

## Memorandum 93-51

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Annual Report for 1993

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Attached to this memorandum is a draft of the Commission's *Annual Report for 1993*. If approved, the staff will send it to the printer in December.

We have not included the numerous appendices that will be printed with the Annual Report, in order to save copying costs and unnecessarily burdening Commissioners. These items are listed in the table of contents on pages 905-906 of the attached Annual Report. All of these reports and recommendations have been previously approved by the Commission. The Family Code recommendations are published as a separate volume because of their size (848 pages).

Much of the Annual Report language remains virtually the same as in past reports, but particular attention should be paid to the new material concerning studies in progress (pp. 911-13) and the Commission budget (pp. 920-21).

The staff has resisted the temptation to insert a footnote recognizing the Commission's debut in fiction. A recent detective novel by Sue Grafton — "J" IS FOR JUDGMENT — includes the following:

“...Anyway, he did what he could, but there was no way we could prove Wendell Jaffe was alive. We did manage to overcome the presumption of death—temporarily....Mrs. Jaffe was plenty mad, but all she had to do was wait. She kept the premiums on his policy paid and went back into court when the five years were up.”

“I thought it was seven.”

“The statute was changed about a year ago. The Law Revision Commission modernized the procedure for probate in the estate of a missing person. Two months ago, she finally got a finding and order from the superior court and had Wendell declared dead. At that point, the company really had no choice. We paid.”

The original recommendation was *Recommendation Relating to Missing Persons*, 16 Cal. L. Revision Comm'n Reports 105 (1982).

Respectfully submitted,

Stan Ulrich  
Assistant Executive Secretary

STATE OF CALIFORNIA

# **CALIFORNIA LAW REVISION COMMISSION**

**STAFF DRAFT**

**Annual Report for 1993**

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



## SUMMARY OF WORK OF COMMISSION

### **Recommendations Enacted in the 1993 Legislative Session**

In 1993, all seven bills introduced to effectuate the Commission's recommendations were enacted. These bills amended 199 sections, added 266 sections, and repealed 313 sections of California statutes. Commission-recommended legislation enacted in 1993 concerned the following subjects:

- Family Code
- Deposit of Estate Planning Documents
- Parent and Child Relationship for Intestate Succession
- Litigation Involving Decedents
- Special Needs Trusts

### **Recommendations to the 1994 Legislative Session**

In 1994, the Commission plans to submit recommendations on the following subjects to the Legislature:

- Power of Attorney Law
- Trial Court Unification
- Effect of Joint Tenancy Title on Marital Property
- Orders To Show Cause and Temporary Restraining Orders

### **Commission Plans for 1994**

During 1994, the Commission will work primarily on two major projects — trial court unification and administrative law. The Commission will study two creditors' remedies matters mandated by statute and may also consider other subjects as time permits.



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STATE OF CALIFORNIA

PETE WILSON, Governor

**CALIFORNIA LAW REVISION COMMISSION**

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December 1, 1993

To: The Honorable Pete Wilson  
*Governor of California*, and  
The Legislature of California

In conformity with Government Code Section 8293, the California Law Revision Commission herewith submits this report of its activities during 1993.

All seven bills introduced in 1993 to effectuate the Commission's recommendations were enacted. A concurrent resolution recommended by the Commission was adopted.

The Commission is grateful to the members of the Legislature who carried Commission-recommended bills:

- Senator Lockyer (special needs trusts technical amendments, concurrent resolution continuing the Commission's authority to study previously authorized topics)
- Senator Wright (miscellaneous Family Code technical corrections)
- Assembly Member Horcher (deposit of estate planning documents, litigation involving decedents)
- Assembly Member Knight (parent-child relationship for intestate succession)
- Assembly Member Speier (Family Code)



The Commission held eight two-day meetings during 1993. Meetings were held in Los Angeles and Sacramento.

Respectfully submitted,

Sanford M. Skaggs  
*Chairperson*

## ANNUAL REPORT FOR 1993

### Introduction

The California Law Revision Commission<sup>1</sup> was created in 1953 as the permanent successor to the Code Commission and given responsibility for the continuing substantive review of California statutory and decisional law.<sup>2</sup> The Commission studies California law to discover defects and anachronisms and recommends legislation to make needed reforms.

The Commission assists the Legislature in keeping the law up to date by:

- Intensively studying complex and sometimes controversial subjects
- Identifying major policy questions for legislative attention
- Gathering the views of interested persons and organizations
- Drafting recommended legislation for legislative consideration

The efforts of the Commission permit the Legislature to determine significant policy questions rather than to concern itself with the technical problems in preparing background studies, working out intricate legal problems, and drafting implementing legislation. The Commission thus enables the Legislature to accomplish needed reforms that otherwise might not be made because of the heavy demands on legislative time. In some cases, the Commission's report demonstrates that no new legislation on a particular topic is needed, thus relieving the Legislature of the need to study the topic.

The Commission consists of:

- A Member of the Senate appointed by the Committee on Rules
- A Member of the Assembly appointed by the Speaker
- Seven members appointed by the Governor with the advice and consent of the Senate

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1. See Gov't Code §§ 8280-8298 (statute establishing Law Revision Commission) (Appendix 1 *infra*).

2. See 1 Cal. L. Revision Comm'n Reports, Annual Report for 1954, at 7 (1957).

- The Legislative Counsel, who is an ex officio member

The Commission may study only topics that the Legislature by concurrent resolution authorizes it to study. The Commission now has a calendar of 30 topics.<sup>3</sup>

Commission recommendations have resulted in the enactment of legislation affecting 18,235 sections of the California statutes: 8,524 sections have been added, 2,967 sections amended, and 6,744 sections repealed. The Commission has submitted more than 280 recommendations to the Legislature. Approximately 96% of these recommendations have been enacted in whole or in substantial part.<sup>4</sup>

The Commission's recommendations are published in softcover and later are collected in hardcover volumes. A list of past publications and information on obtaining copies is at the end of this Report.

### **1994 Legislative Program**

In 1994, the Commission plans to submit recommendations to the Legislature concerning the following subjects:

#### **Civil Procedure**

The Commission plans to submit the following recommendations concerning civil procedure:

- Trial court unification
- Orders to show cause and temporary restraining orders

#### **Probate Law**

The Commission plans to submit the following recommendations concerning probate law and procedure:

- Power of attorney law
- Effect of joint tenancy title on marital property

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3. See list of topics under "Calendar of Topics Authorized for Study" set out in Appendix 2 *infra*.

4. See list of recommendations and legislative action in Appendix 3 *infra*.

### **Major Studies in Progress**

During 1994, the Commission plans to work on two major topics: trial court unification and administrative law. The Commission will study two creditors' remedies matters required by statute and will also consider various other subjects to the extent time permits.

#### **Trial Court Unification**

The Legislature has directed the Commission to study the proposed amendment to the California Constitution contained in SCA 3 (Lockyer) of the 1993-94 Regular Session, concerning unification of the trial courts.<sup>5</sup> The resolution requires recommendations to be forwarded to the Legislature by February 1, 1994, pertaining to the appropriate composition of the amendment, and further recommendation to be reported pertaining to statutory changes that may be necessitated by court unification.

The Commission is giving this study highest priority. The Commission has suspended work on all other studies, except to wrap up projects that are currently on the verge of completion. The study will consume all available Commission resources until February 1, 1994. If SCA 3 is adopted by the voters at the June 1994 primary, the study will further demand that all of the Commission's resources for the duration of 1994 and possibly early 1995 will be devoted to development of recommendations for statutory changes that may be necessitated by trial court unification.

The Commission has commenced work on the first phase of this study, developing recommendations concerning the appropriate composition of the constitutional amendment. The Judicial Council has made its resources available to the Commission on this project, which has expedited the Commission's work. The Commission will circulate a tentative recommendation on the matter in late 1993, and will finalize its recommendations to the Legislature in January 1994.

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5. The referral is made in SCR 26, which was adopted unanimously by the Legislature as 1993 Cal. Stat. res. ch. 96.

The work required for the statutory implementation phase of the study will be much more substantial than the work required for the constitutional amendment phase. In order to complete the required recommendations in a timely fashion, the Commission must begin work on the statutory implementation phase immediately. If SCA 3 is rejected by the voters, the Commission will abandon the statutory implementation work and reactivate its other priority studies.

#### **Administrative Law**

The Commission is giving next priority to the study of administrative law. However, the demands of the study of trial court unification under SCA 3 have caused the Commission to suspend work on the administrative law study. Whether the Commission will be able to reactivate this study during 1994 will depend largely on whether SCA 3 is adopted by the voters at the June 1994 primary election. If it is adopted, it is unlikely that the Commission will be able to conclude work on any phase of the administrative law study during 1994.

The Commission has divided the study into four phases: (1) administrative adjudication, (2) judicial review, (3) administrative rulemaking, and (4) nonjudicial oversight.

The Commission has made substantial progress on the administrative adjudication phase of the study. The Commission's objective is to prepare a new administrative adjudication statute to govern constitutionally and statutorily required administrative hearings of all state agencies, with the exception of the Legislature, the courts and judicial branch, the Governor and Governor's office, and the University of California. The Commission issued a tentative recommendation on the matter for review and comment by interested persons, organizations, and agencies during 1993, and has commenced review of their comments. The Commission has yet to complete review of the comments, make necessary revisions and conforming changes in draft language, and promulgate a final recommendation to the Legislature.

The Commission has also begun work on judicial review of agency action. It has considered two background studies prepared by its consultant Professor Michael Asimow, on "Judicial Review

of Administrative Decision: Standing and Timing" (September 1992) and "The Scope of Judicial Review of Administrative Action" (January 1993). It has received a third and final study prepared by Professor Asimow on this subject, "A Modern Judicial Review Statute to Replace Administrative Mandamus" (November 1993).

### **Creditors' Remedies**

Pursuant to specific statutory requirements, the Commission will study and make recommendations concerning two creditors' remedies matters:

**Exemptions from enforcement of judgments.** The Enforcement of Judgments Law was enacted in 1982 on recommendation of the Commission<sup>6</sup> and became operative on July 1, 1983. Code of Civil Procedure Section 703.120 requires the Commission to review exemptions every 10 years and recommend changes in exempt amounts.

**Experience under 1990 attachment revisions** The Commission is required to study the experience under 1990 amendments to the Attachment Law permitting attachment in cases where the obligation is secured by a lien on personal property or commercial fixtures, in the amount of the difference between the debt and the security interest.<sup>7</sup> The Commission's report concerning the years 1991-93, along with recommendations concerning continuance or modification of the statute, is due at the end of 1994.

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6. See *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001 (1980); *1982 Creditors' Remedies Legislation*, 16 Cal. L. Revision Comm'n Reports 1001 (1982).

7. See 1990 Cal. Stat. ch. 943, § 3 ("The California Law Revision Commission shall study the impacts of the changes in Sections 483.010 and 483.015 of the Code of Civil Procedure made by Sections 1 and 2 of this act during the period from January 1, 1991, to and including December 31, 1993, and shall report the results of its study, together with recommendations concerning continuance or modification of these changes, to the Legislature on or before December 31, 1994."). The 1990 amendments to Sections 483.010 and 483.015 are subject to a January 1, 1996, sunset provision.

The Attachment Law was enacted on Commission recommendation. See, e.g., *Recommendation Relating to Prejudgment Attachment*, 11 Cal. L. Revision Comm'n Reports 701 (1973); *1982 Creditors' Remedies Legislation*, 16 Cal. L. Revision Comm'n Reports 1001, 1171 (1982).

### **Probate Law**

A new Probate Code was enacted in 1990 on recommendation of the Commission<sup>8</sup> and became operative on July 1, 1991. The Commission will continue to monitor the experience under the new code and make recommendations needed to correct any technical or substantive defects that come to its attention.

### **Calendar of Topics for Study**

The Commission's calendar of topics is set out in Appendix 2 in this Annual Report. Each of these topics has been authorized for Commission study by the Legislature.<sup>9</sup> The Commission recommends that the following topics be deleted from its calendar of topics:

- Involuntary Dismissal for Lack of Prosecution
- Statutes of Limitation for Felonies
- Modification of Contracts
- Governmental Liability
- Liquidated Damages
- Parol Evidence Rule
- Pleadings in Civil Actions

Each of these topics has been the subject of comprehensive legislation enacted on Commission recommendation, and none has been the subject of a follow-up Commission recommendation for at least a decade. The Commission does not intend to do further work on

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8. 1990 Cal. Stat. ch. 79. See also 1990 Cal. Stat. ch. 710, § 46 (amending 1990 Cal. Stat. ch. 79, § 37); see also *Recommendation Proposing New Probate Code*, 20 Cal. L. Revision Comm'n Reports 1001 (1990); *Revised and Supplemental Comments to the New Probate Code*, 20 Cal. L. Revision Comm'n Reports 2001 (1990).

9. Section 8293 of the Government Code provides that the Commission shall study, in addition to those topics which it recommends and which are approved by the Legislature, any topics which the Legislature by concurrent resolution refers to it for study. For the current authorization, see 1993 Cal. Stat. res. chs. 31, 96. In addition, Code of Civil Procedure Section 703.120 requires the Commission to review statutes providing for exemptions from enforcement of money judgments each 10 years and to recommend any needed revisions.

any of these topics, and recommends that they be deleted from its calendar.

### **Topics for Future Consideration**

The Commission recommends that it be authorized to study one new topic:

#### **Tolling Statute of Limitations While Defendant Is out of State**

Section 351 of the Code of Civil Procedure provides that statutes of limitations are tolled while the defendant is out of state. This 1872 provision predates long-arm service and jurisdiction concepts now embodied in California law.<sup>10</sup> The section should be reviewed to determine whether it requires revision to bring it into conformity with modern service and jurisdiction provisions.

### **Function and Procedure of Commission**

The principal duties of the Commission<sup>11</sup> are to:

- (1) Examine the common law and statutes for the purpose of discovering defects and anachronisms.
- (2) Receive and consider suggestions and proposed changes in the law from the American Law Institute, the National Conference of Commissioners on Uniform State Laws,<sup>12</sup> bar associations, and other learned bodies, and from judges, public officials, lawyers, and the public generally.
- (3) Recommend such changes in the law as it deems necessary to bring California law into harmony with modern conditions.<sup>13</sup>

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10. See Comment, *California Code of Civil Procedure Section 351: Who's Really Paying the Toll?*, 23 Pac. L.J. 1639 (1992).

11. Gov't Code §§ 8280-8298 (statute governing California Law Revision Commission). See Appendix 1, *infra*.

12. The Legislative Counsel, an ex officio member of the Law Revision Commission, serves as a Commissioner of the Commission on Uniform State Laws. See Gov't Code § 8261. The Commission's Executive Secretary serves as an Associate Member of the National Conference of Commissioners on Uniform State Laws.

13. See Gov't Code § 8288. The Commission is also directed to recommend the express repeal of all statutes repealed by implication or held unconstitutional by the California Supreme Court or the United States Supreme Court. Gov't Code § 8290.



The Commission is required to file a report at each regular session of the Legislature containing a calendar of topics selected by it for study, listing both studies in progress and topics intended for future consideration. As a rule, the Commission may study only topics that the Legislature, by concurrent resolution, authorizes it to study.<sup>14</sup> However, the Commission may study and recommend revisions to correct technical or minor substantive defects in state statutes without a prior concurrent resolution.<sup>15</sup>

The Commission's work on a recommendation begins after a background study has been prepared. The background study may be prepared by a member of the Commission's staff or by a specialist in the field of law involved who is retained as a consultant. Use of expert consultants provides the Commission with invaluable assistance and is economical because the attorneys and law professors who serve as consultants have already acquired the considerable background necessary to understand the specific problems under consideration and receive little more than an honorarium for their services. Expert consultants are also retained to advise the Commission at meetings.

After making its preliminary decisions on a subject, the Commission ordinarily distributes a tentative recommendation to the State Bar, other bar associations, and to numerous other interested persons. Comments on the tentative recommendation are considered by the Commission in determining what recommendation, if any, the Commission will make to the Legislature. When the Commission has reached a conclusion on the matter, its recommendation to the Legislature (including a draft of any legislation necessary to effectuate its recommendation) is published.<sup>16</sup> The background study is sometimes published with the recommendation published by the Commission or in a law review.<sup>17</sup>

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14. See Gov't Code § 8293.

15. See Gov't Code § 8298.

16. Occasionally one or more members of the Commission may not join in all or part of a recommendation submitted to the Legislature by the Commission.

17. For recent background studies published in law reviews, see Kasner, *Donative and Interspousal Transfers of Community Property in California: Where We Are (or Should Be) After MacDonald*, 23 Pac. L.J. 361 (1991); Asimow, *Toward a New Califor-*

The Commission ordinarily prepares an official Comment explaining each section it recommends. These Comments are included in the Commission's recommendations and are frequently revised by the Commission in later reports to reflect amendments made in the legislative process.<sup>18</sup> The reports provide background with respect to the Commission intent in proposing the enactment, such intent being reflected in the Comments to the various sections of the bill contained in the Commission's recommendation, except to the extent that new or revised Comments are set out in the report on the bill as amended.<sup>19</sup>

Comments indicate the derivation of a section and often explain its purpose, its relation to other sections, and potential problems as to its meaning or application. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions.<sup>20</sup> However, while the Commission endeavors in Comments to explain any changes in the law made by a section, the Commission does not claim that every inconsistent case is noted in the Comments, nor can it anticipate judicial conclusions as to the

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*nia Administrative Procedure Act: Adjudication Fundamentals*, 39 UCLA L. Rev. 1067 (1992). For a list of background studies published in law reviews before 1991, see 10 Cal. L. Revision Comm'n Reports 1108 n.5 (1971); 11 Cal. L. Revision Comm'n Reports 1008 n.5, 1108 n.5 (1973); 13 Cal. L. Revision Comm'n Reports 1628 n.5 (1976); 16 Cal. L. Revision Comm'n Reports 2021 n.6 (1982); 17 Cal. L. Revision Comm'n Reports 819 n.6 (1984); 18 Cal. L. Revision Comm'n Reports 212 n.17, 1713 n.20 (1986); 19 Cal. L. Revision Comm'n Reports 513 n.22 (1988); 20 Cal. L. Revision Comm'n Reports 198 n.16 (1990).

18. Many amendments are made on recommendation of the Commission to deal with matters brought to the Commission's attention after publication of its recommendation. In some cases, however, an amendment may be made that the Commission believes is not desirable and does not recommend.

19. For examples of such reports, see Appendices 4-6, 8, and 10 in this Annual Report. Reports containing new or revised comments are printed in the Commission's Annual Report for the year in which the recommendation was proposed. For a description of legislative committee reports adopted in connection with the bill that became the Evidence Code, see *Arellano v. Moreno*, 33 Cal. App. 3d 877, 884, 109 Cal. Rptr. 421, 426 (1973).

20. E.g., *Van Arsdale v. Hollinger*, 68 Cal. 2d 245, 249-50, 437 P.2d 508, 511, 66 Cal. Rptr. 20, 23 (1968); see also *Milligan v. City of Laguna Beach*, 34 Cal. 3d 829, 831, 670 P.2d 1121, 1122, 196 Cal. Rptr. 38, 39 (1983). Commission Comments are published by Bancroft-Whitney and West Publishing Company in their print and CD-ROM editions of the annotated codes, and printed in selected codes prepared by other publishers.

significance of existing case authorities.<sup>21</sup> Hence, failure to note a change in prior law or to refer to an inconsistent judicial decision is not intended to, and should not, influence the construction of a clearly stated statutory provision.<sup>22</sup>

Commission publications are distributed to the Governor, legislative leadership, and, on request, to heads of state departments and a substantial number of judges, district attorneys, lawyers, law professors, and law libraries throughout the state.<sup>23</sup> Thus, a large and representative number of interested persons is given an opportunity to study and comment on the Commission's work before it is considered for enactment by the Legislature.<sup>24</sup>

The reports, recommendations, and studies of the Commission are republished in a set of hardcover volumes that is both a permanent record of the Commission's work and, it is believed, a valuable contribution to the legal literature of the state. These volumes are available at most county law libraries and at some other libraries. Some hardcover volumes are out of print, but others are available for purchase.<sup>25</sup>

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21. See, e.g., *Arellano v. Moreno*, 33 Cal. App. 3d 877, 109 Cal. Rptr. 421 (1973).

22. The Commission does not concur in the *Kaplan* approach to statutory construction. See *Kaplan v. Superior Court*, 6 Cal. 3d 150, 158-59, 491 P.2d 1, 5-6, 98 Cal. Rptr. 649, 653-54 (1971). For a reaction to the problem created by the *Kaplan* approach, see *Recommendation Relating to Erroneously Ordered Disclosure of Privileged Information*, 11 Cal. L. Revision Comm'n Reports 1163 (1973). See also 1974 Cal. Stat. ch. 227.

23. See Gov't Code § 8291. In the past, Commission publications have generally been distributed free of charge. Due to budget constraints, the Commission in 1991 began implementing a charge for Commission publications. For price list, see "Commission Publications" *infra*.

24. For a step-by-step description of the procedure followed by the Commission in preparing the 1963 governmental liability statute, see DeMouly, *Fact Finding for Legislation: A Case Study*, 50 A.B.A.J. 285 (1964). The procedure followed in preparing the Evidence Code is described in 7 Cal. L. Revision Comm'n Reports 3 (1965). See also Quillinan, *The Role and Procedures of the California Law Revision Commission in Probate and Trust Law Changes*, 8 Est. Plan. & Cal. Prob. Rep. 130-31 (Cal. Cont. Ed. Bar 1987).

25. See "Commission Publications" *infra*.

### Personnel of Commission

As of November 1, 1993, the following persons were members of the Law Revision Commission:

<b>Members Appointed by Governor<sup>26</sup></b>	<b><i>Term Expires</i></b>
Sanford M. Skaggs, Walnut Creek <i>Chairperson</i>	October 1, 1993
Daniel M. Kolkey, Los Angeles <i>Vice Chairperson</i>	October 1, 1995
Christine W.S. Byrd, Los Angeles	October 1, 1993
Arthur K. Marshall, Los Angeles	October 1, 1995
Edwin K. Marzec, Santa Monica	October 1, 1995
Forrest A. Plant, Sacramento	October 1, 1993
Colin W. Wied, San Diego	October 1, 1995

#### **Legislative Members<sup>27</sup>**

Assembly Member Terry Friedman, Sherman Oaks  
Senator Bill Lockyer, Hayward

#### **Legislative Counsel<sup>28</sup>**

Bion M. Gregory, Sacramento

Effective September 1, 1993, the Commission elected Sanford M. Skaggs as Chairperson (succeeding Arthur K. Marshall), and Daniel M. Kolkey as Vice Chairperson (succeeding Sanford M. Skaggs). The terms of the new officers end August 31, 1994.

In January 1992, three new Commissioners were appointed. Christine W.S. Byrd succeeded Brad R. Hill. Daniel M. Kolkey

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26. Seven Commission members are appointed by the Governor with the advice and consent of the Senate. Gov't Code § 8281. These Commissioners serve staggered four-year terms. *Id.* The provision in Government Code Section 8281 to the effect that Commission members appointed by the Governor hold office until the appointment and qualification of their successors has been superseded by the rule in Government Code Section 1774 declaring a vacancy if there is no reappointment 90 days following expiration of the term of office. See also Gov't Code § 1774.7 (Section 1774 overrides contrary special rules unless specifically excepted).

27. The Senate and Assembly members of the Commission serve at the pleasure of the appointing power, the Senate Committee on Rules and the Speaker of the Assembly, respectively. Gov't Code § 8281.

28. The Legislative Counsel serves on the Commission by virtue of office. Gov't Code § 8281.

succeeded Ann E. Stodden, and Colin W. Wied succeeded Roger Arnebergh.

As of November 1, 1993, the following persons were on the Commission's staff:

*Legal*

Nathaniel Sterling  
*Executive Secretary*

Barbara S. Gaal  
*Staff Counsel*

Stan Ulrich  
*Assistant Executive Secretary*

Robert J. Murphy  
*Staff Counsel*

*Secretarial*

Victoria V. Matias  
*Composing Technician*

In April 1993, Pamela K. Mishey, on the legal staff since August 1991, left for another position, in the face of additional budget reductions.

In September 1993, Barbara S. Gaal was appointed to a half-time position on the Commission's legal staff.

Beginning in October 1993, the Commission staff has been assisted by a volunteer attorney, Helen Mell of Mountain View.

**Commission Budget**

The Commission's operations are funded from the state general fund. The amount appropriated to the Commission for the 1993-94 fiscal year is \$399,000. This represents a reduction of 15% from the 1992-93 fiscal year and a reduction of 40% over the past three years.

In order to remain productive within the limits of the reduced budget allocation, the Commission has substantially reduced its staffing and revised its operations. The Commission now imposes a charge to cover reproduction and shipping costs on requests for copies of its materials. The Commission has reduced its meeting time to limit travel and other associated meeting costs.

The Commission has eliminated one attorney position, its administrative assistant position, two secretarial positions, and all temporary assistance (legal and nonlegal). The Commission now

functions with two full-time attorneys (including its Executive Secretary), two part-time attorneys, and one secretary.

The result of these reductions is that substantial burdens have been placed on the Commission's remaining staff to maintain productive with fewer resources. The staff attorneys for example, must do all work formerly performed by the administrative assistant and secretaries, in addition to a heavier load of legal work. Currently the work week of the Commission's full time attorneys averages about 60 hours.

All Commissioners have waived their per diem allowances for the 1993-94 fiscal year in order to minimize time-base reductions for existing staff members.

There is some mitigation from outside sources available to the Commission. The Commission receives substantial donations of necessary library materials from the legal publishing community, especially Bancroft-Whitney Company, California Continuing Education of the Bar, and West Publishing Company. The Commission receives additional library materials from other legal publishers and other law reform agencies on an exchange basis, and has access to the Stanford University Law Library. The Commission has also received assistance during 1993 from a volunteer attorney,<sup>29</sup> and pro bono assistance from the law firm of Brobeck, Phleger, and Harrison. The Commission is grateful for their contributions.

The Commission has managed to maintain its productivity despite substantial budget cuts, but this cannot continue indefinitely. The Commission's legislative programs for 1993 and 1994 reflect the strain on the Commission's resources. This trend will continue until more adequate funding is reestablished.

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29. See discussion under "Personnel of Commission" *supra*.

### **Legislative History of Recommendations Submitted to 1993 Legislative Session**

The Commission recommendations were included in seven bills and one concurrent resolution recommended for enactment at the 1993 legislative session. All seven bills were enacted and the concurrent resolution was adopted.

#### **Family Code**

Assembly Bill 1500 (1993 Cal. Stat. ch. 219) was introduced by Assembly Member Speier to effectuate the Commission's recommendations on the Family Code. See *1994 Family Code*, 23 Cal. L. Revision Comm'n Reports 1, 5 (1993); *Family Code: Child Custody*, 23 Cal. L. Revision Comm'n Reports 1, 15 (1993); *Family Code: Reorganization of Domestic Violence Provisions*, 23 Cal. L. Revision Comm'n Reports 1, 23 (1993). The bill was enacted after numerous technical amendments were made.<sup>30</sup> Some additional technical cleanup amendments to resolve conflicts with other bills in the 1993 legislative session were carried in Senate Bill 1068 (1993 Cal. Stat. ch. 876) authored by Senator Wright.

The new Family Code was enacted on Commission recommendation in 1992, with a January 1, 1994, operative date.<sup>31</sup> The 1993 legislation incorporated into the new code other family law measures enacted in 1992,<sup>32</sup> further revised the provisions concerning child custody and domestic violence prevention, and made numerous additional technical changes in anticipation of the new code's operative date of January 1, 1994.

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30. The report on the Family Code sets out the statute as enacted and includes revised Comments reflecting the changes made during the legislative process.

31. See *Family Code*, 22 Cal. L. Revision Comm'n Reports 1 (1992); 1992 Cal. Stat. chs. 162, 163.

32. The Family Code bill (AB 2650) and the conforming revision bill (AB 2641) were both made subordinate to all 1992 family law legislation. See 1992 Cal. Stat. ch. 162, § 14, 1992 Cal. Stat. ch. 163, § 160. Thus, any provisions added to or amended in statutes such as the Family Law Act in the Civil Code had to be repealed and incorporated into the new Family Code structure before the operative date of the new code.

**Deposit of Estate Planning Documents**

Assembly Bill 209 (1993 Cal. Stat. ch. 519) was introduced by Assembly Member Horcher to effectuate a Commission recommendation. See *Deposit of Estate Planning Documents*, 23 Cal. L. Revision Comm'n Reports 965 (1993) (Appendix 7 *infra*). The bill was enacted after amendments were made. See *Report of the California Law Revision Commission on Chapter 519 of the Statutes of 1993 (Assembly Bill 209)*, 23 Cal. L. Revision Comm'n Reports 989 (1993) (Appendix 8 *infra*).

**Parent and Child Relationship for Intestate Succession**

Assembly Bill 1137 (1993 Cal. Stat. ch. 529) was introduced by Assembly Member Knight to effectuate a Commission recommendation. See *Parent and Child Relationship for Intestate Succession*, 23 Cal. L. Revision Comm'n Reports 991 (1993) (Appendix 9 *infra*). The bill was enacted after amendments were made. See *Report of the California Law Revision Commission on Chapter 529 of the Statutes of 1993 (Assembly Bill 1137)*, 23 Cal. L. Revision Comm'n Reports 1009 (1993) (Appendix 10 *infra*).

**Special Needs Trusts**

Senate Bill 978 (1993 Cal. Stat. ch. 305) was introduced by Senator Lockyer and included a section recommended by the Commission concerning special needs trusts. See *Report of the California Law Revision Commission on Chapter 978 of the Statutes of 1993 (Senate Bill 305)*, 23 Cal. L. Revision Comm'n Reports 959 (1993) (Appendix 4 *infra*). See also *Special Needs Trust for Disabled Minor or Incompetent Person*, 22 Cal. L. Revision Comm'n Reports 989 (1992).

**Litigation Involving Decedents**

Assembly Bill 1704 (1993 Cal. Stat. ch. 151) was introduced by Assembly Member Horcher to make technical revisions recommended by the Commission concerning litigation involving decedents. See *Report of the California Law Revision Commission on Chapter 151 of the Statutes of 1993 (Assembly Bill 1704)*, 23 Cal. L. Revision Comm'n Reports 961 (1993) (Appendix 5 *infra*). Additional technical revisions on this subject were included in Assembly Bill 2211 (1993 Cal. Stat. ch. 589), the maintenance of



the codes bill introduced by the Assembly Committee on Judiciary. See *Report of the California Law Revision Commission on Chapter 589 of the Statutes of 1993 (Assembly Bill 2211)*, 23 Cal. L. Revision Comm'n Reports 963 (1993) (Appendix 6 *infra*). See also *Litigation Involving Decedents*, 22 Cal. L. Revision Comm'n Reports 895 (1992).

#### **Resolution Authorizing Topics for Study**

Senate Concurrent Resolution 4 (1993 Cal. Stat. res. ch. 31), introduced by Senator Lockyer on behalf of the Senate Committee on Judiciary, continues the Commission's authority to study 26 topics previously authorized for study and adds authority requested by the Commission to study three new topics: shareholder rights and corporate director responsibilities, unfair business practices, and the Uniform Unincorporated Nonprofit Association Act.

#### **Report on Statutes Repealed by Implication or Held Unconstitutional**

Section 8290 of the Government Code provides:

The commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the state or the Supreme Court of the United States.

Pursuant to this directive, the Commission has reviewed the decisions of the United States Supreme Court and the California Supreme Court published since the Commission's last Annual Report was prepared<sup>33</sup> and has the following to report:

- No decision of the United States Supreme Court holding a state statute repealed by implication has been found.
- No decision of the United States Supreme Court holding a state statute unconstitutional has been found.
- No decision of the California Supreme Court holding a state statute repealed by implication has been found.
- No decisions of the California Supreme Court holding a state statute unconstitutional has been found.

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33. This study has been carried through 5 Cal. 4th 0000 (1993) and 113 S. Ct. 0000 (Advance Sheet No. 18, July 15, 1993).

*[Subject to change on further research.]*

### **Recommendations**

The Law Revision Commission respectfully recommends that the Legislature authorize the Commission to complete its study of the topics previously authorized,<sup>34</sup> to study the new topic recommended for study,<sup>35</sup> and to remove seven topics from the Commission's calendar of topics.<sup>36</sup>

*Pursuant to the mandate imposed by Government Code Section 8290, the Commission recommends the repeal of the provisions referred to under "Report on Statutes Repealed by Implication or Held Unconstitutional," supra, to the extent they have been held unconstitutional and have not been amended or repealed.*

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34. See "Calendar of Topics Authorized for Study," Appendix 2 *infra*.

35. See "New Topic for Future Consideration" *supra*.

36. See "Calendar of Topics for Study" *supra*.

