

Memorandum 92-14

Subject: Priorities 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. The review is timely now both because of the recent turnover in Commission membership and because the list of possible topics has swollen far beyond its usual size as a result of the Family Code project.

The Commission's annual determination of priorities and new topics serves several purposes:

(1) It helps the Commission ensure that its resources are devoted to matters it wants to study and that retain current importance.

(2) It helps the staff plan so that it can allocate the necessary resources to enable the Commission's projects to be completed on schedule.

(3) If a research consultant is needed for a particular topic, lead time is necessary for the Commission to obtain an appropriate consultant. If a research consultant is not needed, the staff can begin to collect background material, to be available when the Commission is ready to take up the matter.

(4) Interested persons and organizations need to know whether to look to the Commission for needed legislation on a particular topic or whether to try to resolve the problem elsewhere.

(5) In case the Commission wishes to study a new topic, the machinery needs to be put in motion to obtain the necessary legislative authorization to study the new topic.

Last year after reviewing topics and priorities, the Commission determined to continue to give highest priority to administrative law and the drafting of a new Family Code. Also, legislation to resolve the MacDonald problems was to be expedited. Other issues, including

community property, real property, and creditors' remedies problems were left to staff discretion to work into the Commission's agenda as the subject merited and time permitted.

This course was followed. The Family Code and the MacDonald recommendation are now bills in the 1992 legislative session, and substantial progress has been made on the administrative law study. Miscellaneous creditors' remedies and probate problems are also the subject of recommendations to the 1992 legislative session. A few other small matters are under study.

#### TOPICS CURRENTLY AUTHORIZED FOR COMMISSION STUDY

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

#### PRIORITIES

The Legislature has directed the Commission to give the Family Code project a priority equal to that of administrative law. The Commission has made these two projects its top priorities, and the staff recommends no change in this for the coming year.

In addition, the Legislature has mandated that the Commission review two other matters, with statutory due dates:

(1) The Commission must review statutes providing for exemptions from enforcement of money judgments every 10 years and recommend any necessary changes. The deadline is July 1, 1993. If we are to meet this statutory deadline, we must devote resources to this task during the coming year.

(2) The Commission must study the impacts of changes in Code of Civil Procedure Sections 483.010 and 483.015, relating to prejudgment attachment, during the period from January 1, 1991, through December

31, 1993. The Commission's report is due on or before December 31, 1994. It is premature to begin work on this task.

In the staff's judgment, the Commission has adequate resources to handle these legislatively prescribed priorities and still work on some other matters. And in any case, the Commission must look ahead to matters that will be taken up after the current priority topics have been disposed of. Below, the staff reviews the likely topics of Commission activity in currently authorized areas.

#### Administrative Law

The Commission has divided this study into four phases. The Commission is actively engaged in the first portion of the study, relating to administrative adjudication. We would like to be able to complete work on a basic draft by summer, to be distributed for comment over the summer and reviewed and revised in the fall and winter, with legislation introduced in 1993. As a practical matter this is probably too optimistic by a year, since it will take a long time to work out the details and then we will be faced with the major deferred issue of exemptions from the statute requested by all the big agencies; this will have to be done very carefully. And then there is the time-bomb buried in all this--the huge job of searching out and amending nonconforming statutes that govern hundreds of different agencies.

The second phase of the administrative law study is judicial review. If we wish to retain Professor Asimow to prepare background material on this phase of the study, we should let him know now. He needs to be able to plan his own professional activities for the next few years. The staff's view is that he has performed well on the first phase, and we would stay with him in the second phase. One question is the availability of funds for research consultants. Our budget is very tight but it does allocate a small amount for research next year. Professor Asimow would probably work for a small amount if necessary; he has invested too much in this project not to.

## Family Law

The Family Code has been introduced in the Legislature and is currently taking up the lion's share of the staff's resources. This will probably continue through much of the session. We also need to begin work on a followup bill for next session. Letters to the Commission have identified many relatively simple clarifying and minor substantive revisions that are needed. We anticipate a fairly substantial bill that will be generally approved by all interested parties. This will take some staff resources but not a great amount of Commission involvement.

The more serious problem is the real and substantial family law issues that have surfaced in the process of the Family Code project. There have been a great many major substantive issues that have been identified in letters to the Commission and in workshops we have held on the code draft, but that we have not dealt with in the Family Code because our mandate is basically to compile a new code without substantive change in the law.

As a sample of these, see Exhibit 2--a listing of issues primarily raised in Family Code workshops by attendees. The list is six pages long, and is just the tip of the iceberg. We have extensive letters concerning many other family law issues, particularly adoption issues.

The staff believes the Commission should be very careful about going deeply into family law substantive issues. We have had experience in this area before, and the experience has not been good. It is an area dominated by deeply held beliefs; the Commission functions best where problems more susceptible to reason are involved.

This is not to say we should stay out completely--there are some matters that we really should follow up on to complete the Family Code project in the best possible way. In particular, the Commission should devote some resources to consolidating the various domestic violence prevention statutes that exist in the law; this would be a real contribution. The Commission also should at least investigate whether juvenile dependency provisions should be relocated from the Welfare and Institutions Code. This is a major issue, and relocation would be a huge task, since the juvenile dependency provisions are almost inextricably linked to the juvenile delinquency statutes. There may be

other improvements of this character that can be made, for example relocation of the support enforcement statutes from the Welfare and Institutions Code and consolidation of the statutes governing termination of parental rights. The Commission has also previously determined that it will try to develop a statute governing marital agreements between spouses (parallel to the existing statute governing premarital agreements).

The staff's suggestion is that we take up some of the more important nonsubstantive issues, as resources permit. If we find we are having some success there, and that we have attained the necessary credibility and working relationship with the various interest groups, we might want to go more deeply into some of the tougher substantive issues. But the staff would not rush this.

In this connection, Commission Member Marshall (Exhibit 8) has forwarded us a copy of Justice King's article on judicial case management of family law disputes, to encourage settlement. Justice King outlines pilot projects that could be initiated to test the proposed judicial management system. Commission Member Marshall believes the pilot projects could be enacted with little, if any, controversy; he believes this is an important initiative that should be tried.

The staff's questions about this proposal are: Shouldn't the Judicial Council be involved in this? What is the attitude of family law practitioners? (Justice King's successful experiment involved parties who voluntarily had agreed to try it out.) What will the cost be in terms of the increased judicial resources required?

#### Probate Code

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

Rights of creditors against nonprobate assets. The Commission has deferred action on this until this summer, in order to review experience under the new trust claims statute.

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

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

In addition, Professor Kasner's work for the Commission on nonprobate transfers of community property raised a number of important issues that the Commission deferred. Many of these issues relate to family law and community property as well as estate planning:

- Whether the statute providing for unilateral severance of joint tenancy real property should be extended to personal property such as securities.

- Liberalization of gift statute (de minimis gifts, gifts made with tacit consent).

- Review of policy of CC § 4800.2 (State Bar Family Law Section).

- Gifts in view of impending death.

- Life insurance (definition of the community property interest of uninsured spouse).

- Federal preemption of community property rules under ERISA.

- Terminable interest rule--has it been repealed for purposes of rights at death?

- Rights of heirs of consenting spouse after death of consenting spouse/duties of donor spouse until death of consenting spouse.

- Revision of transmutation statute.

- Community property presumptions still necessary?

- Should rules governing separate and community rights in the case of property improvement be further adjusted?

- Review nonprobate transfers of quasi-community property.

These projects are all important. However, there are some the staff would not do, such as liberalize the transmutation rule: estate planners would like to see it liberalized, but family lawyers see strict transmutation as one of the best legislative enactments in recent history. There are others that should be done, such as

compensating for the ERISA preemption by allowing offsets of other assets. The staff would like to be able to schedule some of the more important and do-able items here for Commission consideration from time to time as resources permit.

### Real Property

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

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

There are a number of other minor matters identified in the consultant's study that the Commission could clean up when time permits.

### Creditors' Remedies

The statutorily mandated studies (exemptions and prejudgment attachment) are the only ones in the creditors' remedies area the staff would pursue at this point. We are still planning to work into the agenda this year sometime (as we also had planned to do last year sometime) the Conflicts of Jurisdiction Model Act, which limits enforcement of judgments as a sanction. And Commission Member Wied has suggested to the staff that the state insolvency law could use some work, although he has not provided us with any written details.

## NEW TOPICS

During the past year the Commission has received a number of suggestions for study of new topics. These suggestions are discussed below. For any of these topics, prior legislative authorization would be required. Only after the topic was approved by the Legislature would we would assign it a priority.

### Peremptory Challenges

Code of Civil Procedure Section 170.6 requires that peremptory challenge of a judge in a one-judge county be made within 30 days from the date of first appearance in the action of the party making the challenge. Bruce G. Calderwood of Murphys (Exhibit 3) writes to suggest revision of this provision. Thirty days is not enough time, and in a one-judge county a prompt motion to disqualify will cause loss of valuable access to the court. "If I must wait for the scheduling of outside judges I am unable to obtain immediate TRO's or other Ex Parte relief."

The 30-day limitation for single-judge counties was added to the law in 1982 with the support of the California Judges Association. We are not aware of the particular problems that led to enactment of this provision. We could refer this matter to the Judges Association and to the Judicial Council. The staff's opinion is that, given the substantial demands on the Commission's resources and the existence of other institutional mechanisms to achieve reform of the law in this area, the Commission should pass along the suggestion without studying it.

### Definition of Employee Benefit Plans

Melvin Wilson of the California Bankers Association (Exhibit 4) writes to suggest that the Commission develop definitions of the various types of employee pension and welfare benefit plans. He points out that the codes are replete with variant descriptions of different types of benefit plans, and it is never clear exactly what is included and excluded in any particular statutory provision. "I recommend that there be added to the definitions at the beginning of at least the



Probate Code, Code of Civil Procedure and Civil Code a definition of 'employee benefit plan', 'employee pension benefit plan', and 'employee welfare benefit plan' and that the defined terms replace the mishmash of generic descriptors we now have in the text of the statutes."

The staff views this as a time consuming and thankless job. The policy of every statute would have to be examined and a determination made of just what the exact scope of the statute is and should be. We are also skeptical that any reform we make would be more than temporary, since new federal laws and regulations constantly affect this area. We do not see a good prospect for continuing to deal with employee benefit plans other than on an ad hoc basis.

#### Information Practices Act

The Information Practices Act of 1977 is found at Civil Code Section 1798 et seq. The statute is intended to protect privacy of citizens by precluding government from collecting and maintaining personal information that is not necessary to a proper government function.

Stephen Kruger of San Pedro (Exhibit 5) writes to complain of the practice of the California Highway Patrol at the scene of an accident to collect and report residential telephone number and insurance information. He argues that this does not serve a government function but is merely for the convenience of civil litigants. He recommends revision of the California statute to conform to comparable federal law.

Regardless of the merits of Mr. Kruger's point, including whether there is a defect in the wording of the statutes or in their application, the staff believes that privacy issues are political in nature and the Commission should not get involved with them. The staff would respond to Mr. Kruger that the Commission does not believe this matter is appropriate for Commission study.

#### Fictitious Business Names

The fictitious business name statute was enacted in 1969 on recommendation of the Commission. After monitoring experience under the statute for several years, the Commission dropped the matter from

its calendar of topics. Exhibit 6 is a letter from Daniel J. Schmidt, a law student and violator of the statute, arguing that the statute needs to be clarified with respect to the requirement to publish a renewal fictitious business name statement when it was filed after the original statement had expired.

The Commission takes responsibility to monitor experience under statutes enacted on its recommendation. However, any ambiguities in this statute do not appear to have been causing a significant problem in practice. The staff thinks the Commission has other more pressing matters to devote its resources to, and recommends against requesting legislative reauthorization of this topic.

#### Shareholder Rights and Corporate Directors' Responsibilities

Commission Member Kolkey (Exhibit 7) has proposed as a subject for future consideration by the Commission two corporation law matters. He states that at present there is some confusion under California law as to the scope of the business judgment rule safeguarding a director from liability, and the right of a shareholder to bring a derivative action on behalf of the corporation. Corp. Code §§ 309, 800. "This confusion no doubt contributes to the perception of a poor business climate in California."

These matters would not be inappropriate for Commission study; in the past the Commission has studied nonprofit corporation law. However, these are matters in which there is active interest by the organized bar and other entities; the Corporations Committee of the State Bar Business Law Section, for example, drafted the current general corporation law. One might expect action by the State Bar Business Law Section or another group if the problems became too great.

If this is a matter the Commission wishes to investigate, the staff will prepare a memorandum giving an overview of the law and problems that exist, and suggesting language defining the scope of the project for possible legislative authorization.

### Unfair and Unlawful Business Practices

Commission Member Kolkey (Exhibit 7) points out that the California law defining unfair and unlawful business practice is nebulous, making it hard to predict which actions will violate the law. See Bus. & Prof. Code § 17200 et seq. There are also procedural problems, since "any person -- regardless of injury -- can bring a claim under this statutory scheme on behalf of the public, without class certification or even any court determination of their adequacy to represent the public, raising substantial constitutional due process issues."

This could be an appropriate matter for Commission study, although we might need to retain a consultant for it because of the economic implications of the study and the parallels it would have to other extensive bodies of state and federal law. If the Commission wishes to pursue this, again we would try to provide more detail on the law and problems and suggest defining language for the project.

### CONCLUSION

The Commission needs to set its priorities for 1992. The staff makes the following suggestions:

(1) The ongoing work on the Family Code should be completed, and a follow-up bill prepared for next session with easy and generally-agreed-to statutory improvements that have been identified in the code preparation process. Work should also begin on a few of the more procedural problems such as consolidation of the domestic violence statutes.

(2) The Commission should continue work on the administrative adjudication statute with the somewhat optimistic goal of a bill for 1993. The Commission should approve a new consultant contract with Professor Asimow or another expert if it wishes to be in a position to move to judicial review when adjudication is completed.

(3) The review of debtors' exemptions should begin during 1992.

(4) The staff would bring before the Commission other selected issues in the areas of family law, probate law, creditors' remedies,

and real property law, as staff and Commission resources permit. These would be drawn from the specific topics mentioned in this memorandum as worthy of Commission attention.

(5) From time to time defects in statutes enacted on Commission recommendation are identified to the staff. These will be dealt with as they arise.

With respect to new topic suggestions, the staff is generally negative in light of the substantial volume of work facing the Commission in areas currently active. If the Commission is interested in exploring any of the suggested topic areas, the staff will prepare a follow-up memorandum.

The staff would drop discovery from the list of authorized Commission topics. See discussion in Exhibit 1.

Respectfully submitted,

Nathaniel Sterling  
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.

*Miscellaneous Creditors' Remedies Matters*, 21 Cal. L. Revision Comm'n Reports 135 (1991). The recommended legislation is pending in the 1992 legislative session as SB 1372 (Deddeh).

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.)

The Probate Code revision project is complete, but there are a number of left over issues and cleanup projects pending.

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

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

Creditors' rights against nonprobate assets. The staff has identified policy issues. The Commission will monitor experience under the new trust claims statute to see whether it should proceed with this project.

Deposit of estate planning documents with attorney. After two tentative recommendations on this matter, it has been referred to the State Bar Probate Section to see if they can resolve problems with the State Bar administrative staff.

Alternative beneficiaries for unclaimed distribution. The concept is that unclaimed property distributed in probate would go to secondary heirs rather than escheat. The Commission decided to wait until the State's finances improve before considering this.

Filing fees in probate. The staff has done substantial work in trying to make sense out of the filing fee system in probate, supported by the practicing bar. Court clerical staff had problems with this, and negotiations between clerks and lawyers have apparently lapsed. The staff plans to reactivate this worthwhile matter sometime.

Other matters the Commission has deferred for future study. In the process of preparing the new Probate Code the Commission has identified a number of matters in need of further study. These are all matters of a substantive nature that the Commission felt were important but that could not be addressed quickly in the context of the code rewrite. The Commission has reserved these issues for study on an ongoing basis. Topics on the "back burner" list include:

- Statutory 630 Affidavit Form
- Transfer on Death Designation for Real Property
- Summary Guardianship or Conservatorship Procedure
- Uniform Transfers to Minors Act
- Interest on Lien on Estate Property (Attorney Fees)
- Tort & Contract Liability of Personal Representative (L-3011)
- Rule Against Perpetuities and Charitable Gifts
- Jury Trial on Existence of Trust
- Multiple Party Bank Account Forms

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

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

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

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

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

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

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

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

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

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

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

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

*Recommendation Relating to Garnishment of Amounts Payable to Trust Beneficiary*, 17 Cal. L. Revision Comm'n Reports 471 (1984);

18 Cal. L. Revision Comm'n Reports 19-20 (1986). The recommended legislation was enacted. See 1984 Cal. Stat. ch. 493.

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

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

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

*Recommendation Relating to Transfer Without Probate of Certain Property Registered by the State*, 18 Cal. L. Revision Comm'n Reports 129 (1986); *Recommendation Relating to Distribution of Will or Trust*, 18 Cal. L. Revision Comm'n Reports 269 (1986); *Recommendation Relating to Effect of Adoption or Out of Wedlock Birth on Rights at Death*, 18 Cal. L. Revision Comm'n Reports 289 (1986). These three recommendations, together with additional technical and clarifying revisions to previously enacted probate legislation, were combined in one bill. The recommended legislation was enacted. See 1985 Cal. Stat. ch. 982. See also 1985 Cal. Stat. ch. 359.

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

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

*Recommendation Relating to Notice in Guardianship and Conservatorship Proceedings*, 18 Cal. L. Revision Comm'n Reports 1793 (1986); *Recommendation Relating to Preliminary Provisions and Definitions of the Probate Code*, 18 Cal. L. Revision Comm'n Reports 1807 (1986); *Recommendation Relating to Marital Deduction Gifts*, Appendix 5 of 1987 Annual Report; *Recommendation Relating to Administration of Estates of Missing Persons*, Appendix 6 of 1987 Annual Report; *Recommendation Relating to Supervised Administration of Decedent's Estate*, 1 Cal. L. Revision Comm'n Reports 5 (1988); *Recommendation Relating to Independent Administration of Estates Act*, 19 Cal. L. Revision Comm'n Reports

205 (1988); *Recommendation Relating to Creditor Claims Against Decedent's Estate*, 19 Cal. L. Revision Comm'n Reports 299 (1988); *Recommendation Relating to Notice in Probate Proceedings*, 19 Cal. L. Revision Comm'n Reports 357 (1988). These eight recommendations were combined in one bill. The recommended legislation was enacted. See 1987 Cal. Stat. ch. 923.

*Recommendation Relating to Public Guardians and Administrators*, 19 Cal. L. Revision Comm'n Reports 707 (1988); *Recommendation Relating to Inventory and Appraisal*, 19 Cal. L. Revision Comm'n Reports 741 (1988); *Recommendation Relating to Opening Estate Administration*, 19 Cal. L. Revision Comm'n Reports 787 (1988); *Recommendation Relating to Abatement*, 19 Cal. L. Revision Comm'n Reports 865 (1988); *Recommendation Relating to Accounts*, 19 Cal. L. Revision Comm'n Reports 877 (1988); *Recommendation Relating to Litigation Involving Decedents*, 19 Cal. L. Revision Comm'n Reports 899 (1988); *Recommendation Relating to Rules of Procedure in Probate*, 19 Cal. L. Revision Comm'n Reports 917 (1988); *Recommendation Relating to Distribution and Discharge*, 19 Cal. L. Revision Comm'n Reports 953 (1988); *Recommendation Relating to Nondomiciliary Decedents*, 19 Cal. L. Revision Comm'n Reports 993 (1988); *Recommendation Relating to Interest and Income During Administration*, 19 Cal. L. Revision Comm'n Reports 1019 (1988); *Comments to Conforming Revisions and Repeals*, 19 Cal. L. Revision Comm'n Reports 1031 (1988); *Recommendation Relating to 1988 Probate Cleanup Bill*, 19 Cal. L. Revision Comm'n Reports 1167, 1191-1200 (1988). These twelve recommendations were combined in two bills. The recommended legislation was enacted. See 1988 Cal. Stat. chs. 113 and 1199.

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

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

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

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

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

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

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

*Recommendation Relating to Survival Requirement for Beneficiary of Statutory Will, 20 Cal. L. Revision Comm'n Reports 549 (1990); Recommendation Relating to Execution or Modification of Lease Without Court Order, 20 Cal. L. Revision Comm'n Reports 557 (1990); Recommendation Relating to Limitation Period for Action Against Surety in Guardianship or Conservatorship Proceeding, 20 Cal. L. Revision Comm'n Reports 565 (1990); Recommendation Relating to Court-Authorized Medical Treatment, 20 Cal. L. Revision Comm'n Reports 537 (1990); Recommendation Relating to Priority of Conservator or Guardian for Appointment as Administrator, 20 Cal. L. Revision Comm'n Reports 607 (1990). Recommendation Relating to Notice in Probate Where Address Unknown, 20 Cal. L. Revision Comm'n Reports 2245 (1990); Recommendation Relating to Jurisdiction of Superior Court in Trust Matters, 20 Cal. L. Revision Comm'n Reports 2253 (1990). These seven recommendations were enacted as 1990 Cal. Stat. ch. 710.*

*Recommendation Relating to Access to Decedent's Safe Deposit Box, 20 Cal. L. Revision Comm'n Reports 597 (1990). Introduced at 1990 legislative session but not enacted. Resubmitted in revised form in the 1991 legislative session as Recommendation Relating to Access to Decedent's Safe Deposit Box, 20 Cal. L. Revision Comm'n Reports 2859 (1990). Enacted. 1991 Cal. Stat. ch. 1055.*

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

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

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

*Recommendation Relating to TOD Beneficiary Designation for Vehicles and Certain Other State-Registered Property, 20 Cal. L. Revision Comm'n Reports 2883 (1990); Recommendation Relating to Debts That Are Contingent, Disputed, or Not Due, 20 Cal. L. Revision Comm'n Reports 2707 (1990); Recommendation Relating to Remedies of Creditor Where Personal Representative Fails to Give Notice, 20 Cal. L. Revision Comm'n Reports 2719 (1990); Recommendation Relating to Repeal of Civil Code Section 704 (Passage of Ownership of U.S. Bonds on Death, 20 Cal. L. Revision Comm'n Reports 2729 (1990); Recommendation Relating to Disposition of Small Estate Without Probate, 20 Cal. L. Revision Comm'n Reports 2737 (1990); Recommendation Relating to Right of Surviving Spouse to Dispose of Community Property, 20 Cal. L. Revision Comm'n Reports 2769 (1990); Recommendation Relating to Gifts in View of Impending Death, 20 Cal. L. Revision Comm'n Reports 2869 (1990); 1991 General Probate Bill, 20 Cal. L. Revision Comm'n Reports 2907 (1990). These seven recommendations were submitted as a single bill. Enacted. 1991 Cal. Stat. ch. 1055.*

*Recommendation Relating to Litigation Involving Decedents*, 20 Cal. L. Revision Comm'n Reports 2785 (1990). Submitted to 1992 legislative session as SB 1496 (Senate Judiciary Committee).

*Recommendation Relating to Compensation in Guardianship and Conservatorship Proceedings*, 20 Cal. L. Revision Comm'n Reports 2837 (1990). Revised recommendation *Compensation in Guardianship and Conservatorship Proceedings*, 21 Cal. L. Revision Comm'n Reports 227 (1991). Legislation pending.

*Recommendation Relating to Elimination of Seven-Year Limit for Durable Power of Attorney for Health Care*, 20 Cal. L. Revision Comm'n Reports 2605 (1990). Enacted. 1991 Cal. Stat. ch. 896.

*Recommendation Relating to Recognition of Trustee's Powers*, 20 Cal. L. Revision Comm'n Reports 2849 (1990); *Recommendation Relating to Recognition of Agent's Authority Under Statutory Form Power of Attorney*, 20 Cal. L. Revision Comm'n Reports 2629 (1990). These two recommendations will be submitted to the 1992 legislative session as part of SB 1496.

*Recommendation Relating to Uniform Statutory Rule Against Perpetuities*, 20 Cal. L. Revision Comm'n Reports 2501 (1990); *Application of Marketable Title Statute to Executory Interests*, 21 Cal. L. Revision Comm'n Reports 53 (1991). Enacted. 1991 Cal. Stat. ch. 156.

*1991 Probate Urgency Clean-up Bill*, 20 Cal. L. Revision Comm'n Reports 2909 (1990). Enacted. 1991 Cal. Stat. ch. 28.

*Relocation of Powers of Appointment Statute*, 21 Cal. L. Revision Comm'n Reports 91 (1991). Legislation pending.

*Nonprobate Transfers of Community Property*, 21 Cal. L. Revision Comm'n Reports 163 (1991). Legislation pending.

*Notice of Trustees' Fees*, 21 Cal. L. Revision Comm'n Reports 191 (1991). Legislation pending.

*Nonprobate Transfer to Trustee Named in Will*, 21 Cal. L. Revision Comm'n Reports 201 (1991). Legislation pending.

*Preliminary Distribution Without Court Supervision*, 21 Cal. L. Revision Comm'n Reports 209 (1991). Legislation pending.

*Transfer of Conservatorship Property to Trust*, 21 Cal. L. Revision Comm'n Reports 219 (1991). Legislation pending.

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

Application of Marketable Title Act to Obsolete Restrictive Covenants. During the past five years, the Commission has made a series of recommendations designed to improve the marketability of

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

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

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

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

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

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

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

*Recommendation Relating to Recovery of Condemnee's Expenses on Abandonment of an Eminent Domain Proceeding*, 8 Cal. L. Revision



Comm'n Reports 1361 (1967); 9 Cal. L. Revision Comm'n Reports 19 (1969). The recommended legislation was enacted. See 1968 Cal. Stat. ch. 133.

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

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

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

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

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

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

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

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

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

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

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

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

*Recommendation Relating to Evidence of Market Value of Property*, 14 Cal. L. Revision Comm'n Reports 105 (1978); 14 Cal. L. Revision Comm'n Reports 225 (1978). The recommended legislation was enacted in part. See 1978 Cal. Stat. ch. 294. *Recommendation Relating to Application of Evidence Code Property Valuation Rules in Noncondemnation Cases*, 15 Cal. L. Revision Comm'n Reports 301 (1980); 15 Cal. L. Revision Comm'n Reports 1429 (1980). The recommended legislation was enacted. See 1980 Cal. Stat. ch. 381.

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

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

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

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

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

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

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

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

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

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

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

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

*Recommendation Relating to Commercial Real Property Leases: Remedies for Breach of Assignment or Sublease Covenant*, 20 Cal. L. Revision Comm'n Reports 2405 (1990); *Recommendation Relating to Commercial Real Property Leases: Use Restrictions*, 20 Cal. L. Revision Comm'n Reports 2421 (1990). Enacted. 1991 Cal. Stat. ch. 67.

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.

Marital agreements made during marriage. California now has the Uniform Premarital Agreements Act and detailed provisions concerning agreements relating to rights upon death of one of the spouses. However, there is no general statute governing marital agreements during marriage. Such a statute would be useful and the development of

the statute might involve controversial issues. Also, the issue whether the right to support can be waived in a premarital agreement should be considered.

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

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

Family Code issues. Compilation of the Family Code has generated interest in a number of family law issues. These are discussed in the memorandum in connection with the Family Code.

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 cleanup legislation could be submitted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The California Evidence Code was enacted upon recommendation of the Commission. Since then, the Federal Rules of Evidence have been adopted. Those rules draw heavily from the California Evidence Code, and in drafting the federal rules the drafters made changes in provisions taken from California. The California statute might be conformed to some of these federal provisions. In addition, there is a substantial body of experience under the Evidence Code. That experience might be reviewed to determine whether any technical or substantive revisions in the Evidence Code are needed. The Commission has available a background study that reviews the federal rules and notes changes that might be made in the California code in light of the federal rules. However, the study was prepared more than 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 25 years ago) might be useful before the Commission undertakes a review of the Evidence Code.

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

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

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

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

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

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

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

*Recommendation Relating to Evidence Code Section 999--The "Criminal Conduct" Exception to the Physician-Patient Privilege*,

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

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

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

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

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

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

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

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

The Commission recommended legislation on this topic that was enacted in 1975 and 1976. See *Recommendation and Study Relating to Oral Modification of Written Contracts*, 13 Cal. L. Revision Comm'n Reports 301 (1976); 13 Cal. L. Revision Comm'n Reports 2011 (1976).

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

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

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

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

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

*Recommendations Relating to Sovereign Immunity: Number 1--Tort Liability of Public Entities and Public Employees; Number 2--Claims, Actions and Judgments Against Public Entities and Public Employees; Number 3--Insurance Coverage for Public Entities and Public Employees; Number 4--Defense of Public Employees; Number 5--Liability of Public Entities for Ownership and Operation of Motor Vehicles; Number 6--Workmen's Compensation Benefits for Persons Assisting Law Enforcement or Fire Control Officers; Number 7--Amendments and Repeals of Inconsistent Special Statutes*, 4 Cal. L. Revision Comm'n Reports 801, 1001, 1201, 1301, 1401, 1501, and 1601 (1963). See also 4 Cal. L. Revision Comm'n Reports 211-13 (1963). Most of the recommended legislation was enacted. See 1963 Cal. Stat. chs. 1681 (tort liability of public entities and public employees), 1715 (claims, actions and judgments against public entities and public employees), 1682 (insurance coverage for public entities and public employees),

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

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

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

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

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

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

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

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

INVERSE CONDEMNATION. Whether the decisional, statutory, and constitutional rules governing the liability of public entities for inverse condemnation should be revised (including, but not limited to, liability for damages resulting from flood control projects) and whether the law relating to the liability of private persons under

similar circumstances should be revised. (Authorized by 1971 Cal. Stat. res. ch. 74. See also 1970 Cal. Stat. res. ch. 46; 1965 Cal. Stat. res. ch. 130.)

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

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

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

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

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

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

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

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

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

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



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

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

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

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

The Commission submitted a recommendation proposing a comprehensive statute relating to pleading. *Recommendation and Study Relating to Counterclaims and Cross-Complaints, Joinder of Causes of Action, and Related Provisions*, 10 Cal. L. Revision Comm'n Reports 499 (1971). The topic is continued on the Calendar of Topics so that the Commission is authorized to recommend technical and substantive changes in the pleading statute. See 11 Cal. L. Revision Comm'n Reports 1024 (1973) (technical change).

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

This topic is under active consideration by the Commission.

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

The Commission requested authority to study this matter pursuant to a suggestion by the California Judges Association. The staff has done a substantial amount of work on this topic. We understand that an American Bar Association committee is preparing to publish proposals based on the staff's work.

The Commission has deferred work on this subject pending receipt from the CJA of an indications of the problems they see in the law governing payment and shifting of attorneys' fees between litigants.

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

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



## FAMILY CODE ~ ISSUES FOR FUTURE STUDY

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### *Juvenile Law*

Study to see if juvenile law should be incorporated into the Family Code or kept separate. Views of State Bar Juvenile Law Section should be obtained [Minutes 10-11/91].

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### *Family Law Advisory Committee's change in language proposal*

Hugh McIssac submitted a proposal to revise the language in custody matters in an effort to reduce the adversary nature of custody disputes and focus on the interests of children and the responsibilities of the parents instead of winning and losing. Thus, "custody" would be replaced by "parenting plan" and "visitation" would be replaced by "parental contact."

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### *Temporary Restraining Orders*

The provisions providing for these orders, including the specific orders to prevent domestic violence, are repeated with slight variations throughout existing law and now throughout the Code. Study with a view toward collecting these in one place and reconciling inconsistencies.

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### *Terminology*

Definitions and consistent use of terms to refer to fathers. At present there are "presumed," "alleged," "natural," and "birth" fathers. It seems like there are only two categories of fathers and these are "presumed fathers" (men who fit within one of the statutory presumptions) and "alleged fathers" (man who a mother asserts to be the father or man who is asserting that he is the father but who does not fit within one of the statutory presumptions.)

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§ 125

### *Quasi-community property*

Study revision of the concept of quasi community property. See, e.g., Bassett, *Repealing Quasi-Community Property: A Proposal To Readopt a Unitary Marital Property Scheme*, 22 U.S.F.L. Rev. 463 (1988).

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§ 240 et seq.

### *Temporary restraining orders and support orders issued without notice*

Uniform times should be worked out in consultation with the State Bar Section to be set forth at Section 242. Staff and State Bar should work on creating overall uniformity among these provisions. [Minutes 10/31 & 11/1/91]

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§ 721 & 1100  
et seq.

### *Management and Control of Marital Property*

Existing law does not have explicit rules regarding management and control of quasi-community property. Two issues are whether quasi-community property should be treated as separate or community property for purposes of management and control during marriage and whether or not the developing fiduciary and confidential duties during marriage should apply to quasi-community property.

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- § 721 & 1111 *Management and control during marriage (duty of spouses to one another)*  
 (1) Extent of retroactivity is unclear. Amendments are effective 1/1/92, but legislature intended to "clarify existing law." (See 1991 Cal. Stat. ch. 1026; *In re Marriage of Baltins*, 212 Cal. App. 3d 66, 91 (1989).)  
 (2) What is the standard for the duty now? Recently-enacted statutes use "fiduciary relationship" and "confidential relationship" interchangeably, but case law distinguishes them. (See *Vai v. Bank of America*, 56 Cal. 2d 329, 337-38 (1961); *Estate of Cover*, 188 Cal. 133, 143 (1922); *Jones v. Kaufmann* 264 Cal. App. 2d 857, 863 (1968); *In re Marriage of Coffin*, 63 Cal. App. 3d 139, 150-55 (1976).)  
 (3) Reference to spouses as trustees is continued, but application of trust law eliminated. Statutes provide that partnership law will apply, but case law related to partners has imposed stricter duties and liabilities than have been imposed by courts in a spousal situation. (See *Leff v. Gunter*, 33 Cal. 3d 508, 514-18 (1983).) Thus, the courts are still left to determine the issues on a case by case basis. Should clearer standards be drafted?
- 
- § 721 & 1620 *Agreements between husband and wife and with third parties made during marriage*  
 Should more comprehensive statutes governing agreements during marriage be developed? The Commission has already considered giving priority to studying this topic. [Minutes 10-11/91]
- 
- § 760 et seq. *Characterization of marital property*  
 Current definitions of community, quasi community, and separate property present difficulties. For example, real property purchased by a married person domiciled in a community property state other than California will be quasi-community property upon moving to California. Quasi-community property is treated as separate property for purposes of management and control during marriage. Therefore, property that was formerly community property may be stripped of its character (at least for purposes of management and control during marriage) by moving to California. Real property purchased while domiciled in California but which is located outside of California does not fit into any category. It should be community property and the December draft of the code (§ 760) includes real property wherever situated. [Minutes 10-11/91]
- 
- § 850 et seq. *Transmutation of property*  
 Study whether the general civil rules regarding the statute of frauds and the exceptions thereto apply to transmutation. A Matthew Bender representative reported that a case had held that the statute of frauds and its exceptions would apply to agreements under the Uniform Premarital Agreement Act and that if that is the case then the rule should also apply to transmutations.
- 
- § 914 & 2623 *Liability for necessities*  
 This statute (and others which use this same language) refer to both "common necessities" and "necessaries of life." The term "necessities" is also used. Case law should be reviewed. Also, terms "living separately" and "living separate and apart" probably have different meanings and this also could be made clear if it is the case. Study with a view toward clarifying these and whether or not there should be two different terms.
-

§ 1100 et seq.	<i>Management and control of marital property</i> Study this with a view toward drafting procedural rules as to how to enforce these rights.
§ 1612	<i>Subject matter of premarital agreement</i> Study whether spouses should be permitted to make binding premarital agreement waiving right to spousal support. Section 1612 was drawn from the Uniform Premarital Agreement Act (1983) but omitted the portion of the uniform act which specifically provided that parties to a premarital agreement could contract with respect to modification or elimination of spousal support. Should also look at the subject of premarital agreement regarding attorney's fees in later litigation between spouses. The State Bar reported that a recent case held that a premarital contract to eliminate attorney's fees in later litigation between spouses was found to be invalid. [Minutes 10-11/91]
§ 2313	<i>Duty of support not affected by dissolution on grounds of insanity</i> Study whether to eliminate as unnecessary and confusing. Consult with State Bar Section. [Minutes 10-11/91]
§ 2335	<i>Evidence of specific acts of misconduct</i> Study to see whether there are other situations in which evidence of specific acts of misconduct might appropriately be admitted in evidence. [Minutes 10-11/91]
§ 2338 et seq.	<i>Judgments</i> The concept of interlocutory judgment has been eliminated without conforming existing statutes to this new scheme. Study with a view toward conforming existing provisions to the new scheme.
§ 2552	<i>Valuation date for assets and liabilities</i> Study with a view toward establishing what other procedural requirements apply. For example, does one need to make a noticed motion?
§ 2610	<i>Division of retirement plan benefits</i> The LA City Attorney reported that this section has created "tremendous confusion" and needs to be clarified. [Minutes 10-11/91]
§ 2625	<i>Separate Debts</i> "Benefit to the community" needs to be defined; case law has produced inconsistent results.
§ 3000	<i>Right of parent to custody, services, and earnings of unmarried minor child</i> Study with a view toward eliminating subdivision (c) as superseded by later enacted and more specific statutes.
§ 3080 et seq.	<i>Default rules concerning joint custody agreement</i> Consider default rules on need to obtain consent where the parties fashion their own joint custody agreement. If these agreements are drawn by a conciliation court, all of these details are dealt with, but not when people do it without intervention by the conciliation court. The statute might say that unless the agreement otherwise provides the following decisions cannot be made unilaterally, but consent of the other parent is required, and then there would be a list of specific items like change of religion, decisions on education, health, etc.

§ 3101	<i>Determination of visitation rights of stepparent or grandparent in marriage dissolution or nullity proceeding</i> Study the issue of whether visitation should be available to any non-parent (not just stepparents and grandparents) who has established a meaningful relationship with the child.
§ 3500 et seq.	<i>Statute of Limitations on recovery of public support</i> Should there be a statute of limitations on recovery of public money spent for support?
§ 3500 et seq.	<i>Federal fail-safe issue</i> Should there be some general section which deals with the issue of the effect of federal law in the support area? Increasingly federal law sets up situations in which state law must conform to federal law on penalty of not receiving federal funds. Apparently some interests want a clear statement in state law that when this happens the state courts have the authority to construe state law to conform with federal law. (See, e.g., Fam. Code § 3653.)
§ 4011	<i>Priority of child support payments</i> Study with view toward expanding to other types of support orders.
§ 4400	<i>Duty to support parent in need</i> Study with a view toward possible elimination of this duty, since federal law probably prohibits a government entity from recovering public funds from an adult child anyway. The Uniform Law Commissioners may also propose to eliminate this rule.
§ 4500 et seq.	<i>Enforcement of support orders</i> Should enforcement of support provisions now found in the Welfare and Institutions Code be compiled in the Family Code? Commissioners suggested that this be placed on list of possible topics for future study and that Chief Deputy District Attorney Child Enforcement Officer in San Francisco (who is also a member of the State Bar Section Executive Committee) should be consulted on this issue. [Minutes 10-11/91]
§ 4560	<i>Order for child support security deposit</i> Should this section make explicit that a parent cannot waive child support where the District Attorney is involved?
§ 4614	<i>Determination by court of assets subject to order</i> Study to see if the \$6000 limitation is too low.
§ 4846	<i>Paternity issue</i> Study with a view toward making this section gender-neutral.
§ 7500 et seq.	<i>Termination of parental rights</i> Consider whether there should be only one procedure and set of standards for terminating parental rights. For example, the constitutional requirements for notice to an absent parent is not set out in some of the termination procedures. Right now there are three procedures: in adoption, in the UPA and in Civ. Code § 232.

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§ 7600 et seq. *Uniform Parentage Act*

Aside from the more complex issues raised in relation to integration of the UPA with the adoption law, as a more technical matter everyone agrees that these statutes are very badly drafted and the terminology used unclear. The notice provisions are especially badly drafted. Consideration should be given to revising the UPA, notwithstanding its status as a uniform act.

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§ 7800 et seq. *Freedom from parental custody and control [aka Termination of parental rights]*

Should this procedure be revised to require a finding of adoptability as a condition precedent to the termination of parental rights in all cases? The courts of appeal have apparently been divided on this question. [Minutes 10-11/91]

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§ 7820 et seq. *Termination of parental rights*

What portions of former CC § 232 survive the creation in the Welfare and Institutions Code of a procedure to terminate parental rights after a finding in the Juvenile Court that the parents cannot be reunited and their rights should be terminated? Adoption attorneys use parts of this procedure, such as the abandonment part. And if procedure for terminating parental rights will now only be used in the adoption context, do we still need a separate procedure with all of these procedural protections, especially when the stepparent adoptions are being treated in the summary procedure of Section 8604?

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§ 8500 et seq. *Terminology*

The terms "consent" and "relinquishment" raise a number of problems. Relinquishment is used in agency adoptions, while consent is the term used in independent adoptions. An important distinction between these is that relinquishment immediately extinguishes parental rights, whereas consent in an independent adoption does not by itself extinguish the parental rights. These terms do not appear to be used carefully. Consent has at least three uses: (1) consent by a birth parent in an independent adoption, (2) consent by an agency in an agency adoption, and (3) in an agency adoption, where the second birth parent refuses to relinquish, where consent (in the general and non-legal sense) is then required. A specific example of this is found at Fam. Code § 8750.

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§ 8500 et seq. *Terminology*

"Person" versus "parent" (see for example § 8705). Also, "birth parent," "natural parent," "biological parent," and "parent" (unmodified) are confusing.

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§ 8500 et seq. *Adoption law and UPA*

The adoption law does not properly take account of the requirements of the UPA. These two areas need to be integrated. This is complex, however, since the two areas of law have developed with an opposite emphasis. The UPA has focused on the "rights of unwed fathers" (which have been recognized in constitutional law) and parts of adoption law are focused on getting the rights of birth parents cut off as quickly and efficiently as possible in order to free the child for adoption. One important UPA section that needs to be integrated with adoption law is former CC § 7017. There are also other issues in this area that could be studied.

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§ 8548	<p><i>Stepparent adoption</i></p> <p>Study the conflict between the existing definition of stepparent adoption (which seems to allow the adoption to go forward without the parent and stepparent still being married) and the substantive rules (e.g. § 9000) which speak in terms of "spouses" thereby implying that the parties need to still be married. Should they have to still be married?</p>
§ 8601	<p><i>Required age difference between adoptive parents and child</i></p> <p>Study with a view toward eliminating the required age difference between adoptive parents and children. Is it in the public interest to allow someone younger to adopt someone older? Is there a problem regarding use of this statute to manipulate heirship and evade tax consequences?</p>
§ 8604	<p><i>Consent of parents</i></p> <p>Subdivision (b) was written prior to the development of joint custody orders. Another problem arises from the fact that this statute was written prior to the statutory distinctions between "physical" and "legal" custody. The disappearing parent under a joint custody order can never be eliminated under this provision. Actually this section may be used exclusively in stepparent adoption cases, although this is not stated. Case law has held that this section does not apply to joint custody cases.</p>
§ 8700	<p><i>Relinquishment of child to department or licensed adoption agency</i></p> <p>It is suggested that subdivision (c) should state: "is <u>or will be</u> cared for or is <u>or will be</u> placed for adoption." Existing law seems to state that an out-of-state relinquishment cannot be taken until the child has already been transferred to the California agency.</p>

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**BRUCE G. CALDERWOOD**  
ATTORNEY AT LAW  
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P. O. BOX 1440  
MURPHYS, CA. 95247  
TELEPHONE 209 728-2033

Admin.  
Law Revision Commission  
**RECEIVED**

DEC 0 2 1991

File: \_\_\_\_\_  
Key: \_\_\_\_\_

November 26, 1991

Law Revision Commission  
1000 Middlefield Road  
Palo Alto, California 94303-4739

Dear staff:

Please consider for revision CCP Sec 170.6 as it applies to single judge counties. Specifically, 30 days after filing is not enough time to decide whether or not to disqualify the judge. I most often do not know, 30 days after filing, who will be opposing counsel, what legal issues will arise upon response or whether or not the case will ever go to trial.

In a single judge county one loses valuable access to the court when a discussion is made to disqualify. If I must wait for the scheduling of outside judges I am unable to obtain immediate WRO's or other EX Parte relief.

My practice is limited to family law and I believe that the present application of CCP 170.6 in single judge counties creates an unnecessary obstacle to the intended purpose of 170.6. Why can't the statute require filing the motion prior to first hearing or upon filing of the memo to set for trial?

I would appreciate any comments.

Sincerely,



Bruce Calderwood

Memo 92-14

P.O. Box 2097, H23-80  
Los Angeles, CA 90051

EXHIBIT 4

Admin.

File:

DEC 11 1991

2.3.10

~~895-3318~~

Telephone (213) 345-8278

Facsimile (213) ~~895-3318~~

December 6, 1991



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

Nonprobate Transfer to Trustee Named in Will  
(21 CLRC Repts. 201)

Gentlemen:

The California Bankers Association's State Trust Governmental Affairs Committee reviewed a number of the CLRC recommendations. I was requested to communicate a couple of suggested changes to the referenced recommendation.

- 1 In the first line (as printed) of proposed Probate Code Section 6320(a)(3), the word "retirement" should be inserted between the words "individual" and "annuities". The phrase "individual retirement annuities or accounts", the intended meaning, conveys a much different meaning than "individual annuities or accounts".
- 2 As some employee welfare benefit plans [see 29 USC §1002(1) = ERISA §3(1)], such as vacation plans, provide cash benefits which are subject to disposition under a beneficiary designation, I suggest that proposed §6320(a)(3) specifically include a reference to employee welfare benefit plans.

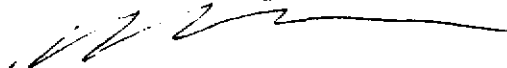
That raises an unrelated issue which seems to be appropriate for review by the Commission. Various provisions of various codes employ several approaches to describe employee pension or welfare benefit plans in a generic sense. The most commonly used approach is to generically define what we understand to mean employee pension benefit plans by listing several of the common

names for such plans, such as money purchase, profit sharing, retirement, etc. Most practitioners accept such smorgasbord descriptor to mean all employee retirement benefit plans, but one is never quite sure whether employee welfare benefit plans are intended to be included.

Another approach used in the codes is to incorporate by reference the definitions in ERISA. However, some references incorporate "plans governed by ERISA" (see CC §5106). As not all employee benefit plans are subject to ERISA [e.g., 29 USC §1003(b)], that approach may result in an unintentional omission of some forms of plans which should be subject to the statute.

I recommend that there be added to the definitions at the beginning of at least the Probate Code, Code of Civil Procedure and Civil Code a definition of "employee benefit plan", "employee pension benefit plan", and "employee welfare benefit plan" and that the defined terms replace the mishmash of generic descriptors we now have in the text of the statutes.

Very truly yours,



Melvin H. Wilson  
Vice President & Associate Trust Counsel

cc D. Lauer  
M. Padden

Memo 92-14

**Stephen Kruger**  
Attorney at Law

Admin.

3249 Denison Avenue  
San Pedro, California 90731Law Revision Commission  
RECEIVED

(213) 832-5945

Admitted in New York

x P.O. Box 4153  
San Pedro, California 90731File: \_\_\_\_\_  
Key: \_\_\_\_\_

November 4, 1991

John H. DeMully, Esq.  
4000 Middlefield Rd. #D-2  
Palo Alto, CA 94303

Dear Mr. DeMully:

I write to you in your capacity as Executive Secretary of the Law Revision Commission. The enclosed correspondence summarizes the position of the OPI and my position concerning CHP Form 555. In my view, the Law Revision Commission should address the following concerns:

1. Police practice is to abuse the exemption from the notification provisions of the Information Practices Act. The exemption, contained in Civ. Code §1798.17, should be repealed.

2. As seen from the attachment to Ms. Aaron's letter, the OIP reduces the statutory standard of "relevant and necessary" (Civ. Code §1798.14 [emphasis added]) to two simplistic questions. These negate the statutory words, which are in the conjunctive, and also disregard the phrase "strict limits" (emphasis added) in Civ. Code §1798.1(c).

The United States statutory scheme should be the model for the California act. Under the former, the relevant-and-necessary standard of 5 U.S.C. §522a(e)(1) is supplemented by the practical-utility requirement of 44 U.S.C. §3502(16) and of 44 U.S.C. §3504(c)(2). The administrative definition of "practical utility" includes "actual, not merely theoretical or potential, usefulness of information to an agency" (5 C.F.R. §1320.7[a]).

This letter is of necessity a summary. If you wish further information, please call.

Sincerely yours,

  
STEPHEN KRUGER

SK:wam

Enclosures

**CALIFORNIA STATE PERSONNEL BOARD**

801 CAPITOL MALL • P.O. BOX 944201 • SACRAMENTO 94244-2010



October 10, 1991

Mr. Stephen Kruger  
Attorney-at-Law  
P.O. Box 4153  
San Pedro, CA 90731

Dear Mr. Kruger:

This is in response to your concern that the California Department of Highway Patrol (CHP) is in violation of the Information Practices Act (IPA) Section 1798.14 because it provides on its Form 555 space for recording individuals' home and business telephone numbers and insurance information.

California Civil Code Section 1798.14 provides:

"Each agency shall maintain in its records only personal information which is relevant and necessary to accomplish a purpose of the agency required or authorized by the California Constitution or statute or mandated by the federal government."

CHP has stated 1) that providing the telephone numbers and insurance information is voluntary and 2) that the information is used for investigative purposes and in its capacity as a public service agency. Additionally, the guidelines to the IPA Section 1798.14 (copy enclosed) provide two key questions to assist in determining whether information is relevant and necessary. (How do we use the information? How would our program be impacted if we did not have it?) In applying this standard to the maintenance of

Mr. Stephen Kruger  
Page 2  
October 10, 1991

the information regarding telephone numbers and insurance, it appears that the information is used in an appropriate manner and that program impairment would result in the absence of the information. On the basis of this, coupled with the factors that CHP is a public service agency and that providing the telephone number and insurance information is voluntary, I find the CHP to be in compliance with the IPA.

If you have any questions regarding this letter, please feel free to contact me at the above address.

Sincerely,

*Karen Aaron*

KAREN AARON, Manager  
Office of Information Practices

Enc. .

cc: B. Whitley  
California Highway Patrol

*included in one report to eliminate the need for separate reports. Two important considerations in determining whether or not to combine systems of records in one notice are:*

- 1. Can the record system be adequately described as to the nature of its contents? and*
- 2. Would the notice allow agency personnel to locate the information with a minimum of relayed messages and delay in response to an inquiry?*

*If an agency has reported its record systems under very broad titles and descriptions it should not require the individual seeking access to be more specific in describing the record system to which he or she seeks access.*

*Disclosures of personal information pursuant to Article 6, subdivision (e) and (f) of Section 1798.24 must either be reported to the Office of Information Practices by type of disclosure on Form 694, or accounted for individually. (See Article 7, Section 1798.25 of the Act and the related commentary.)*

\* \* \* \* \*

#### **Report to the Legislature**

**§ 1798.11.** The Office of Information Practices shall, on or before June 30, 1988, and annually thereafter, transmit a report to the Legislature regarding the compliance of state agencies with the provisions of this chapter and the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, the cost to the state of agencies complying with this act and the California Public Records Act, and recommendations for legislation to improve state agencies' compliance with these acts.

### **ARTICLE 5**

#### **AGENCY REQUIREMENTS**

##### **Relevance and Necessity**

**§ 1798.14.** Each agency shall maintain in its records only personal information which is

relevant and necessary to accomplish a purpose of the agency required or authorized by the California Constitution or statute or mandated by the federal government.

\* \* \* \* \*

*In determining the relevance and necessity of information, an agency must carefully weigh the information needed to fulfill its statutory or constitutional mandate with the individual's right to privacy. Key questions in this process are "How do we use the information?" and "How would our program be impaired if we did not have it?" (See also the comments following Section 1798.17 regarding requiring individuals to divulge their social security account numbers.)*

\* \* \* \* \*

#### **Collection from Subject Individual**

**§ 1798.15.** Each agency shall collect personal information to the greatest extent practicable directly from the individual who is the subject of the information rather than from another source.

\* \* \* \* \*

*Common sense should be the best guide in complying with this section. Obviously when information is gathered in an investigation of any kind, third parties may furnish much of the personal information about the individual to whom the information pertains.*

\* \* \* \* \*

#### **Record of Sources**

**§ 1798.16.** Whenever an agency collects personal information, the agency shall maintain the source or sources of the information, unless the source is the data subject or he has received a copy of the source document, including, but not limited to, the name of any source who is an individual acting in his or her own private or individual capacity. If the source is an agency, governmental entity or other organization, such as a corporation or association, this requirement

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**Stephen Kruger**  
Attorney at Law

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P.O. Box 4153  
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Admitted in New York

September 23, 1991

California State Personnel Board  
P.O. Box 944201  
Sacramento, CA 94244

Attention: Karen Aaron  
Manager  
Office of Information Practice

Dear Ms. Aaron:

I received the letter of Beverly Whitley, dated September 13, 1991. It is clear from the letter that mediation of the matter is not possible. Therefore, I request, pursuant to Civ. Code §1798.8, a Statement of Findings and a Recommendation to Parties. This letter summarizes my position.

1. I do not object to the recording by a police officer, on CHP Form 555, of any information which appears on a motorist's driver license. The question raised refers specifically to phone numbers (house and office) and insurance information (name of company and policy number). Form 555 has spaces for both phone numbers and insurance information. Neither data is permissible, because they are contrary to the Information Practices Act of 1977.

2. The policy of the Act is to subject information collection by State agencies to "strict limits" (Civ. Code §1798.1[c]) (emphasis added). Therefore, an agency such as the CHP may "maintain in its records only personal information which is relevant and necessary" to accomplish its purpose. Civ. Code §1798.14. Note that the criterion has two parts, and that the connector is "and". It is not sufficient that requested personal information be "relevant"; it must be "necessary" as well.

3. It is no surprise that the CHP stuck by its position. Self-justification is a human trait, and a bureaucratic characteristic. Indeed, the OIP was established precisely because agencies are reluctant to admit non-adherence to law, or to make changes in their in-house ways of doing things.



4. No weight should be given to the statement in Ms. Whitley's September 13 letter that the Attorney General supports the CHP position. It is the function of the AG to fight for State agencies (Gov't Code §12511), just as any lawyer advocates his client's position. Also, were there substance to the support of the AG, it would have been spelled out. The conclusory assurance that the CHP "is well within [its] legal bounds" is not a legal analysis, and it adds nothing to the contentions of the CHP.

5. The function of the police at the scene of an accident is to record the names and addresses of participants (and witnesses, if any), and to record objective information about the scene of the accident. Recording the names and addresses of participants enables the police to give out tickets and make arrests, if appropriate. Recording the names and addresses of witnesses allows the police to pass along to the district attorney means by which a witness to a possible crime (e.g., vehicular homicide) can be made available for testimony. The taking down of objective information by a police officer (such as locations of vehicles and skid marks) is a form of preservation of evidence, in the event of prosecution.

6. It is not the function of the police at an accident scene to assist potential civil litigants. Police officers may not take sides in private disputes. Thus, for example, a police officer may not opine on causation, and may not reach a conclusion as to liability. If those notations are placed on an accident report, they are hearsay and conclusory, and therefore inadmissible. Carlton v. Department of Motor Vehicles (1988) 203 C.A.3d 1428.

7. Thus, it is clear that the police may not record phone numbers to assist the drivers in their post-accident litigation. Likewise, it is not the function of the police to help motorists determine who has or does not have insurance to pay for vehicular damage. To the extent that the CHP argues that it performs a "public service" by asking for information useful to civil litigants, the CHP misses the point. The coercive power of the police may only be applied to criminal matters.

8. As to assistance of motorists for statutory purposes, it is correct that Veh. Code §20002 requires motorists to exchange driver-license and registration information. I have no problem with that. The police officer at the scene of the accident records every driver's driver-license information. Likewise, CHP Form 555 has spaces for recording vehicle-registration information, and there is no objection to that either. Thus, if one driver refuses to show his driver license or vehicle registration to

another driver, the refusing driver may be cited for an infraction. Veh. Code §20002 does not require any driver to state his phone number(s) to another driver. Veh. Code §20002 does not require one driver to show proof of insurance to another driver. Therefore, these items of information are not of concern to a police officer who fills out CHP Form 555.

9. Nor is there independent statutory authority for a police officer to ask about insurance information. Veh. Code §16028, whereunder proof of insurance at the scene of an accident was required to be shown, sunsetted on January 1, 1991.

have 10. Even if §16028 is reenacted, it has no bearing on CHP Form 555. If a motorist does not have proof of insurance with him, and that is legally required, the proper reaction of a police officer is to issue a Notice to Appear. Whether a motorist does or does not have insurance is not relevant or necessary for a Form 555, because that form relates solely to accident investigation. Insurance is a financial matter, and has no bearing on objective facts (such as locations of vehicles) which describe the scene of the accident.

11. The CHP rationalizes phone numbers as means of follow-up investigation of an accident. In my 15 years of practicing law, I have known or heard of not one single follow-up call. The suggestion is ludicrous, and not merely because police departments are overworked and understaffed. If an accident has no criminal-law aspect, the police go on to the next matter, and leave the drivers to their civil remedies. If the accident is serious, a summons is issued at the scene, or an arrest is made at the scene of the accident. In the rare event of post-accident action, it is taken in the form of a report to the district attorney. If prosecution is initiated, the police get an arrest warrant, and using the motorist's address, go to his residence and make an arrest. No one calls the motorist. It would be ludicrous to warn the subject of an arrest warrant, and thereby give him time to disappear himself.

12. There is no legal ground whereon the CHP can claim that it may collect "voluntary" information. The statutory restriction of requested information to that which is relevant and necessary, a standard which is to be strictly construed, precludes asking for volunteered information. If the datum is not required, it is by definition not necessary for the effectuation of the agency's function.

13. Especially in a police context, the term "voluntary" loses its meaning. For the average motorist, an answer to a question

posed by a policeman is mandatory, not voluntary. In addition, police officers are not lawyers. Their job is to fill out forms which are given to them. They do not distinguish, as a lawyer might, between mandatory and voluntary information. The mere presence of an information box on Form 555 means to a police officer that the information is mandatory.

14. My case (now resolved) is an example. I refused to give phone numbers and insurance information. The police officer had a form to fill out, and used the threat of arrest under Pen. Code §148 (interference with a police officer) to accomplish that which he perceived to be his job. That is how the real world works. That is the importance of not having on CHP Form 555, which is filled out entirely by the police, any information request other than for mandatory information: driver-license particulars, vehicle-registration particulars, names and addresses of witnesses and a description of the scene of the accident.

15. It should be noted in this context that the motorist is not informed which information on Form 555 is mandatory and which is voluntary. CHP Form 555 is exempt from the notice requirement of Civ. Code §1798.17. Thus, it is no solution to modify Form 555 to mark certain boxes as mandatory and others as voluntary, absent a mandatory communication of this distinction to the motorist.

It must be concluded that the CHP is not authorized to collect any person's phone number(s) and insurance information; that the presence of "voluntary" information on a form is not seen as such by police officers; and that, in any event, the average motorist is not informed that some responses are voluntary. For all these reasons, it is requested that these findings, and the ones outlined above, be made. It is further requested that the OPI recommend to the CHP that its Form 555 be modified to delete from it the boxes labelled "business phone number", "home phone number" and "insurance information".

Sincerely yours,

STEPHEN KRUGER

SK:wam

Eve M. Jacklin  
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Gordon E. McClintock  
Mark T. Mitchell  
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August 19, 1991

**CA LAW REV. COMMISSION**

**AUG 20 1991**

**RECEIVED**

Daniel J. Schmidt  
1887 Galt Street  
Simi Valley, CA 93065

Dear Mr. Schmidt:

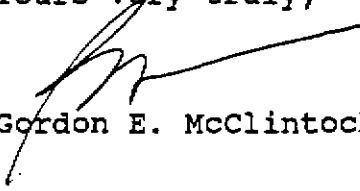
This will acknowledge receipt of your letter of July 25, 1991.

As I indicated in our telephone conversation, I have been a litigation attorney for more than 20 years. I am not a transactional lawyer, and have had little reason to deal with the fictitious business name statute.

The preparation of the original study in 1968 consumed a great deal of time. I would have to review the study as well as cases decided under the various statutes to answer your questions. The current state of my practice does not allow me the time necessary to respond to your letter.

I have taken the liberty of sending your letter to Nathaniel Sterling, Executive Secretary of the California Law Revision Commission. It may be that the statute should be amended to address the question that you have raised.

Yours very truly,

  
Gordon E. McClintock

GEM:ej

cc: ✓ Nathaniel Sterling  
Executive Secretary  
California Law Revision Commission  
4000 Middlefield Road, Suite D2  
Palo Alto, CA 94303-4739

56924.1\schmidt.1

Daniel J. Schmidt  
1887 Galt St.  
Simi Valley, California 93065  
Telephone: (805) 522-8486

July 25, 1991

Mr. Gordon E. McClintock  
McClintock & Quandros  
1400 Fashion Island Blvd., Suite 800  
San Mateo, California 94404

Dear Mr. McClintock:

To recap our telephone conversation earlier this week, I am interested in your opinion regarding the requirement to publish a renewal fictitious business name statement when it was filed after the original statement had expired.

1. Is a fictitious business name statement still valid after the expiration date if no new statement has been filed?
2. If the statement is not valid after the expiration date, must a new statement be both filed **and** published to restore the fictitious business name, or will filing alone cure that defect?
3. Conversely, if the statement is still valid after its expiration, how long thereafter will it remain so, and under what conditions, if any, will it cease to be effective?

Business and Professions Code Section 17910 states, "Every person who regularly transacts business in this state for profit under a fictitious business name shall: (b) File a new statement in accordance with this chapter **on or before the date of expiration** of the statement on file." (emphasis added)

The statute fails to specify what will result if Section 17910 (b) is violated, either because the statement is not filed before the expiration date, or is not filed at all. In addressing the publishing requirement of the renewal statement, Section 17917 (c) states:

Where a new statement is required because the prior statement has **expired** under subdivision (a) of Section 17920, the new statement need not be published unless there has been a change in the information required (under Section 17913) in the expired statement. (emphasis added)

(Section 17920 (a) states that a statement expires "at the end of five years from December 31 of the year in which it was filed." This was amended in 1988 to read "five years from the date it was filed " However, the 1988 amendment shouldn't affect

statements filed in 1986 or 1987, which expire on December 31, 1991 and 1992, respectively.)

The use of the words "has expired" in Section 17917 (c) is the source of the confusion. One group interprets this to mean that no matter how much time has elapsed since the original statement expired and the renewal was filed, no publication is necessary unless there has been a change of information. The most extreme proponents suggest that a fictitious business name statement is valid indefinitely, even without renewal, so long as the information has not changed.

Another group believes that publication is not required if the renewal filing occurred "on or before the date of expiration." However, if the renewal filing occurred after this date, the statement must be published. Essentially, this group believes that the term "expiration" speaks for itself, applying as unequivocally to fictitious business name statements as it does to insurance policies or drivers licenses.

This second group believes the confusion could be eliminated if the words "has expired" were replaced with "will expire," or simply, "expires." This change would conform with other provisions in the statute. Section 17921, which, until amended in 1983, required County Clerks to send notices to registrants "no later than the first day of December preceding the expiration date" to "minimize the danger that the registrant will be unaware of the impending expiration" (9 Cal.L.Rev. Comm. Reports). The 1983 amendment eliminated the notification requirement.

Section 17921 (b) continues:

Neither the failure of the county clerk to mail the notice as provided in this section nor the failure of the notice to reach the person to whom it is sent continues the fictitious business name statement in effect after its expiration date.

While the intent of Section 17921 appears to conclude that a fictitious business names does not "continue in effect after the expiration date," some county clerks determined that publication is simply not required if no changes have taken place, no matter how long ago the original statement expired.

Eliminating the requirement to refile if no changes have taken place would also end the debate. Then only new statements or renewal statements with changes would be filed and published. However, wholesale elimination of the automatic five-year expiration might defeat the general intent of the statute to maintain current information at the county clerk's office.

One weakness in Section 17900, *et seq.*, is that the failure to follow the statute is not discussed beyond the inability for a registrant to maintain a court action. Is one who files, but does not publish, a renewal statement after the original has expired prevented from maintaining a court action?

In practice, county clerks have imposed their own sanctions on registrants for minor violations. County clerks routinely refuse to accept affidavits or certificates of publication if publishing did not begin within 30 days of the file date as required under Section 17917 (a), or if the affidavit or certificate was not filed within 30 days of the completion of publication as required under Section 17917 (c).

One can assume that if a registrant who publishes or files a certificate late by one day or one week must start the process anew, then a registrant who fails to file a renewal statement "on or before the date of expiration" must also start over. And what about someone who doesn't file for several months after the expiration?

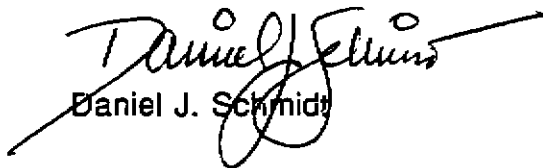
After a thorough reading of your article, *Fictitious Business Name Legislation - Modernizing California's Pioneer Statutes* (1968) 19 Hastings Law Journal 1349, I can understand why you advocated the elimination of the publishing requirement altogether. The confusion over the publishing requirement I have now described may reinforce your position.

This issue has yet to be addressed by any court, as far as I have been able to determine. However, as long as publication is required, clarification of these questions I pose to you could end this debate.

I would be most grateful if you would kindly consider this matter. As I mentioned on the phone, I am a law student researching this subject as a defendant "charged" with publishing renewal fictitious business name statements after the original has expired. Your opinion is extremely important to me.

Please let me know if you need anything else from me. I look forward to your response.

Sincerely,

  
Daniel J. Schmidt

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February 24, 1992

Law Revision Commission  
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**VIA TELECOPY**

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

Dear Nat:

I would like to propose the following subjects for future consideration by the Law Revision Commission:

1. Shareholder Rights And Corporate Directors' Responsibilities. At present, there is some confusion under California law as to the scope of the business judgment rule (which safeguards a director from liability in the performance of his or her duties, see Cal. Corp. Code § 309), and the right of a shareholder to bring a derivative action, on behalf of the corporation, see Cal. Corp. Code § 800. This confusion no doubt contributes to the perception of a poor business climate in California.

2. Unfair And Unlawful Business Practices. See Bus. and Prof. Code § 17200 et seq. At present, unlawful business practices are any business practice which violates the law; the definition of unfair business practices is more amorphous, allowing the practice to be judged on a cost-benefit analysis. Thus, it is hard to predict which actions will violate this law. Further, any person -- regardless of injury -- can bring a claim under this statutory scheme on behalf of the public, without class certification or even any court determination of their

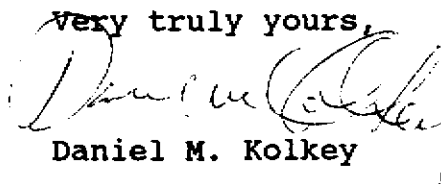


GIBSON, DUNN & CRUTCHER

February 24, 1992  
Page 2

adequacy to represent the public, raising substantial  
constitutional due process issues.

very truly yours,

A handwritten signature in dark ink, appearing to read "Daniel M. Kolkey", written over the typed name.

Daniel M. Kolkey

DMK/vp

LL920550.028

ARTHUR K. MARSHALL  
JUDGE OF THE SUPERIOR COURT  
(RETIRED)  
300 SOUTH GRAND AVE. TWENTY-NINTH FLOOR  
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TELEPHONE (213) 229-8403 OR (213) 627-8111

FEB 13 1992

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February 7, 1992

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

Dear Nat:

Enclosed is a most interesting article dealing with Family Law procedures (which you've probably seen in "California Lawyer"). I do believe that what Justice King has evolved is a system for "case management" which can be enacted into law with very little, if any, controversy. Basically, he schedules one conference with lawyers and parties present, sets out need for complete devotion to settlement of all issues and then holds a series of telephone conferences to keep tabs on doing all the things to clear obstacles from the path to settlement. He's had remarkable success.

Could we put this on the agenda? This is just as important as the agencies' insistence on control of ALJs.

As ever,

*art*

Arthur K. Marshall

AKM:lmb  
Enclosure

# Save the Court Save the Family

*You've got to accentuate the positive + eliminate the negative  
+ latch onto the affirmative + don't mess with Mr. In-Between.*

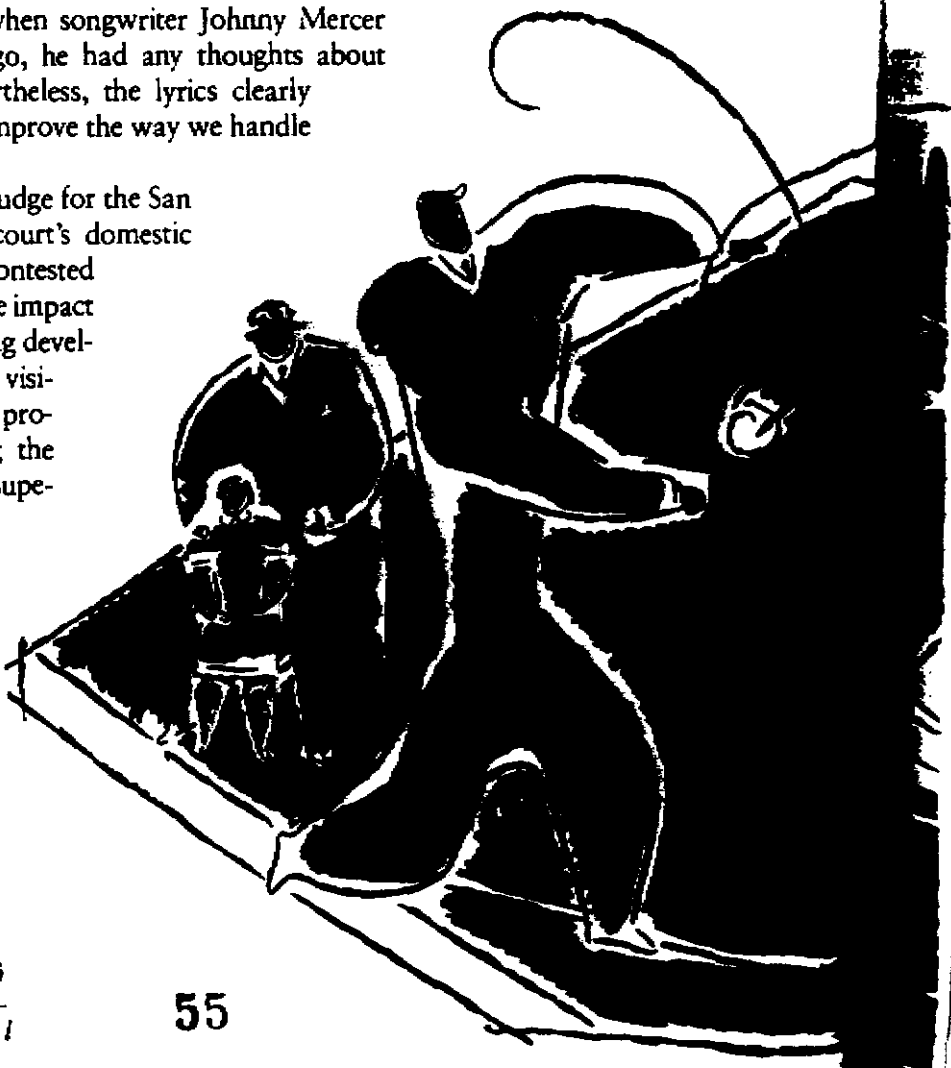
**We have no reason** to believe that when songwriter Johnny Mercer penned these lyrics more than 40 years ago, he had any thoughts about improving our family court system. Nevertheless, the lyrics clearly describe the approach we should follow to improve the way we handle marital dissolution cases.

For six years I was the domestic relations judge for the San Francisco Superior Court, hearing all the court's domestic relations law and motion matters and many contested trials. As a family law judge I had considerable impact in improving family law procedures, including developing mandatory mediation for custody and visitation disputes, initiating judicial education programs for family law judges and enacting the Uniform Domestic Relations Local Rules for superior courts in the San Francisco Bay area.

These and other improvements in family law, however, have failed to change the basic process for dissolving marriages. Neither litigants, attorneys nor judges are happy with our present system. I now realize that as a trial court judge, I was too close to the forest to see the trees, too inundated with the workload to perceive how the system fails the parties going through it.

After nine years on the court of appeal,

**By JUSTICE DONALD B. KING**  
*First District Court of Appeal*



## JUDICIAL CASE

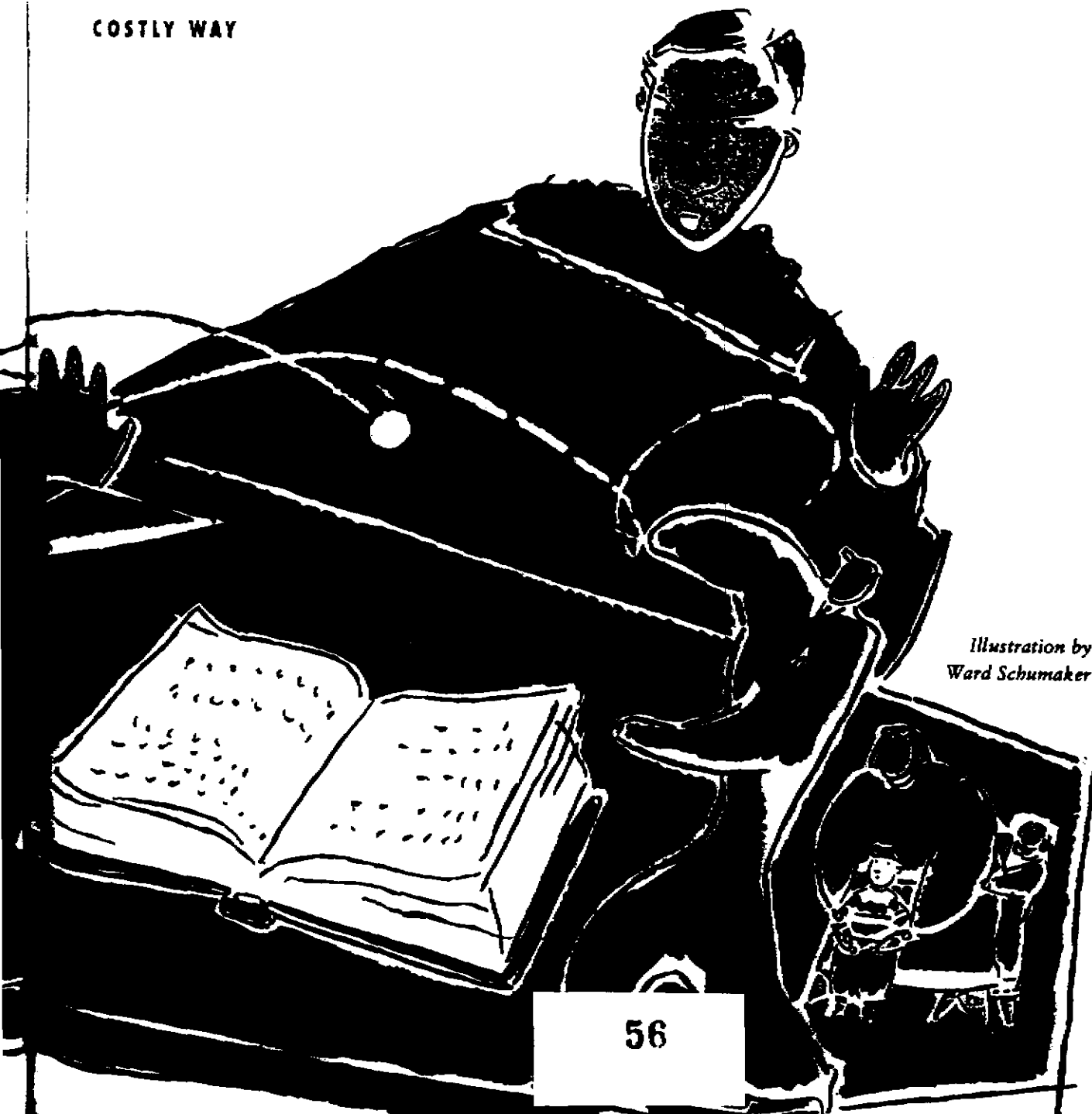
MANAGEMENT IS THE

KEY TO SEPARATING

COUPLES IN A MORE

SENSITIVE AND LESS

COSTLY WAY



*Illustration by  
Ward Schumaker*

during which I authored more than 35 family law decisions, it has become clear to me that an entirely new process is necessary to handle these most difficult cases. Government has a duty to provide a system that helps its citizens—not one that leaves them worse off financially and emotionally than when they entered it, that costs so much only the wealthy can afford it, and that is so complex few lawyers, fewer judges and no legislators understand it. We must change from a system in which every case must fit the process to a system where the process has the flexibility to fit the case.

From 1987 to 1989, with the benefit of a blanket assignment from Chief Justice Malcolm M. Lucas, I returned to the San Francisco County Superior Court for two weeks every other month to try family law cases. I found most cases came to trial because the adversary process incited conflict and inhibited settlement. Cases were out of control, significantly increasing the parties' financial and emotional cost.

I decided to try a different approach when Presiding Judge Claude D. Perasso asked me to hear a case set for a two-day hearing on various motions. This case had been on file for less than six months; there had already been several hearings and the file was inches thick. But I concluded the hearing in 15 minutes.

Judge Perasso asked me if I would handle all aspects of the case in order to bring it under control. I accepted and began a program of intensive case management by telephone. No further court hearings occurred, and the next piece of paper filed in the case, about six months later, was a stipulated judgment.

Subsequent presiding judges have requested that I manage all aspects of other escalating cases. My experience has convinced me deficiencies within our judicial system require that the judge take charge of family law cases.

**Let me be clear.** I do not propose a trial delay reduction program. California's trial delay reduction program essentially deals with case flow through the court system. Family law cases need case management to remain as nonadversarial as possible while moving expeditiously toward settlement.

The lawyers representing clients in conflict cannot be in charge of the case. Clients in the adversary system see their lawyer as their advocate, their champion; if opposing counsel work too cooperatively, each may find a new lawyer representing his or her client. And pressures on lawyers to satisfy clients, as well as the need for protection against possible malpractice claims, often lead lawyers to perform work that is not necessary to achieve settlement. Photocopy machines and word processors make that work very easy and add to the runaway costs of litigation.

In a sense, the adversary system is a monster with a life and a momentum of its own. It may work well for litigants who will never see each other again. But it is too slow, too expensive and too impersonal for family court, and it does not help divorcing spouses who will have to remain in contact with each other for years because of support obligations or visitation with children.

I propose judicial intervention in family law cases when the parties first come to court, usually to request orders pending the suit. At that time the judge would encourage the parties and their counsel to do everything possible to resolve issues by settlement, and to create an atmosphere in which settlement is everyone's expectation. Trials should be the last resort, not the first.

The parties would be asked to require their attorneys not to fight with one another but to work

ing is feasible, the judge would take the lead in case planning for settlement. The parties would put issues ready to be resolved on the record at the initial meeting. After counsel and their clients have had an opportunity to confer privately, any unsettled issues requiring judicial orders would be heard.

The meeting would close with the judge and counsel agreeing on what should take place—usually an exchange of information and documents—within the next 30 days. A conference call among counsel and the judge would be scheduled for the end of that period. After that, judicial oversight would consist primarily of case management by conference call. The goal of the initial meeting and the follow-up calls would be for each side to obtain the information necessary to discuss settlement at the earliest possible time. Anything necessary for trial but unnecessary for settlement would not be pursued unless and until settlement could not be achieved.

In most instances only one or two conference calls would be needed to resolve the case. More complex cases might require calls over several months. If problems arose that could not wait for the next scheduled conference call, counsel would be able to telephone the judge. This would be done by conference call unless the parties and both lawyers stipulated to ex parte telephone contact.

Working with the lawyers, the judge would schedule events and determine the extent to which work was to be carried out. For example, discovery would be limited to that only necessary for settlement. If settlement did not occur, further discovery could always



*The adversary system is too slow,  
too expensive and too impersonal  
for family court.*

together, with the judge, as a team. The judge would preclude counsel from performing unnecessary or premature work and, to protect them against later malpractice claims, would provide counsel with a record of the limitations placed on their work.

The judge would offer alternative dispute resolution within and outside the judicial system; ADR is a necessity, not merely an option to the courts. If neither arbitration, mediation, nor private judge-

take place. To increase efficiency and reduce costs, the judge would be involved in scheduling discovery and would determine the scope of the subject matter.

The judge would also be available by telephone at the time of depositions. If an objection arose, the judge could rule via telephone, with the deposition reporter transcribing counsels' comments and the ruling. This would make it unnecessary to adjourn depositions for for-

mal motions and hearings on whether questions should be answered, thereby avoiding the need to reconvene weeks later to pursue proper questions. The availability of the judge would make it less likely problems would arise.

The judge would also encourage both counsel and the parties to reduce costs by agreeing to use neutral appraisers, accountants and actuaries for property valuation. Discovery costs could also be curtailed by judicial oversight.

When each side had sufficient information to discuss settlement seriously, a meeting would be scheduled with the judge, counsel and the parties. Counsel or the parties might feel uncomfortable having settlement discussions with the judge who would try the case if it did not settle. But it is important that the judge managing the case conduct these meetings, which are much more likely to lead to settlement because of the judge's familiarity with the case, the attorneys and the parties.

If an issue could not be settled, a date certain would be set, and trial preparation would be planned by the team and carried out under judicial supervision. Prior case management would allow judge and counsel to assess whether an issue would actually go to trial and how much time it would take. This would avoid the unnecessary costs incurred under our present system, where cases are set for trial only to be continued because no judge is available or the trial cannot be concluded within the time allotted. Team planning for trial would also allow the judge and counsel to determine whether there were pivotal issues that should be bifurcated and tried first, in hopes that their resolution would lead to settlement of the remaining issues.

This system would make family court a more difficult assignment. The judge would need not only to be a competent administrator but also to have a firm grasp of substantive family law. Mandatory judicial education would be essential for judges in the system I propose because of their greater responsibilities. However, in this new role judges would also have greater opportunities for satisfaction because they would have a direct role in helping the parties and counsel resolve the case.



**Is judicial case management workable or is it pie in the sky?** I submit that it is workable, since I used it successfully in the escalating cases I managed in the San Francisco County Superior Court and in a pilot project

knowledge of the other, and prohibiting them from filing motions or orders to show cause without calling me first. To avoid litigation to collect unpaid fees, which usually results in a cross-complaint for malpractice, the stipulation allowed me to resolve fee disputes.

The only commitment I asked from the parties was that they agree not to let

The only commitment I asked from the parties was that they not let their attorneys fight.

begun in March 1989. In that project I developed a stipulation granting me extensive case management powers. In each of 30 cases, I met in chambers with the parties and their counsel for five to 15 minutes to discuss the program and whether they wished to participate in it. The stipulation included provisions allowing the lawyers ex parte communication with me without notice to or

their attorneys fight. My primary goal was to avoid an adversary approach, at least until settlement could not be achieved. This relieved pressure on the lawyers to posture for their clients. In return I guaranteed the parties their case would be concluded more rapidly at less financial and emotional cost, and that they would be happier with each other, their lawyers and the process than if they



Court of Appeal Justice Donald B. King: No fighting and no bking.

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had gone through the regular system.

I told them the attorneys and I would act as a team, with me as the leader, doing only what was necessary to achieve settlement. To my surprise, I found that 59 of the 60 parties did not want to fight. They just wanted to put the divorce behind them and get on with their lives.

Although I was assigned only 30 cases, the variety among them was remarkable. They ranged from two cases in which the San Francisco Neighborhood Legal Assistance Foundation represented a party to three cases involving doctors and their spouses. I had several cases in which one party was in pro per.

One startling result of my approach was obvious immediately. Only three of the cases calendared for an initial order-to-show-cause hearing still required one after our first meeting. These hearings were not strongly adversarial, and the longest lasted only five minutes. The issues in the remaining 27 cases were resolved by agreement between the parties and their counsel after the initial meeting.

Several of the initial proceedings included disputes over temporary custody or visitation. These were referred to the court mediator, who, after meeting with the parties, met briefly with me, the parties and their counsel to discuss the issues. The meeting helped avoid future problems and resulted in the provisions of the mediated agreement being carried out.

In three of the cases every issue was resolved and a stipulated judgment placed on the record on the day of the order-to-show-cause appearance. In one other case the parties were interested in attempting reconciliation and asked that the case be held in abeyance for 90 days, at the end of which the attorneys reported by conference call that the reconciliation had been successful and a stipulated dismissal was filed.

One of my cases with a pro per litigant was not easily resolved. Indeed, this was the only real problem case in my project. It was the only case in which a motion or order to show cause was filed between the time I began managing the case and its conclusion.

Except for the three original pendent lite hearings and the pro per case, where an order to show cause regarding contempt was necessary because of nonpayment of child support, none of the cases had a single hearing from the time it was filed until entry of judgment. Only three of the cases required trials, and those

(Continued on page 85)

# Family Court

(Continued from page 46)

involved single issues.

In just 13 of the cases was it necessary to hold a status conference, in which we discussed not only settlement but also trial preparation with its attendant costs and risks. In 10 of these cases the status conference resulted in a settlement of all issues. Another 13 cases were settled without direct judicial involvement except for conference calls.

In most instances case management took place by telephone, without personal appearances at status or chambers conferences, court reporters or court hearings. If Rip Van Winkle were to awake in today's courtroom, he would think he had dozed off for only a few minutes; many of our courts operate as if the telephone had never been invented. In my experience conference calls were just as productive as personal meetings and took much less time.

All discovery was informal and voluntary, in the sense that no discovery requests or motions had to be filed. Since I was convinced that each case would be settled, and the parties and counsel were influenced by my belief, any needed information was provided by agreement.

Depositions were rarely taken, and then only of the parties. The subject matter was limited to what was necessary for settlement. I regularly specified and limited the issues, with the understanding that a deposition could be taken later if settlement did not occur. In all cases discovery was worked out with the agreement of counsel via conference calls.

I did not need a bailiff, a court reporter, a courtroom clerk or even a courtroom, although occasionally I did need access to these resources. I could have used an informal, comfortable room with a round table for meeting with the parties, a telephone and a computer to keep track of the planning arrangements for each case. In addition, I could have used a legal assistant to make many of the conference calls, which would have permitted me to devote more time to the cases requiring greater oversight.

**So where do we go from here?**  
Simplification of substantive and proce-

dural family law must come from the Legislature—but in recent years it has seemed intent on making the law more complex, enacting law not on its merits but at the behest of special-interest groups. Family law has rapidly moved from a field where considerable discretion was available to achieve equity to one with the complexities, technicalities and arbitrariness of the Internal Revenue Code. Unless and until the Legislature perceives what a monster it has created, simplification and equity are unachievable dreams.

As a first step I recommend that the Legislature create pilot projects in three counties in which all new family law cases are handled as I have described. Records of pilot project cases should be compared to those processed in the old system to determine whether caseloads could be accommodated using existing resources.

For example, it would be important to compare the time spent in the initial meeting under the new system to that devoted to order-to-show-cause hearings. My experience indicated the meeting often eliminated the need for further hearings by keeping the parties from becoming mired in the adversary process.

The pilot projects would provide greater information if each court possessed maximum flexibility in designing and implementing its program. I recommend, however, the following minimal requirements for project counties:

- Pilot projects would be three years in duration.

- At least 10 percent of the court's judges would be assigned to the project. If a court had fewer than 10 judges, one would be assigned to devote 10 percent of the court's time to the project.

- Judges would commit to remaining in the project for its duration. Funding would be provided so that each project's judicial officer had a legal assistant.

- Each court would create a family law division, with separately numbered cases placed under the supervision of a single judge from filing through judgment.

- Each court would develop a panel of neutral experts and rules for its program in consulta-

tion with the local family law bar.

- Project courts would be empowered to adopt procedural rules in conflict with statutes and the California Rules of Court.

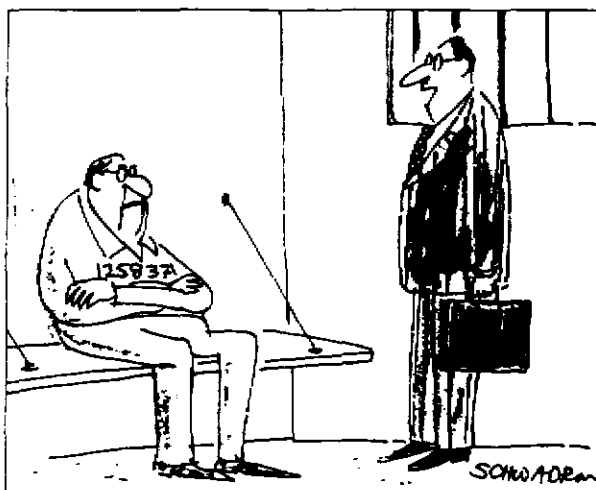
- Judicial officers would be required to participate in a specially designed educational program presented by the California Center for Judicial Education and Research.

- Funding would be provided for statistical comparisons of family law cases processed under the new and existing systems.

- The Administrative Office of the Courts would monitor the pilot projects and report to the Legislature on their operation.

I believe that once a judicial case management system is in place and the legal culture has adjusted to it, family courts can function successfully with existing resources. If so, California could enter a new era in which courts handle family law cases in a manner that helps the parties, allows the attorneys to practice law in a more civilized manner and provides the judge with a greater opportunity to help parties reach an early settlement of their disputes. Indeed, there is no reason the proposed system would not also apply to all civil cases.

Twenty years ago California became the first state to adopt no-fault divorce. In 1980 it was the first state to mandate mediation of custody and visitation disputes. The case management system I propose offers another opportunity for California to lead the nation to a better way of handling marital dissolution. If we accentuate the positive and eliminate the negative in modifying our family court processes, how can we lose? ♦



"A word to the wise, Mr. Brughof: If you don't break down and cry on the witness stand, no one on the jury will believe you're sincere."