as entirely community property subject to division.

While it is true that California has stood alone on the leading edge of legal theory many times, California can take no pride in lagging severely behind in this instance. This state alone fails to follow the trend of the other states toward

Mr. Edwin K. Marzec, Esquire
Chairperson, California Law Revision Commission
November 7, 1989
Page 3

preservation of the individual's rights, but rather clings to an antiquated line of vague precedent, afraid to strike out in an attempt to balance the interests of the individual and of the community in the instance of injury to a married person.

This subject is obviously one which entails detailed analysis beyond the scope of this letter. My recently authored article contains a detailed analysis of the judicial and legislative history of California and each of the seven other community property states in terms of approaching the classification of personal injury damage awards between married persons. Ultimately, the article proposes a workable statutory system of apportioning portions of the personal injury damage award representing economic damages to the community, while apportioning non-economic damages to the separate estate of the injured spouse.

The article tracks California's history--including a study published by the Law Revision Commission in 1967 and 1968--and the pitfalls and inadequacies plaguing California's current system. With all deference to the Law Revision Commission, the Commission's prior study and recommendations concerning this issue were undertaken by the Commission in an attempt to abrogate the horrendous doctrine of imputed spousal contributory negligence in the days prior to comparative fault. This laudable end the Commission achieved. Unfortunately, however, the Commission's study and recommendations did not meaningfully address the idea of apportionment of the components of the damage award between the separate and community estates. The study and recommendation completely ignored a line of dissenting opinions authored by former Supreme Court Justice Carter favoring apportionment and separate property treatment of pain and suffering awards, and rejected without analysis a 1955 recommendation by the State Bar of California encompassing the notion of apportionment with separate property classification of damages awarded for pain, suffering and disfigurement.

I understand that the Commission is understaffed for the many pressing issues which confront it. However, with the Commission undertaking the study of current family law provisions, it seems appropriate for the Commission to consider the proposals for reform suggested by the article. Please bear in mind that the article which I have authored is not merely some theorist's idealistic banter about what someone else should come up with somehow, someday. The article addresses with particularity the policies favoring separate property recognition of certain elements of the personal injury damage award. Through specific statutory revisions of the Civil Code--using language

Mr. Edwin K. Marzec, Esquire
Chairperson, California Law Revision Commission
November 7, 1989
Page 4

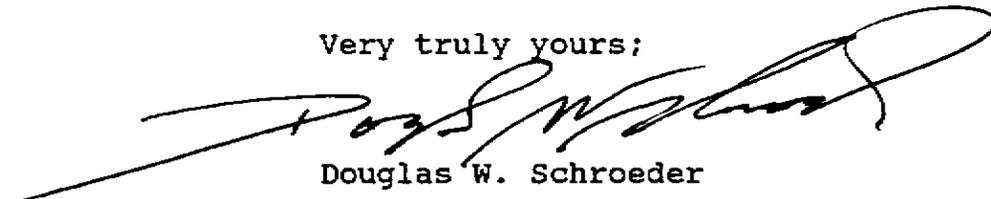
which currently resides in several other sections of the Civil Code--the article proposes a scheme which provides a bright-line definition of the elements to be divided between community and separate estates. The statutory scheme is aided by an evidentiary presumption which eliminates the danger of creating unnecessary work (as well as eliminating the danger of speculative division of marital assets) by the trial court. Moreover, the statutory proposals advanced in the article do not require additional proceedings or the use of untested or foreign terms.

The proposed statutory system for classification relies on current definitions in the Civil Code of economic versus non-economic damages (found in the Medical Injury Compensation Reform Act of 1975 and the Fair Responsibility Act of 1986.) As explained in the article, presently approved BAJI instructions can be easily modified to provide evidentiary standards by which the court is to make the apportionment. All in all, the concerns over inefficiency, speculation, and undue complication which have previously thwarted attempts to promote recognition of separate and community property apportionment principles in this state are alleviated by these proposals for statutory reform.

I greatly appreciate your attention to the concerns addressed in this letter and would be pleased to know that the article and its proposals were to be reviewed by a member of the Commission's staff. I would, of course, be happy to address any inquiries which may arise regarding the issue of classification of personal injury damage awards by the elements of economic versus non-economic damages and would be glad to assist the Commission in any respect it desires.

Thank you for your time and courteous consideration.

Very truly yours;



Douglas W. Schroeder

DWS/ds

Enclosure: *Adding Insult to Injury: California's Community Property Classification of Personal Injury Damage Awards--Proposed Statutory Reform* 16 W. St. U.L. Rev. 521 (1989).



Superior Court of the State of California
County of Orange

CLAW 127. COMPT

DEC 08 1989

RECEIVED

4601 JAMBOREE ROAD
DEPT. 92
NEWPORT BEACH, CA 92660
(714) 476-4704

CHAMBERS OF
ROBERT C. TODD
JUDGE

December 1, 1989

Law Review Commission
Suite D-2
4000 Middlefield Road
Palo Alto, CA 94303-4739

Re: Section 425.11, Code of Civil Procedure

TO WHOM IT MAY CONCERN:

This letter is being addressed to you with the hope that it can be forwarded to someone who has the authority to initiate a change in the above-referenced statute, through the legislature.

The statute was enacted in the medical malpractice crisis. While its purpose is still questionable, its purpose can be preserved and, yet, the amendment proposed herein after will serve as assistance to us who must deal with the results of the legislation.

Section 425.11 is a companion to 425.10 which prohibits, in an action for personal injury or wrongful death, the pleading of actual or punitive damages for personal injury or wrongful death.

Keeping in mind that, in 1974 when section 425.10 was enacted, the jurisdictional limits of the Superior Court began at \$5,000.00, and keeping in mind that, for all practical purposes, actions for personal injury and wrongful death routinely fall into the category of six figures or more even though the statutory jurisdiction is \$25,000.00, there is, in truth, no need for section 425.10. At the same time, if that section is to be preserved, then section 425.11 should be made meaningful.

At the present time, section 425.11 permits a defendant or cross-defendant to request a statement setting forth the nature and amount of damages being sought by the plaintiff or cross-complainant. Nothing in the statute even hints that a responding plaintiff or cross-complainant must act in good faith in providing a response. And this is where the legislation fails.

Superior Court of the State of California

County of Orange

To: Law Review Commission
Re: Section 425-11, CCP
Page 2

Attached is a photocopy of the existing statute. I am proposing that the statute read as follows:

(A) When a complaint or cross-complaint is filed in an action in the Superior Court to recover damages for personal injury or wrongful death, the party against whom the action is brought may, at any time, request a statement setting forth the nature and amount of damages being sought. The request shall be served, by regular mail or otherwise, upon the plaintiff or cross-complainant. The party upon whom such request has been served shall serve a responsive statement as to all damages being claimed within 15 days of the date of service.

If no request is made by an adverse party for a statement setting forth the nature and amount of damages being claimed, the party claiming such damages shall be required to give notice to the defendant or cross-defendant of the amount of special and general damages sought to be recovered (1) before a default may be taken or (2) in the event an answer has been filed, not less than 60 days prior to the date first set for trial.

C. In the event that a response is not served in response to an adverse party's request therefor, the adverse party, on notice to the plaintiff or cross-complainant, may petition the court in which the action is pending to order the plaintiff or cross-complainant to serve a responsive statement. The Court may consider sanctions pursuant to the provisions of sections 128.5 and 177.5 of this Code.

D. The responsive statement shall set forth the amount, then known to that party, being claimed as to each different item of damages including, but not limited to, loss of income, medical expenses, pain and suffering, expenses of last illness and death, general damages, punitive damages, costs and attorneys fees.

An amended statute is not going to solve all problems but it is going to help the attorneys evaluate their respective cases in a more concise fashion. More importantly, it will be of a great deal of help to judges when it comes to matters of negotiation during settlement conferences and just prior to the

Superior Court of the State of California
County of Orange

To: Law Review Commission
Re: Section 425-11, CCP
Page 3

time of trial. Unlike a statutory 998 demand (section 998, Code of Civil Procedure), which is always disclosed to a settlement judge or a trial judge when negotiations are being undertaken, this particular code section is broader in that a party is required to set forth all of the amounts and claims being made. The 998 offer may be made well before any request for a statement of damages is submitted, for the purpose of an expeditious settlement, whereas a specific delineation of financial claims pursuant to section 425.11 will give all parties, including the Court, the full picture as to what it is the financial exposure may be.

Attached are copies of a typical request for statement of damages (note the caption) and a very, very typical response.

Thank you for your assistance.

*And see
Cortez vs Macias
110 CA3d 640, 657-8*

RCT:ec
89-191e

Very truly,

Robert C. Todd
Robert C. Todd
Judge of Superior Court



Superior Court of the State of California
County of Orange

CA LAW REV. COMM'N

JAN 05 1990

RECEIVED

CHAMBERS OF
ROBERT C. TODD
JUDGE

January 3, 1989

4601 JAMBOREE ROAD
DEPT. 92
NEWPORT BEACH, CA 92660
(714) 476-4704

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

Re: Section 425.11, Code of Civil Procedure

Dear Mr. Sterling:

Thank you for your letter of December 18th.

I neglected suggesting that the code section also be revised to accommodate "indemnity" cross-complaints.

Hope you have a very successful 1990.

Very truly,

A handwritten signature in cursive script that reads "Robert C. Todd".

Robert C. Todd
Judge of the Superior Court

RCT:dr
90-002

§ 425.10
Note 322

CODE OF CIVIL PROCEDURE

322. Trespass

Landowners in peaceable but allegedly wrongful possession of disputed property, who filed suit against adjoining

327. Fiduciary duties

Cause of action for alleged breach of fiduciary duties was stated under law of California by complaint alleging failure on part of defendant

ARTICLE 1. GENERAL PROVISIONS

§ 425.10. Statement of facts; demand for judgment

A complaint or cross-complaint shall contain both of the following:

- (a) A statement of the facts constituting the cause of action, in ordinary and concise language.
- (b) A demand for judgment for the relief to which the pleader claims he is entitled. If the recovery of money or damages be demanded, the amount thereof shall be stated, unless the action is brought in the superior court to recover actual or punitive damages for personal injury or wrongful death, in which case the amount thereof shall not be stated.

(Amended by Stats.1974, c. 1481, p. 3239, § 1; Stats.1979, c. 778, p. 2662, § 2.)

Historical Note

1974 Amendment. Added the exception in subd. (b).
1979 Amendment. Inserted "actual or punitive" before "damages" in last sentence of subd. (b).

Law Review Commentaries

Limiting cause of action for loss of consortium. (1978)
66 C.L.R. 430.

Underline indicates changes or additions by amendment

2

§ 425.11. Personal injury or wrongful death actions; request for statement of nature and amount of damages; notice of amount of special and general damages sought

When a complaint or cross-complaint is filed in an action in the superior court to recover damages for personal injury or wrongful death, the party against whom the action is brought may at any time request a statement setting forth the nature and amount of damages being sought. The request shall be served upon the plaintiff or cross-complainant, who shall serve a responsive statement as to the damages within 15 days thereafter. In the event that a response is not served, the party, on notice to the plaintiff or cross-complainant, may petition the court in which the action is pending to order the plaintiff or cross-complainant to serve a responsive statement.

If no request is made for such a statement setting forth the nature and amount of damages being sought, the plaintiff shall give notice to the defendant of the amount of special and general damages sought to be recovered (1) before a default may be taken; or (2) in the event an answer is filed, at least 60 days prior to date set for the trial.

(Added by Stats.1974, c. 1481, p. 3239, § 2.)

Library References

Pleading ¶367(5).
C.J.S. Pleading §§ 477, 478, 481.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

Notes of Decisions

In general 1
Default judgments 2
Municipal court actions 3
Service, statement of damages 5

Statement of damages 4, 5

In general 4
Service 5

1. In general

Victim's failure to give dog's owner at least 30 days notice of her damages prior to entry of default judgment did not render default "void," so that reasonableness of notice given could be determined only by timely direct attack on judgment, where owner conceded that he was personally served with victim's statement of damages 27 days before she filed for default judgment; declining to follow *Plotina v. Superior Court*, 140 Cal.App.3d 755, 189 Cal.Rptr. 769 (2 Dist.).

Underline indicates changes or additions by amendment

10

1 plaintiffs at this time, but which amount will be made available
2 to defendants when said amount is known.

3 c. Incidental expenses in an amount unknown to
4 plaintiffs at this time, but which amount will be made
5 available to defendants when said amount is known.

6 d. Funeral expenses in an amount unknown at this
7 time, but which amount will be made available to defendants
8 when said amount is known.

9 e. Loss of benefits, contribution, and personal
10 services in an amount unknown at this time, but which amount
11 will be made available to defendants when said amount is
12 known.

13 f. Other expenses in an amount unknown at this
14 time, but which amount will be made available to defendants
15 when said amount is known.

16 DATED: 6 Apr 57

17 _____
18 Attorney for Plaintiffs
19
20
21
22
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25
26
27
28

BAKER & MCKENZIE

ATTORNEYS AT LAW

CITICORP PLAZA

THIRTY-SIXTH FLOOR

725 SOUTH FIGUEROA STREET

LOS ANGELES, CALIFORNIA 90017

TELEPHONE (213) 629-3000

CABLE: ABOGADO LA · TELEX: 75271B

TELECOPIER: (213) 629-7206

August 21, 1989

AUG 23 1989

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California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, California 94303

Re: Amendments to Code of Civil Procedure,
Sections 1141.24 and 2019(d)

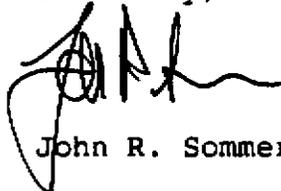
Dear Law Revision Commission:

I have two suggestions for technical amendments to the California Code of Civil Procedure. First, Section 2019(d) is titled "Timing of discovery in trademark cases." However, Section 2019(d) deals with timing of discovery in trade secret cases. I would suggest that this be changed to correctly refer to the contents of such section.

California Code of Civil Procedure Section 1141.24, which relates to discovery after judicial arbitration, should also be amended. It presently prohibits discovery after arbitration "other than that permitted by Section 2037." However, Section 2037, relating to expert witnesses was repealed as of July 1, 1987 and replaced by Section 2034. Accordingly, I would suggest that Section 1141.24 be amended to refer to Section 2034.

Should you have any questions, please contact me at your convenience.

Sincerely,



John R. Sommer

JNS/lmm

Memo 90-19

EXHIBIT 6

Admin.

FULBRIGHT JAWORSKI & REAVIS McGRATH700 SOUTH FLOWER STREET
LOS ANGELES, CALIFORNIA 90017TELEPHONE: 213/926-5241
TELECOPIER: 213/690-4818
CABLE ADDRESS: KEARN
TELEX: 69-1208NEW YORK
LOS ANGELES
FULBRIGHT & JAWORSKI
HOUSTON
WASHINGTON, D.C.
AUSTIN
SAN ANTONIO
DALLAS
LONDON
MURICH

January 15, 1990

Irwin D. Goldring, Esq.
1888 Century Park East
Suite 350
Los Angeles, California 90067**Re: Law Revision Commission Work Relating to Civil Code
Sections 38, 39 & 40 on the Issue of Competence**

Dear Irv:

Last week I asked you if you knew whether the Law Revision Commission was doing any work on Civil Code Sections 38, 39 and 40, or on any related legislation purporting to define competence or incompetence and the indicia of either phenomenon.

I indicated to you that I had spoken with Lance Weagant and with Kathy Ballsun about the possibility of establishing an ad hoc committee under the auspices of the Probate Section of the Beverly Hills Bar Association for the purpose of studying the law under Civil Code Sections 38, 39 and 40 and for the purpose of proposing legislation that would bring those Code Sections into the 20th and perhaps the 21st century.

The science of neuro-psychology has established a collection of rather objective tests that measure many of the components of competence (e.g. long term memory, short term memory, computational abilities, the ability to appreciate the effect of certain value judgments, etc.). As the population ages, it is becoming a more frequent phenomenon that a party to a transaction was suffering from some cognitive impairment at the time when documents were executed. More and more estate planning documents will come into question, as will other transactions such as "bargain" sales of homes and disadvantageous purchases by failing senior citizens.

Judges and juries should have better guidelines for determining competence than the archaic linguistic structures currently employed in Civil Code Sections 38, 39 & 40 and in the case law underlining those case sections.

