

Memorandum 2014-41

New Topics and Priorities

Annually, the Commission¹ reviews its current program of work, determines what its priorities will be for the next year, and decides whether to request that topics be added to or deleted from its legislatively enacted Calendar of Topics Authorized for Study (“Calendar of Topics”). The Commission generally undertakes this analysis in the fall, after the Legislature has adjourned for the year.

To assist the Commission in that process, this memorandum summarizes the status of the topics that the Legislature has directed the Commission to study, the other topics that the Commission is actively studying, the topics that the Commission has previously expressed an interest in studying, and the new topics suggestions received in the last year. The memorandum concludes with staff recommendations for allocation of the Commission’s resources during the coming year.

At the Commission meeting, the staff does not plan to discuss each of the many topics described in this memorandum. A Commissioner or other interested person who believes a topic warrants discussion should be prepared to raise it at the meeting. Absent discussion, the staff will handle the topic as recommended in this memorandum.

The following letters, email communications, and other materials are attached to and discussed in this memorandum:

	<i>Exhibit p.</i>
• Charles Collier (04/16/14)	1
• Jan Raymond (02/25/14)	2
• Senate Bill 406 (Evans)	3

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

In preparing this memorandum, the staff had assistance from a legal extern, Anthony Hoisington, who attends UC Davis School of Law. The staff appreciates his work.

PREFATORY NOTE

In reviewing this memorandum, Commissioners and other persons should bear in mind that the Commission's resources are very limited and its existing workload is substantial.

The Commission's current staff is small. The staff includes four attorneys, only two of whom are full-time. In addition, the Commission staff includes a secretary and a half-time administrative analyst. The Commission also receives some assistance from externs and other law students, particularly from UC Davis School of Law.

While its staff resources are quite limited, the Commission must nonetheless continue to demonstrate its value to the state by producing high quality reports that significantly improve the law and benefit the citizens of California. To accomplish this goal, **the Commission must use its resources wisely, focusing on projects that serve the Legislature's needs or appear likely to lead to helpful changes in the law.**

Similarly, the Legislature has made clear that it wants the Commission to focus its efforts on such projects. For example, it has directed the Commission to notify the judiciary committees upon commencing a new study. A recent bill analysis explains the purpose of that requirement:

Given the limited resources of the commission which has suffered budget cuts in past years, early communication to the Legislature of proposed topics of study would allow legislative input on whether a particular proposed topic would likely be controversial and thus perhaps avoided by the commission *so that it may devote its limited resources to other, more productive studies.*²

COMMISSION AUTHORITY

The Commission's enabling statute recognizes two types of topics the Commission is authorized to study: (1) those that the Commission identifies for

2. Assembly Committee on Judiciary Analysis of SCR 83 (Jun. 6, 2014), p. 3 (emphasis added).

study and lists in the Calendar of Topics that it reports to the Legislature, and (2) those that the Legislature assigns to the Commission directly, by statute or concurrent resolution.³

In the past, the bulk of the Commission's study topics have come through the first route — matters identified by the Commission and approved by the Legislature. Once the Commission identifies a topic for study, it cannot begin to work on the topic until the Legislature, by concurrent resolution, authorizes the Commission to conduct the study.

Direct legislative assignments have become much more common in recent years. Many of the Commission's recent studies were directly assigned by the Legislature, not requested by the Commission.

CURRENT LEGISLATIVE ASSIGNMENTS

Several topics have been specifically assigned to the Commission by statute or resolution. One of these assignments, recognition of tribal and foreign court judgments, came out of the 2014 legislative session. All of the current legislative assignments are described below.

Recognition of Tribal and Foreign Court Judgments

In August 2014, the Governor signed Senate Bill 406 (Evans) into law.⁴ This bill assigns the Commission a new study. Specifically, section 1 of the bill directs the Commission to:

... within existing resources, conduct a study of the standards for recognition of a tribal court or a foreign court judgment, under the Tribal Court Civil Money Judgment Act (Title 11.5 (commencing with Section 1730) of Part 3 of the Code of Civil Procedure) and the Uniform Foreign-Country Money Judgments Recognition Act (Chapter 2 (commencing with Section 1713) of Title 11 of Part 3 of the Code of Civil Procedure). On or before January 1, 2017, the California Law Revision Commission shall report its findings, along with any recommendations for improvement of those standards, to the Legislature and the Governor.⁵

3. Gov't Code § 8293.

4. 2014 Cal. Stat. ch. 243. For ease of reference, the chaptered bill is reproduced as an attachment to this memorandum. See Exhibit p. 3.

5. 2014 Cal. Stat. ch. 243, § 1.

In addition, to this assignment, the bill establishes the Tribal Court Civil Money Judgment Act (“Tribal Act”) to govern the process of recognizing and enforcing tribal court civil money judgments.⁶ By its own terms, the Tribal Act sunsets on January 1, 2018 unless a later enacted statute deletes or extends that date.⁷

The Legislature requires the Commission to report its findings “[o]n or before January 1, 2017.” This date was specifically selected to ensure that the Legislature would have time to act, with the benefit of the Commission’s report, prior to the 2018 sunset date of the Tribal Act.⁸

At the September meeting, the Commission authorized the staff to begin work in this topic right away, subject to reconsideration of priorities in conjunction with this memorandum.⁹

This study is a direct legislative assignment with a specified deadline. Typically, the Commission gives highest priority to such a study. **The staff recommends that the Commission give this topic high priority to ensure completion of the work in the timeline directed by the Legislature.**

State and Local Agency Access to Customer Information from Communications Service Providers

In September 2013, Senate Concurrent Resolution 54 (Padilla) was adopted. This resolution directs the Commission to:

... report to the Legislature recommendations to revise statutes governing access by state and local government agencies to customer information from communications service providers in order to do all of the following:

(a) Update statutes to reflect 21st Century mobile and Internet-based technologies.

(b) Protect customers’ constitutional rights, including, but not limited to, the rights of privacy and free speech, and the freedom from unlawful searches and seizures.

(c) Enable state and local government agencies to protect public safety.

(d) Clarify the process communications service providers are required to follow in response to requests from state and local agencies for customer information or in order to take action that would affect a customer’s service, with a specific description of

6. 2014 Cal. Stat. ch. 243, § 4.

7. 2014 Cal. Stat. ch. 243, §§ 2, 3, 4.

8. See Assembly Committee on Judiciary Analysis of SB 406 (June 13, 2014), p. 8.

9. Minutes (Sept. 2014), p. 3.

whether a subpoena, warrant, court order, or other process or documentation is required[.]¹⁰

After the adoption of SCR 54, Senator Padilla sent a letter to the Commission providing background information on this assignment.¹¹

In 2013, the Legislature also passed Senate Bill 467 (Leno), which would have substantively changed the rules governing law enforcement access to communication records. The Governor vetoed that bill due to concerns about new notice requirements.¹²

The resolution does not set a deadline for completion of the study, but the consistent legislative attention indicates that this topic is a priority issue. The Commission made significant progress on this topic in 2014, but much work remains. **Given its history and the current attention on this issue, the Commission should continue to give this topic high priority.**

Fish and Wildlife Law

In January 2012, the Commission received a letter jointly signed by the Chair of the Senate Natural Resources and Water Committee (Senator Fran Pavley) and the Chair of the Assembly Water, Parks, and Wildlife Committee (now former Assembly Member Jared Huffman), urging the Commission to conduct a comprehensive review of the Fish and Game Code.¹³ The same year, the Legislature granted the necessary authority to conduct the study:

Resolved, That the Legislature approves for study by the California Law Revision Commission the new topic listed below:

Whether the Fish and Game Code and related statutory law should be revised to improve its organization, clarify its meaning, resolve inconsistencies, eliminate unnecessary or obsolete provisions, standardize terminology, clarify program authority and funding sources, and make other minor improvements, without making any significant substantive change to the effect of the law¹⁴

Although the resolution does not set a deadline for completion of the study, the Legislature presumably would like the work completed promptly.

10. 2013 Cal. Stat. res. ch. 115.

11. See Memorandum 2013-43, Exhibit pp. 4-5.

12. Governor's Veto Message for SB 467 (Oct. 12, 2013) (*available at* http://gov.ca.gov/docs/SB_467_2013_Veto_Message.pdf).

13. See Memorandum 2012-5, Exhibit pp. 32-33.

14. 2012 Cal. Stat. res. ch. 108.

The Commission made significant progress on this topic in 2014. In the course of its work, the Commission identified a number of beneficial changes that could be made before completion of the entire recodification. It approved and circulated a tentative recommendation proposing those changes. The Commission will consider the comments on the tentative recommendation at the October meeting. If the Commission approves a final recommendation on matters addressed by the tentative recommendation, the staff will seek introduction of the proposed legislation in 2015.

While the Commission made significant progress on this topic in 2014, much work remains to complete the entire recodification. **The Commission should continue to give this topic high priority.**

The Relationship Between Mediation Confidentiality and Attorney Malpractice and Other Misconduct

In 2012, Assembly Member Wagner introduced a bill to create a new exception to the law governing the confidentiality of mediation communications. Under that bill as introduced, confidentiality would not apply to:

The admissibility in an action for legal malpractice, an action for breach of fiduciary duty, or both, or in a State Bar disciplinary action, of communications directly between the client and his or her attorney during mediation if professional negligence or misconduct forms the basis of the client's allegations against the attorney.¹⁵

During the legislative session, the bill was amended to remove its substance and instead require the Commission to study the matter. The bill was not enacted. Instead, the resolution relating to the Commission's Calendar of Topics was amended to authorize the proposed Commission study, thus:

Resolved, That the Legislature approves for study by the California Law Revision Commission the new topic listed below:

(a) Analysis of the relationship under current law between mediation confidentiality and attorney malpractice and other misconduct, and the purposes for, and impact of, those laws on public protection, professional ethics, attorney discipline, client rights, the willingness of parties to participate in voluntary and mandatory mediation, and the effectiveness of mediation, as well as any other issues that the commission deems relevant. Among other matters, the commission shall consider the following:

15. AB 2025 (Wagner), as introduced Feb. 23, 2012.

(1) Sections 703.5, 958, and 1119 of the Evidence Code and predecessor provisions, as well as California court rulings, including, but not limited to, *Cassel v. Superior Court* (2011) 51 Cal.4th 113, *Porter v. Wyner* (2010) 183 Cal.App.4th 949, and *Wimsatt v. Superior Court* (2007) 152 Cal.App.4th 137.

(2) The availability and propriety of contractual waivers.

(3) The law in other jurisdictions, including the Uniform Mediation Act, as it has been adopted in other states, other statutory acts, scholarly commentary, judicial decisions, and any data regarding the impact of differing confidentiality rules on the use of mediation.

(b) In studying this matter, the commission shall request input from experts and interested parties, including, but not limited to, representatives from the California Supreme Court, the State Bar of California, legal malpractice defense counsel, other attorney groups and individuals, mediators, and mediation trade associations. The commission shall make any recommendations that it deems appropriate for the revision of California law to balance the competing public interests between confidentiality and accountability.¹⁶

The Commission has devoted some time to this topic in 2014, however there is still much to be done before the study is completed. **While the resolution does not set a deadline for completion of the study, the Commission should consider this a legislative priority and continue to prioritize work on this topic.**

Deadly Weapons

In 2006, the Legislature directed the Commission to study the statutes relating to control of deadly weapons.¹⁷ The objective was to propose legislation that would clean up and clarify the statutes, without making substantive changes. The Commission completed its final report on this topic in compliance with the due date of July 1, 2009. Two voluminous bills¹⁸ and some follow-up legislation¹⁹ have since been enacted, fully implementing the recodification.

16. 2012 Cal. Stat. res. ch. 108 (ACR 98 (Wagner)).

17. 2006 Cal. Stat. res. ch. 128 (ACR 73 (McCarthy)).

18. See 2010 Cal. Stat. ch. 178 (SB 1115 (Committee on Public Safety)); 2010 Cal. Stat. ch. 711 (SB 1080 (Committee on Public Safety)).

19. See 2013 Cal. Stat. ch. 76, §§ 145.5, 147.3, 153.5 (AB 383 (Wagner)); 2012 Cal. Stat. ch. 162, §§ 12-14, 203, 227 (SB 1171 (Harman)); 2011 Cal. Stat. ch. 285 (AB 1402 (Committee on Public Safety)).

In addition to the recodification, the 2009 report included a list of “Minor Clean-Up Issues for Possible Future Legislative Attention.”²⁰ The Legislature authorized the Commission to study those issues.²¹

In 2013, the Commission completed a recommendation addressing some of the minor clean-up issues identified in the Commission’s 2009 report.²² This year, the Legislature enacted Assembly Bill 1798, which implements that recommendation.²³

Currently, the Commission is not actively working on this topic. **As time permits, the Commission should continue to consider the minor clean-up matters identified in its earlier report.** These are narrow issues that are generally suitable for student projects under staff supervision.

Trial Court Unification Follow-Up Studies

Government Code Section 70219 directs the Commission and the Judicial Council to study certain topics identified in the Commission’s report on *Trial Court Unification: Revision of Codes*.²⁴ The Commission was given primary responsibility for some of those topics, the Judicial Council was given primary responsibility for other topics, and a few topics were jointly assigned to the Commission and the Judicial Council.

Topics For Which the Commission Has Primary Responsibility

The Commission has completed work on all but one of the topics for which it has primary responsibility. The remaining topic is publication of legal notice in a county with a unified superior court.

At the Commission’s September meeting, the Commission approved a tentative recommendation on this topic. It is currently being circulated for public comment, with a comment deadline of October 31st. **The staff intends to continue working diligently to resolve this outstanding issue.**

20. *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm’n Reports 217, 265-80 (2009).

21. See 2010 Cal. Stat. ch. 711, § 7.

22. *Deadly Weapons: Minor Clean-Up Issues*, 43 Cal. L. Revision Comm’n Reports 63 (2013).

23. 2014 Cal. Stat. ch. 103.

24. 28 Cal. L. Revision Comm’n Reports 51, 82-86 (1998)

Topics Jointly Assigned to the Commission and the Judicial Council

The Commission's report on *Trial Court Unification: Revision of Codes* also called for a joint study with the Judicial Council reexamining the three-track system for civil cases (traditional superior court cases, traditional municipal court cases, and small claims cases) in light of unification. Under this rubric, the Commission worked on two projects with the Judicial Council. One of them ended with the enactment of legislation.²⁵

The second joint project was a study of the jurisdictional limits for small claims cases and limited civil cases. The Commission tabled that project a decade ago, because further work appeared unlikely to be fruitful.²⁶ Circumstances warranting reactivation of the project have not materialized. **At this point, it seems reasonable to consider the matter closed** (subject to possible reopening if appropriate circumstances arise).

Trial Court Restructuring

The Legislature has directed the Commission to recommend revision of statutes that have become obsolete due to trial court restructuring (unification, state funding, and employment reform).²⁷ In response to this directive, the Commission has done a vast amount of work. Six bills and a constitutional measure implementing revisions recommended by the Commission have become law, affecting over 1,700 sections throughout the codes.²⁸

More work needs to be done to complete the assigned task of revising the codes to reflect trial court restructuring. **Consistent with other demands on staff resources, the Commission should continue its work in this area.**

Enforcement of Money Judgments

Code of Civil Procedure Section 681.035 authorizes the Commission to maintain a continuing review of the statutes governing enforcement of judgments. The Commission submits recommendations from time to time under this authority.

25. See *Unnecessary Procedural Differences Between Limited and Unlimited Civil Cases*, 30 Cal. L. Revision Comm'n Reports 443 (2000); 2001 Cal. Stat. ch. 812.

26. See Memorandum 2013-54, pp. 8-9.

27. See Gov't Code § 71674.

28. See 2002 Cal. Stat. ch. 784; 2003 Cal. Stat. ch. 149; 2007 Cal. Stat. ch. 43; 2008 Cal. Stat. ch. 56; 2010 Cal. Stat. ch. 212, §§ 2, 3, 6, 7, 8, 10, 11, 12; 2012 Cal. Stat. ch. 470; 2002 Cal. Stat. ch. 88 (ACA 15), approved by the voters Nov. 5, 2002 (Prop. 48).

In the course of the Commission’s new study regarding tribal and foreign country money judgments, the staff anticipates that there may be ancillary issues that could be addressed by the Commission in accordance with this related authority. **However, there are currently no active studies focusing solely on this topic.**

Technical and Minor Substantive Defects

The Commission is authorized to recommend revisions to correct technical and minor substantive defects in the statutes generally, without specific direction by the Legislature.²⁹ The Commission exercises this authority from time to time.

In 2013, the Commission completed a recommendation proposing to fix, among other things, certain technical mistakes in the Probate Code.³⁰ In 2014, the material from this recommendation was incorporated into an omnibus committee bill, which was enacted.³¹

No new action on this topic is required at this time.

Statutes Repealed by Implication or Held Unconstitutional

The Commission is directed by statute to recommend the express repeal of any statute repealed by implication or held unconstitutional by the California Supreme Court or the United States Supreme Court.³² The Commission obeys this directive annually in its Annual Report. However, the Commission does not ordinarily propose legislation to effectuate these recommendations.

No new action on this topic is required at this time.

CALENDAR OF TOPICS

The Commission’s Calendar of Topics currently includes 23 topics.³³ The next section of this memorandum reviews the status of each topic listed in the Calendar. On a number of the listed topics, the Commission has completed work,

29. Gov’t Code § 8298.

30. *Technical and Minor Substantive Statutory Corrections*, 43 Cal. L. Revision Comm’n Reports 35 (2013).

31. 2014 Cal. Stat. ch. 913, §§ 13, 14, 15, 26, 27, 28, 29, 30, 31, 34 (AB 2747 (Committee on Judiciary)).

32. Gov’t Code § 8290.

33. See 2014 Cal. Stat. res. ch. 63.

but the topic is retained in the Calendar in case corrective legislation is needed in the future.

In a number of instances, we also describe some possible areas of future work, which have been raised in previous years and retained for further consideration. New suggestions are discussed later in this memorandum.

1. Creditors' Remedies

Beginning in 1971, the Commission has made a series of recommendations covering specific aspects of creditors' remedies. In 1982, the Commission obtained enactment of a comprehensive statute governing enforcement of judgments. Since enactment of this statute, the Commission has submitted a number of narrower recommendations on this topic to the Legislature.

Possible subjects for study under this topic are discussed below.

Judicial and Nonjudicial Foreclosure of Real Property Liens

The Commission has long recognized that foreclosure is a topic in need of work. Nevertheless, the Commission has consistently deferred undertaking a project on this subject, because of the magnitude, complexity, and controversy involved in that area of the law.

In recent years, the Commission has received suggestions from a number of sources regarding foreclosure procedure.³⁴ The Commission has not pursued any of those suggestions, but has kept them on hand.

With the recent collapse in the housing market, the legal landscape governing foreclosure issues has been changing. In recent years, the Legislature has enacted several foreclosure-related reforms,³⁵ and the federal government has also pursued reforms in this area.³⁶ In addition, two pending cases before the California Supreme Court address foreclosure-related issues.³⁷ **Given the**

34. See, e.g., Memorandum 2006-36, pp. 21-22 & Exhibit pp. 44-60; Memorandum 2005-29, p. 20; Memorandum 2002-17, p. 5 & Exhibit p. 47; Memorandum 2001-4, Exhibit pp. 1-2.

35. See 2012 Cal. Stat. ch. 86 (AB 278 (Eng)); 2012 Cal. Stat. ch. 87 (SB 900 (Leno)); 2012 Cal. Stat. ch. 562 (AB 2610 (Skinner)); 2012 Cal. Stat. ch. 569 (AB 1950 (Davis)); 2012 Cal. Stat. ch. 568 (AB 1474 (Hancock)); 2012 Cal. Stat. ch. 201 (AB 2314 (Carter)).

36. See, e.g., P.L. 110-289 (Secure and Fair Enforcement for Mortgage Licensing Act of 2008); P.L. 111-22 (Protecting Tenants at Foreclosure Act of 2009, law sunsetted as of Dec. 31, 2012); P.L. 111-203 (2010), P.L. 110-343 (2008); see also <http://www.consumerfinance.gov/mortgage-rules-at-a-glance/> (Summary of Consumer Financial Protection Bureau Mortgage Rules).

37. See *Coker v. JP Morgan Chase Bank, N.A.*, 218 Cal. App. 4th 1, 159 Cal. Rptr. 3d 555 (2013), review granted, 312 P.3d 829, 164 Cal. Rptr. 3d 413 (Nov. 20, 2013, No. S213137); *Yvanova v. New*

changing policy landscape on this topic, unless the Legislature affirmatively seeks the Commission’s assistance, it does not appear to be a good time for the Commission to commence a study of foreclosure.

2. Probate Code

The Commission drafted the current version of the Probate Code in 1990. The Commission continues to monitor experience under the code, and make occasional recommendations.

The Commission is currently involved in, or has previously expressed interest in pursuing, a number of probate-related topics, as discussed below.

Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

The Commission finalized a recommendation on the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (“UAGPPJA”) in 2013. In 2014, a bill was enacted to implement that recommendation.³⁸

At this point, the main work on this study is complete. However, the staff anticipates that there might be some follow-up issues to address. The staff will monitor this topic to determine whether any issues arise that require the Commission’s attention.

Creditor Claims, Family Protections, and Nonprobate Assets

A few years ago, the Commission accepted an offer from its former Executive Secretary, Nathaniel Sterling, to prepare a background study on the liability of nonprobate transfers for creditor claims and family protections. In other words, if a decedent’s property passes outside of probate (e.g., by a trust, joint tenancy, or transfer-on-death beneficiary designation), to what extent should that property be liable to satisfy the decedent’s creditors (including persons who are entitled to the “family protections” applicable in probate)? And what procedures should be used to address any such liability?

Mr. Sterling summarizes the underlying problem as follows:

The move from a probate-based system for transfer of wealth at death to a nonprobate system has left California law in disarray. The policy of the law to require payment of a decedent’s just debts

Century Mortgage Corp., 226 Cal. App. 4th 495, 172 Cal. Rptr. 3d 104 (2014), *review granted*, 331 P.3d 1275, 176 Cal. Rptr. 3d 266 (Aug. 27, 2014, No. S218973).

38. 2014 Cal. Stat. ch. 553 (SB 940 (Jackson)).

and to protect a decedent's surviving spouse and children in probate has been shredded by the ad hoc development of nonprobate transfer law.³⁹

In 2010, the Commission circulated the background study for a 120-day public comment period.⁴⁰ Copies of the study were sent, with a request for review and comment, to a number of interested groups and individuals. No detailed comments were received in response to that request. The Commission did not follow up at that time, because new assignments from the Legislature had pushed the matter to the back burner.

In June 2013, the Commission considered a memorandum introducing this study and approved the general approach to the study outlined in that memorandum.⁴¹ However, further work on the topic was suspended due to other demands on staff resources.

While the Commission gives some priority to active studies and studies for which we have an expert consultant, we have generally given higher priority to direct legislative assignments. Given our current slate of direct legislative assignments, we do not have the staff resources to proceed with this study at this time. **The staff proposes to return to this study once our higher priority workload has eased.**

Presumptively Disqualified Fiduciaries

A number of years ago, the Legislature directed the Commission to study the operation and effectiveness of Probate Code provisions that establish a statutory presumption of fraud and undue influence when a person makes a gift to a "disqualified person" (i.e., to the drafter of the donative instrument, to a fiduciary who transcribed the donative instrument, or to the care custodian of a transferor who is a dependent adult). After studying the topic, the Commission recommended a number of improvements to those provisions.⁴² Legislation to implement that recommendation was introduced as SB 105 (Harman) in 2009.

The same year, the Commission began studying a related matter — whether the statutory presumption described above should also apply to an instrument naming a fiduciary. In other words, should there be a presumption of fraud or

39. See Memorandum 2012-45, Exhibit p. 2.

40. See Memorandum 2010-27; Minutes (June 2010), p. 7.

41. Memorandum 2013-25; Minutes (June 2013), p. 14.

42. See *Donative Transfer Restrictions*, 38 Cal. L. Revision Comm'n Reports 107 (2008).

undue influence when an instrument names a “disqualified person” as the fiduciary of the person executing the instrument?

Because of the functional interrelationship between the two studies (both would apply the same factual predicate and evidentiary rules in defining the scope and effect of the presumption), the Commission decided to table the latter study until after the Legislature decided the fate of SB 105.

In 2010, the Legislature enacted SB 105, with amendments.⁴³ **With that matter settled, the Commission should reactivate its study of presumptively disqualified fiduciaries when its resources permit.**

Uniform Custodial Trust Act

In 2000, the Commission decided to study the Uniform Custodial Trust Act on a low priority basis. That act provides a simple procedure for holding assets for the benefit of an adult (perhaps elderly or disabled), similar to that available for a minor under the Uniform Transfers to Minors Act.

California has not yet adopted the Uniform Custodial Trust Act, so the matter remains an appropriate topic for study. However, **this topic does not appear to be as pressing as some of the other topics awaiting the Commission’s attention.**

3. Real and Personal Property

The study of property law was authorized by the Legislature in 1983, consolidating various previously authorized aspects of real and personal property law into one comprehensive topic.

Two subjects under this umbrella are discussed below.

Mechanics Lien Law

Several years ago, the Commission recommended a complete recodification of mechanics lien law. A bill to implement the Commission’s recommendation was enacted in 2010, and a clean-up bill was enacted in 2011.⁴⁴ The recodification of mechanics lien law did not become operative until July 1, 2012.

In preparing the recommendation and seeking its enactment, the Commission deferred consideration of several possible substantive improvements to existing

43. 2010 Cal. Stat. ch. 620; Prob. Code §§ 21360-21392.

44. See 2010 Cal. Stat. ch. 697 (SB 189 (Lowenthal)); 2011 Cal. Stat. ch. 44 (SB 190 (Lowenthal)).

mechanics lien law. The Commission's overall view was that the recodification should be addressed separately from any significant substantive changes, which may be appropriate for future work by the Commission.

The staff recommends deferring the commencement of any new work on mechanics liens, so that such work can benefit from additional experience with the new statutory scheme.

4. Family Law

The Family Code was drafted by the Commission in 1992. Since then, the general topic of family law has remained on the Commission's agenda for ongoing review.

One aspect of this topic, which the Commission has kept in mind for possible future study, is discussed below.

Marital Agreements Made During Marriage

California has enacted the Uniform Premarital Agreements Act, as well as detailed provisions concerning agreements relating to rights on death of one of the spouses. Yet there is no general statute governing marital agreements made during marriage. Such a statute would be useful, but the development of the statute would involve controversial issues.

In 2012, the Uniform Law Commission ("ULC") approved the Uniform Premarital and Marital Agreements Act. Any Commission study of this topic should begin by examining the uniform act.

If the Commission decides to undertake such work, it could also consider clarifying certain language in Family Code Section 1615, governing the enforceability of premarital agreements.⁴⁵ In particular, the Commission could study circumstances in which the right to support can be waived.⁴⁶

This is an appropriate topic for Commission study, however it does not appear to be as pressing as some of the other topics awaiting the Commission's attention.

45. See Memorandum 2005-29, p. 25 & Exhibit pp. 21-36.

46. See *In re Marriage of Pendleton and Fireman*, 24 Cal. 4th 39, 5 P.3d 839, 99 Cal. Rptr. 2d 278 (2000).

5. Discovery in Civil Cases

Some time ago, the Commission undertook a study of civil discovery, with the benefit of a background study prepared by Prof. Gregory Weber of McGeorge School of Law. A number of reforms were enacted, most recently the Commission's recommendation on *Deposition in Out-of-State Litigation*.⁴⁷ No new proposal is in progress at this time.

The Commission has on hand numerous suggestions relating to various aspects of civil discovery; it has also identified other topics of interest. Thus far, the focus has been on relatively noncontroversial issues of clarification. This approach has been successful and may be more productive than investigating a major reform that might not be politically viable.

The Commission should reactivate the discovery study when its resources permit. At that time, it can assess which discovery topic to pursue next.

6. Rights and Disabilities of Minor and Incompetent Persons

Since authorization of this study in 1979, the Commission has submitted a number of recommendations relating to rights and disabilities of minor and incompetent persons. There are no active proposals relating to this topic before the Commission at this time. **However, the topic should be retained on the Calendar of Topics, in case such a proposal is presented in the future.**

7. Evidence

The Evidence Code was enacted in 1965 on recommendation of the Commission. Since then, the Commission has had continuing authority to study issues relating to the Evidence Code. The Commission has made numerous recommendations on evidence issues, most of which have been enacted.

The Commission has on hand an extensive background study prepared by Prof. Miguel Méndez (UC Davis School of Law and Stanford Law School), which is a comprehensive comparison of the Evidence Code and the Federal Rules of Evidence. A number of years ago, the Commission began to examine some topics covered in the background study, but encountered resistance from within the Legislature and suspended its work in 2005.

47. 37 Cal. L. Revision Comm'n Reports 99 (2007)

The staff later compiled a list of specific evidence issues for possible study, which appear likely to be relatively noncontroversial.⁴⁸ The Commission directed the staff to seek guidance from the judiciary committees regarding whether to pursue those issues. The staff explored this matter to some extent, without a clear resolution. **Unless the Commission otherwise directs, the staff will raise the matter with the judiciary committees again, but not until there is a realistic possibility of being able to work on this matter.**

8. Alternative Dispute Resolution

The present California arbitration statute was enacted in 1961, on Commission recommendation. The topic was expanded in 2001 to include mediation and other alternative dispute resolution techniques.

At this time, the Commission is not actively working on any proposal pursuant to that grant of authority. **However, the topic should be retained on the Calendar of Topics, in case such work appears appropriate in the future.** For instance, the Commission's ongoing study of mediation confidentiality discussed above might alert the Commission to other aspects of alternative dispute resolution that warrant attention.

9. Administrative Law

This topic was authorized for Commission study in 1987, both by legislative initiative and at the request of the Commission. After extensive studies, a number of bills dealing with administrative adjudication and administrative rulemaking were enacted.

There are no active proposals relating to this topic before the Commission at this time. **However, the topic should be retained on the Calendar of Topics, in case any adjustments are needed in the laws enacted on Commission recommendation.**

10. Attorney's Fees

The Commission requested authority to study attorney's fees in 1988, pursuant to a suggestion of the California Judges Association ("CJA"). The staff did a substantial amount of preliminary work on the topic in 1990, but the work

48. See Memorandum 2006-36, Exhibit pp. 70-71.

was suspended pending guidance from CJA on specific problems requiring attention, which were never identified.

In 1999, the Commission began studying one aspect of this topic — award of costs and contractual attorney’s fees to the prevailing party. The Commission considered a number of issues and drafts, but had to put the matter on the back burner in 2001 due to other demands on staff and Commission time.

The Commission has also considered studying the possibility of standardizing various attorney’s fee statutes.

The Commission might want to turn back to the topic of attorney’s fees at some time in the future, when its resources permit.

11. Uniform Unincorporated Nonprofit Association Act

In 1993, the Commission was authorized to study whether California should enact the Uniform Unincorporated Nonprofit Association Act. The Commission ultimately decided not to recommend enactment, but made other recommendations to clarify the status and governance of unincorporated associations, which were enacted.

In 2008, the ULC revised the Uniform Unincorporated Nonprofit Association Act. At some point, it may be appropriate to examine the revised act and consider whether to adopt any aspect of it in California. In any event, **the Commission should retain the topic on its Calendar of Topics, in case issues arise relating to provisions enacted on its recommendation.**

12. Trial Court Unification

Trial court unification was assigned by the Legislature in 1993. Constitutional amendments and legislation recommended by the Commission have since been enacted.

Further work still needs to be done, as discussed above under “Trial Court Unification Follow-Up Studies” and “Trial Court Restructuring.”

The Commission also did extensive work on two other projects: (1) appellate and writ review under trial court unification (Study J-1310), and (2) equitable relief in a limited civil case (Study J-1323). The Commission tabled those projects years ago for budgetary reasons,⁴⁹ and the attorney who handled them has since retired. We have not received any communications urging the Commission to

49. See Memorandum 2008-40, pp. 3-4.

reactivate these studies. **At this point, it seems appropriate to regard these matters closed** (subject to possible reopening if appropriate circumstances arise).

13. Contract Law

The Commission's Calendar of Topics includes a study of the law of contracts, which includes a study of the effect of electronic communications on the law governing contract formation, the statute of frauds, the parol evidence rule, and related matters.

In this regard, the staff has been monitoring developments relating to the Uniform Electronic Transactions Act ("UETA"). California enacted a version of UETA in 1999.⁵⁰ However, in 2000, related federal legislation was enacted, the Electronic Signatures in Global and National Commerce Act ("E-SIGN").⁵¹

The interrelationship of the two legislative acts is complex, but it appears E-SIGN may preempt at least some aspects of state UETA law. In 2013, the Commission's work touched on a related issue, the impact of a UAGPPJA provision relating to E-SIGN preemption.⁵² A staff memorandum discussed the history of UETA and E-SIGN, but it did not address the broader question of E-SIGN's preemptive effect on California's UETA enactment. As yet, the courts have not resolved this complicated issue.

The staff will continue to monitor this situation, but does not recommend commencing a project in this area until the courts have offered more guidance on the preemption issue.

14. Common Interest Developments

Common interest development ("CID") law was added to the Commission's Calendar of Topics in 1999, at the request of the Commission. The Commission has been actively engaged in a study of various aspects of this topic since that time, and has issued several recommendations, most of which have been enacted.

50. Civ. Code §§ 1633.1-1633.17.

51. 15 U.S.C. §§ 7001-7006, 7021, 7031.

52. Memorandum 2013-14

Most recently, the Legislature enacted Commission recommendations to (1) recodify the Davis-Stirling Common Interest Development Act,⁵³ and (2) create a new and separate act for commercial and industrial common interest developments.⁵⁴

The Commission has a long list of possible future CID study topics. For example, the Commission previously decided to address miscellaneous other areas of CID law in which the application of the Davis-Stirling Act appears inappropriate or unclear — e.g., a stock cooperative without a declaration, a homeowner association organized as a for-profit association, or a subdivision with a mandatory road maintenance association that is not technically a CID.⁵⁵

Given our extensive work in this area of law, it would make sense to return to such matters as resources permit.

15. Statute of Limitations for Legal Malpractice

A number of years ago, the Commission did extensive work on the statute of limitations for legal malpractice. After circulating both a tentative recommendation and a revised tentative recommendation, the Commission decided that further work probably would be unproductive and discontinued the study without issuing a final recommendation. **The topic remains on the Commission’s Calendar of Topics, in case future developments make it worthwhile to recommence work in this area.**

16. Coordination of Public Records Statutes

A study of the laws governing public records was added to the Commission’s Calendar of Topics in 1999, at the request of the Commission. The objectives are to coordinate the public records law with laws protecting personal privacy, and to update the public records law in light of electronic communications and databases.

While this is an important study, we have not given it priority. **In light of current constraints on Commission and staff resources, the staff does not**

53. See 2012 Cal. Stat. ch. 180 (AB 805 (Torres)); 2012 Cal. Stat. ch. 181 (AB 806 (Torres)); see also 2013 Cal. Stat. ch. 183 (clean-up legislation) (SB 745 (Committee on Transportation and Housing)).

54. 2013 Cal. Stat. ch. 605 (SB 752 (Roth)).

55. See Minutes (Oct. 29, 2008).

recommend that the Commission undertake a project of this scope and complexity at this time.

17. Criminal Sentencing

Review of the criminal sentencing statutes was added to the Commission's Calendar of Topics in 1999, at the request of the Commission. The Commission began to work on this matter, but received negative input and the proposal was tabled.

In 2006, the Legislature directed the Commission to study and report on a nonsubstantive reorganization of the statutes governing deadly weapons, which include criminal sentencing enhancements relating to the possession or use of deadly weapons. That study has now been completed, but follow-up work is still in progress.⁵⁶ **In light of its possible relevance to the deadly weapons study, the existing authority to study criminal sentencing should be retained.**

18. Subdivision Map Act and Mitigation Fee Act

In 2001, a study of the Subdivision Map Act and Mitigation Fee Act was added to the Commission's Calendar of Topics, at the request of the Commission. The objective of the study would be a revision to improve organization, resolve inconsistencies, and clarify and rationalize provisions of these complex statutes.

This project would be a massive, mostly nonsubstantive recodification. Recent experience shows that such projects can take several years to complete and the results may be difficult to enact. **In light of current limitations on Commission and staff resources, the staff does not recommend that the Commission undertake this project at this time.**

19. Uniform Statute and Rule Construction Act

In 2003, a study of the Uniform Statute and Rule Construction Act (1995) was added to the Commission's Calendar of Topics, at the request of the Commission.

The Commission has previously indicated its intention to give this study a low priority. **The staff does not recommend that the Commission undertake this project at this time.**

56. See discussion in "Current Legislative Assignments," above.

20. Venue

In 2007, the Calendar of Topics was revised at the Commission's request, to add a study of "[w]hether the law governing the place of trial in a civil case should be revised."⁵⁷ That request was prompted by an unpublished decision in which the Second District Court of Appeal noted that Code of Civil Procedure Section 394, a venue statute, was a "mass of cumbersome phraseology," and that there was a "need for revision and clarification of the venue statutes."⁵⁸ The court of appeal was sufficiently concerned about this matter to direct its clerk to send a copy of its opinion to the Office of Legislative Counsel, which in turn alerted the Commission.

The Commission should begin work in this area when its resources permit. **Unfortunately, that is not likely to be possible in the coming year.**

21. Charter School as a Public Entity

In 2009, the Legislature directed the Commission to analyze "the legal and policy implications of treating a charter school as a public entity for the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code," which governs claims and actions against public entities and public employees.⁵⁹ The Commission issued its final report on that topic in 2012.⁶⁰ No further work on this topic is currently pending. **Nonetheless, it would be prudent to preserve our existing authority, in case any future questions arise that the Commission needs to address.**

22. Fish and Wildlife Law

See discussion of this topic under "Current Legislative Assignments," above.

23. The Relationship Between Mediation Confidentiality and Attorney Malpractice and Other Misconduct

See discussion of this topic under "Current Legislative Assignments," above.

57. 2007 Cal. Stat. res. ch. 100.

58. See Memorandum 2005-29, Exhibit p. 59.

59. See 2009 Cal. Stat. res. ch. 98.

60. See *Charter Schools and the Government Claims Act*, 42 Cal. L. Revision Comm'n Reports 225 (2012).

CARRYOVER SUGGESTIONS FROM PREVIOUS YEARS

When it considered last year's memorandum on new topics, the Commission retained several suggestions for future reconsideration. Those carryover suggestions are briefly described below; further detail is available in the sources cited. Given the Commission's current slate of legislative assignments, **the staff expects that the Commission will again this year lack the resources to undertake work on any of these carryover suggestions.**

Generally, the carryover topics appear to be issues that the Commission is well-suited to address. As discussed below, some of them have become moot or are being studied by another entity. **The staff recommends that the remaining issues be retained for future consideration by the Commission once the Commission's workload eases.**

Intestate Inheritance by a Half-Sibling⁶¹

Marlynn Stoddard of Newport Beach asked the Commission to study intestate inheritance by a half-sibling who lacks a familial relationship with the decedent.⁶² Currently, California's law on intestate succession provides that "relatives of the halfblood inherit the same share they would inherit if they were of the whole blood."⁶³ Ms. Stoddard provides the example of the estate of her brother, who died intestate; Ms. Stoddard, who "had a very close relationship" with her brother, and two estranged half-siblings each received a one-third share of her brother's estate.⁶⁴ Ms. Stoddard indicated that "the current half-blood statute ... produces grossly unfair and irrational results in cases like mine."⁶⁵

Homestead Exemption — Challenge to Existence of a Dwelling⁶⁶

Attorney John Schaller, of Chico, raised the issue of the lack of "procedure in the Code for a creditor who levies on real property to get rid of falsely recorded homestead filings in the situation where there is no dwelling on the property."⁶⁷ Based on the staff's preliminary research, Mr. Schaller appears to be correct that the Code of Civil Procedure does not provide clear guidance on what procedure

61. See full analysis in Memorandum 2013-54, pp. 22-23.

62. See Memorandum 2012-5, Exhibit pp. 48-51.

63. Prob. Code § 6406.

64. See Memorandum 2012-5, Exhibit pp. 48-51.

65. *Id.* at 50.

66. See full analysis in Memorandum 2013-54, pp. 23-24.

67. *Id.*

to follow when there is a dispute over the existence of a dwelling on the debtor's property (as opposed to a dispute regarding whether a dwelling is the debtor's homestead, and thus qualifies for the homestead exemption). Mr. Schaller's issue would be a relatively narrow matter of clarification, which relates to the Commission's previous work on enforcement of judgments and the homestead exemption.

California Tribal Governments and California Indians⁶⁸

Several years ago, the California Association of Tribal Governments ("CATG"), the non-profit statewide association of federally recognized California Indian tribes,⁶⁹ requested that the Commission "add to its agenda of active studies an examination of California law concerning California tribal governments and California Indians."⁷⁰ However, CATG did not provide any specific examples of issues warranting the Commission's attention, instead suggesting that any questions be directed to its Executive Director. Previously, the staff invited CATG to provide further information regarding the types of issues that it would like the Commission to address.⁷¹ The Commission has not received further correspondence from CATG.

However, in its recent work, the Commission has been becoming familiar with tribal issues generally. The Commission encountered a tribal law issue in its recent work on UAGPPJA.⁷² The Commission's new legislative assignment will directly address recognition of certain tribal court civil money judgments.⁷³

Bonds and Undertakings: References to "Bearer" Bonds and "Bearer" Notes⁷⁴

Attorney H. Thomas Watson requested that the Commission "consider proposing legislation to amend California Code of Civil Procedure sections 995.710, 995.720 and 995.760 so that they no longer refer to 'bearer' bonds or 'bearer' notes, but instead to simply 'bonds or notes.'"⁷⁵ He explained that the proposed amendments are needed "because the U.S. Treasury and the states

68. See full analysis in Memorandum 2013-54, pp. 25-26.

69. Memorandum 2012-5, Exhibit p. 34.

70. *Id.*

71. Memorandum 2012-45, p. 26.

72. Memorandum 2013-8, pp. 2-4, 7-10; Memorandum 2013-40, pp. 6-7; Memorandum 2013-45.

73. See discussion of "Recognition of Tribal and Foreign Court Judgments" *supra*.

74. See full analysis in Memorandum 2013-54, p. 26.

75. First Supplement to Memorandum 2012-5, Exhibit p. 14.

ceased issuing bearer instruments in 1982.”⁷⁶ He cited a federal regulation⁷⁷ as support for that proposition.⁷⁸

This issue appears to be moot, having been addressed by legislation this year.⁷⁹

Civil Procedure: Stay of Trial Court Proceeding During Appeal⁸⁰

Mr. Watson also suggested that the Commission consider a proposed amendment⁸¹ of Code of Civil Procedure Section 916 that “seeks to resolve the anomalous split of authority” on whether a trial court retains jurisdiction to resolve a motion for judgment NOV while a case is stayed during an appeal.⁸² His proposed amendment was offered to ensure the trial court “retain[s] jurisdiction to rule on all post-trial motions regardless of whether a notice of appeal is perfected.”⁸³

If Mr. Watson wants to pursue the matter more expeditiously, he might consider contacting an appropriate section or committee of the State Bar.

Commencement of Discovery in Trust Litigation⁸⁴

Attorney John Armstrong, of Lake Forest, suggested that the law governing the commencement of discovery by a plaintiff in trust litigation be revised, so that it more closely parallels the rule that governs commencement of discovery by a plaintiff in probate litigation.⁸⁵

He pointed out that the relevant timing rules⁸⁶ turn, in part, on the service of a summons, which is used in probate litigation, but is *not* used in trust litigation. Under these rules, in the absence of a “summons,” the only way for a plaintiff to commence discovery is to either petition for leave of court or find some reason to require an appearance by the other party.⁸⁷

76. *Id.*

77. 26 C.F.R. § 5f 103-1.

78. First Supplement to Memorandum 2012-5, Exhibit p. 15.

79. See 2014 Cal. Stat. ch. 305 (AB 1856 (Wilk)).

80. See full analysis in Memorandum 2013-54, p. 27.

81. First Supplement to Memorandum 2012-5, Exhibit p. 12.

82. *Id.* at 12-13.

83. *Id.* at 13.

84. See full analysis in Memorandum 2013-54, p. 28.

85. See Memorandum 2012-45, Exhibit p. 13.

86. Code Civ. Proc. §§ 2025.210(b), 2030.020(b), 2031.020(b), 2033.020(b).

87. See Memorandum 2012-45, Exhibit pp. 13, 15.

The Commission referred this issue to the State Bar. **The State Bar is considering the issue, so further Commission involvement appears unnecessary.**

Uniform Trust Code⁸⁸

Nathaniel Sterling, the Commission's former Executive Secretary, wrote on behalf of the California Commission on Uniform State Laws, to request that the Law Revision Commission "make a study to determine whether the Uniform Trust Code should be enacted in California, in whole or in part."⁸⁹

SUGGESTED NEW TOPICS

During the past year, the Commission received several new topic suggestions from various sources. Most of those suggestions are discussed below. A few suggestions do not warrant discussion in this memorandum, because they clearly are a poor fit for the Commission's expertise, or obviously should be resolved by elected representatives rather than Commission appointees.

Probate Code

The Commission received two new suggestions that appear to fall within the Commission's existing authority to study the Probate Code.

Social Security Number Disclosure Requirement

In conjunction with the Commission's work on UAGPPJA, the staff received correspondence from attorney Jennifer Wilkerson sharing a concern raised by attorney Peter Stern.⁹⁰ Mr. Stern pointed out that if a proposed conservatee is an absentee, Probate Code Section 1841 requires that the conservatorship petition include the proposed conservatee's social security number. He further indicated that social security numbers generally are not used in any non-confidential pleadings or filings.⁹¹ Probate Code Section 2620(c)(7), for example, requires that a conservatee's social security number remain confidential:

If any document to be filed or lodged with the court under this section contains the ward's or conservatee's social security number or any other personal information regarding the ward or

88. See full analysis in Memorandum 2013-54, pp. 32-33.

89. *Id.* at Exhibit p. 36.

90. See email from Jennifer Wilkerson to Barbara Gaal (Feb. 4, 2014) (on file with Commission).

91. *Id.*

conservatee that would not ordinarily be disclosed in a court accounting, an inventory and appraisal, or other nonconfidential pleadings filed in the action, the account statement or other document shall be attached to a separate affidavit describing the character of the document, captioned "CONFIDENTIAL FINANCIAL STATEMENT" in capital letters. Except as otherwise ordered by the court, the clerk of the court shall keep the document confidential except to the court and subject to disclosure only upon an order of the court. The guardian or conservator may redact the ward's or conservatee's social security number from any document lodged with the court under this section.

Mr. Stern noted that although Section 1841 happened to catch his eye, a more general scan of the Probate Code may be appropriate to see if other provisions require the inclusion of a social security number in a document filed with the court.⁹²

The staff searched the Probate Code for provisions requiring the inclusion of a social security number in a document filed with the court.⁹³ The staff found a few provisions akin to Probate Code Section 2620, providing confidentiality protection for documents including a social security number.⁹⁴ In addition to the provision identified by Mr. Stern, the staff found only one provision (Probate Code Section 3703) that requires a social security number to be included in a document filed with the court, without any confidentiality protection. Like the provision identified by Mr. Stern, Section 3703 relates to an absentee.

Since the early 2000's, the Legislature has taken actions to protect the privacy of social security numbers, enacting several bills that address this issue.⁹⁵

92. Email from Peter Stern to Barbara Gaal and Jennifer Wilkerson (Feb. 4, 2014) (on file with Commission).

93. The staff encountered other Probate Code sections that refer to social security numbers, but these requirements do not appear to relate to court filings and the staff's preliminary assessment is that they do they appear to raise the same concerns as those discussed above. See, e.g., Prob. Code §§ 4800 (advance health care directive registry), 6389 (registry for information related to execution of international will), 9201 (forms for notice to public entities related to claim against decedent's estate), 18100.5 (specifying information that may be included in certification of trust), and 19201 (forms for notice to public entities related to claim seeking recovery from decedent's revocable trust). In some cases, these provisions provide some protection for the social security number. E.g., Prob. Code § 4800 ("Information that may be released upon request may not include the registrant's social security number except when necessary to verify the identity of the registrant.")

94. See Prob. Code §§ 2620, 2891, 2893.

95. See, e.g., 2001 Cal. Stat. ch. 720 (SB 168 (Bowen)); 2001 Cal. Stat. ch. 232 (AB 1517 (Canciamilla)); 2002 Cal. Stat. ch. 786 (SB 1730 (Bowen)); 2002 Cal. Stat. ch. 1054 (SB 700 (Simitian)); 2003 Cal. Stat. ch. 532 (AB 763 (Liu)); 2003 Cal. Stat. ch. 809 (SB 613 (Perata)); 2004 Cal. Stat. ch. 45 (AB 782 (Kehoe)); 2006 Cal. Stat. ch. 677 (SB 1637 (Committee on Veterans Affairs));

Generally, the confidentiality protections for conservatee social security numbers offered in the Probate Code originated in 2001.⁹⁶ In particular, the social security number protections in Probate Code Sections 2620, 2891, and 2893 were all enacted at this time.⁹⁷ However, the staff found no evidence of any effort to amend either Probate Code Section 1841 or Section 3703.

As an initial matter, the staff considered whether a reason may exist for the different treatment of an absentee's social security number.

According to Probate Code Section 1403, an absentee is either:

(a) A member of a uniformed service covered by United States Code, Title 37, Chapter 10, who is determined thereunder by the secretary concerned, or by the authorized delegate thereof, to be in missing status as missing status is defined therein.

(b) An employee of the United States government or an agency thereof covered by United States Code, Title 5, Chapter 55, Subchapter VII, who is determined thereunder by the head of the department or agency concerned, or by the authorized delegate thereof, to be in missing status as missing status is defined therein.

Because federal law governs who would be deemed an absentee under California law, determining the appropriate treatment of an absentee's social security number would entail a review of the pertinent federal provisions (e.g., disclosure of the social security number to the relevant federal agency or agencies may need to be accommodated).

The staff identified competing considerations regarding the disclosure of a social security number for absentees: (1) identity verification and (2) the susceptibility to fraud and exploitation. In particular, a social security number might be useful in verifying that certain assets belong to a certain absentee. However, an absentee's assets could perhaps face an unusually high risk of damage from fraud or exploitation, particularly where a conservator has not yet been appointed or the absentee's assets have not been fully identified. The staff is concerned that unscrupulous persons could view an absentee, especially one whose social security number is publicly available, as an easy target.

2007 Cal. Stat. ch. 627 (AB 1168 (Jones)); 2009 Cal. Stat. ch. 552 (SB 40 (Correa)); 2011 Cal. Stat. ch. 197 (SB 24 (Simitian)); 2014 Cal. Stat. ch. 855 (AB 1710 (Dickinson)).

96. 2001 Cal. Stat. ch. 563 (AB 1286 (Rod Pacheco)); see also 2001 Cal. Stat. ch. 232 (AB 1517 (Canciamilla)).

97. 2001 Cal. Stat. ch. 563, §§ 6, 7.

This topic appears to be one that the Commission is well suited to study and it falls within the Commission's current authority to study the Probate Code. **The staff recommends that the Commission retain the topic for future consideration once the Commission's workload eases.** If anyone wants to pursue this matter more expeditiously, perhaps the State Bar Trusts and Estates Section would be in a position to address it.

Transfer on Death Deed

The Commission received a suggestion from Attorney Charles A. Collier, Jr. pertaining to the Uniform Real Property Transfer on Death Act (2009, hereafter "Uniform Act").⁹⁸ In particular, Mr. Collier suggests that, in light of the promulgation of the Uniform Act, the Commission may want to revisit the topic of transfer on death ("TOD") deeds.⁹⁹

The Commission's involvement in this topic began in 2005, when a statute was enacted directing the Commission to study whether California should authorize the use of "beneficiary deeds" to effectuate a nonprobate transfer of real property on death.¹⁰⁰ After completing its study of the matter, the Commission recommended that "a revocable transfer on death deed" be authorized in California.¹⁰¹ The recommendation included comprehensive proposed legislation prescribing the effect of such a deed, specifying how it could be executed or revoked, and integrating the new instrument into California's existing body of estate planning law.

Legislation was introduced in 2007 to implement the Commission's recommendation.¹⁰² The bill was heavily amended in the Assembly.¹⁰³ After passing out of the Assembly, the bill died in committee in the Senate. In 2009, the author reintroduced the bill, based on the amended version that had been approved by the Assembly in 2007.¹⁰⁴ Again, the bill was approved by the Assembly and failed in the Senate.

98. See Exhibit p. 1.

99. *Id.*

100. 2005 Cal. Stat. ch. 422 (AB 12 (DeVore)).

101. *Revocable Transfer on Death (TOD) Deed*, 36 Cal. L. Revision Comm'n Reports 103 (2006).

102. AB 250 (DeVore, 2007-2008).

103. Compare AB 250 (DeVore), as introduced Feb. 1, 2007 with *id.*, as amended by Assembly, Apr. 10, 2007.

104. See AB 724 (DeVore, 2009-2010).

Given that the Legislature has relatively recently declined to enact the Commission's recommendation, the staff is disinclined to seek the introduction of new legislation to implement the original recommendation (with or without the Assembly amendments). However, in light of the recent adoption of the uniform act, it is worthwhile to consider whether the uniform act offers an alternative approach that the Commission might want to consider. In the staff's view, it does not.

The core provisions of the Uniform Act are very similar to those of the Commission's recommendation. Both the Uniform Act and the Commission's recommendation would authorize the use of TOD deeds,¹⁰⁵ make clear that such a deed remains revocable during the transferor's life,¹⁰⁶ and make clear that the deed has no inter vivos effect.¹⁰⁷ Both laws provide details about execution,¹⁰⁸ revocation,¹⁰⁹ delivery,¹¹⁰ and recordation¹¹¹ of a TOD deed.

One important difference, however, is that the Uniform Act offers a broader authorization for the use of TOD deeds than the Commission's recommendation. In particular, the Uniform Act does not place any limitations on the form of property that can be transferred by the deed: "The transferor may select any form of ownership, concurrent or successive, absolute or conditional, contingent or vested, valid under state law."¹¹² By contrast, the Commission's recommendation would allow the TOD deed to be used to transfer a life estate with remainder, but would not permit any other type of future interest to be conveyed.¹¹³

Given that the Uniform Act is so similar in its fundamentals to the Commission's recommendation, **the staff does not believe that the promulgation of the Uniform Act warrants reevaluation of the Commission's recommendation.**

105. See Unif. Act § 5; *supra* note 101, proposed Prob. Code § 5620.

106. Unif. Act § 6; *supra* note 101, proposed Prob. Code § 5630.

107. Unif. Act § 12; *supra* note 101, proposed Prob. Code § 5650.

108. Unif. Act § 9(1)-(2); *supra* note 101, proposed Prob. Code § 5624.

109. Unif. Act § 11; *supra* note 101, proposed Prob. Code §§ 5628, 5632.

110. Unif. Act § 10; *supra* note 101, proposed Prob. Code § 5626(b)-(c).

111. Unif. Act § 9(3); *supra* note 101, proposed Prob. Code § 5626(a).

112. Unif. Act § 5 Comment.

113. See *supra* note 101, proposed Prob. Code § 5652(b).

Technical and Minor Substantive Statutory Corrections

The Commission received one new suggestion that appears to fall within the Commission's existing authority to study the technical and minor substantive statutory corrections.

Differing Rules of Construction Regarding Verb Tenses

Jan Raymond writes to identify an inconsistency "in various Code sections that provide how word tenses will be construed."¹¹⁴ In particular, he indicates that all of the codes developed by the Code Commission provide that the present tense includes the past and future. In contrast, the original codes that were not touched by the Code Commission provide that the present tense includes the future, but they do not mention the past.¹¹⁵

The staff reviewed the rules of construction in the different codes. The majority of the codes specify that the present tense should be construed to include the past and future, and the future tense should be construed to include the present.¹¹⁶ However, three codes specify only that the present tense should be construed to include the future (with no mention of the past or how to construe the future tense).¹¹⁷ In two other codes, the Commercial Code and the Public Contract Code, the staff found no explicit rule on construing the tenses.

While there would be some value in having consistent rules of construction across the codes, the staff is concerned that modifying fundamental rules of construction at this point could be disruptive. These changes could lead to confusion and questions about how any changes in the rules of construction would affect individual substantive provisions in the codes.

The differing rules of construction do not appear to have caused any problems.¹¹⁸ **Since these rules appear to be working well in practice, the staff recommends against the Commission undertaking this project.**

114. Exhibit p. 2.

115. *Id.*; Compare Prob. Code § 9 ("The present tense includes the past and future tenses, and the future, the present.") with Civ. Code § 14 ("Words used in this code in the present tense include the future as well as the present...").

116. See, e.g., Corp. Code § 11, Fam. Code § 9, Pub. Res. Code § 11, Welf. & Inst. Code § 11.

117. See Civ. Code § 14, Code Civ. Proc. § 17, Pen. Code § 7.

118. Exhibit p. 2.

SUGGESTED PRIORITIES

The Commission needs to determine its priorities for work during 2015. Completion of recommendations for the next legislative session becomes the highest priority at this time of year. That is followed by matters that the Legislature has indicated should receive a priority and other matters that the Commission has concluded deserve immediate attention. The Commission has also tended to give priority to projects for which a consultant has delivered a background study, because it is desirable to take up the matter before the research goes stale and while the consultant is still available. Finally, once a study has been activated, the Commission has felt it important to make steady progress so as not to lose continuity on it.

To summarize, the Commission's traditional scheme of priorities is:

- (1) Matters for the next legislative year.
- (2) Matters directed by the Legislature and other matters the Commission has concluded deserve immediate attention.
- (3) Matters for which the Commission has an expert consultant.
- (4) Other matters that have been previously activated but not completed.
- (5) New topics that appear appropriate for the Commission to study.

This priority scheme has worked well over the years. The staff recommends that the Commission continue to follow it in 2015, as detailed below.

Legislative Program for 2015

In 2015, the Commission's legislative program **may include legislation on the following topics:**

- Fish and Game Law: Technical Revisions and Minor Substantive Improvements
- Trial Court Unification: Publication of Legal Notice

Managing this legislative program will consume some staff resources but should not require much attention from the Commission.

The Legislature's Priorities and Other Matters Deserving Immediate Attention

The Legislature has just directed the Commission to undertake a new study on recognition of tribal and foreign money judgments. There is a deadline for completion of that work. **The staff recommends that this study be a priority for**

the Commission in 2015. The staff anticipates that significant progress can be made on the topic over the course of the year.

The Commission should also **continue its work on the three legislative assignments for which work is ongoing:** (1) state and local agency access to customer information from communications service providers, (2) fish and wildlife law, and (3) the relationship between mediation confidentiality and attorney malpractice and other misconduct.

If resources permit, the Commission should also **return to its legislatively-mandated study of trial court restructuring.** The Commission should continue to make progress on bringing this huge project to an end.

In addition, there is the legislatively-approved list of “Minor Clean-Up Issues for Possible Future Legislative Attention” that the Commission compiled while preparing its nonsubstantive reorganization of the deadly weapon statutes. Those issues are narrow in scope and generally suitable for student projects. **The Commission might be able to address some of them in 2015, on a low priority basis.**

Consultant Studies

For some studies, the Commission has the benefit of a consultant’s assistance. In particular, the Commission is fortunate to have Mr. Sterling’s extensive background study on *Liability of Nonprobate Transfer for Creditor Claims and Family Protections* (June 2010). The Commission began this work in 2013, but had to put it on hold due to other higher priority work. **The Commission should return to this topic as soon as its resources permit. The staff anticipates that this may be possible in 2015.**

The Commission also has background studies on the following topics, which it has already studied to some extent:

- Common interest development law (background study prepared by Prof. Susan French of UCLA Law School).
- Civil discovery (background study prepared by Prof. Gregory Weber of McGeorge School of Law).
- Review of the California Evidence Code (background study prepared by Prof. Miguel Méndez of Stanford Law School and UC Davis School of Law).

The Commission is unlikely to have time to begin new studies in these areas in 2015, but it should turn back to them when resources permit.

Other Activated Topics

Two other topics the Commission has actively studied are attorney's fees, and presumptively disqualified fiduciaries. Those studies are currently on hold, and it is unlikely that the Commission will have resources available to reactivate either of them in 2015. They should be addressed when time permits.

New Topics

Aside from the matters discussed above, the Commission almost certainly will not be able to commence any new studies this year. The staff regrets that the Commission's resources are so limited and it is unable to promptly address all of the topics that could benefit from its attention.

Summary

If the Commission approves the staff recommendations made in this memorandum, the Commission's priorities for 2015 would include:

- Manage the 2015 legislative program.
- Proceed with the new study on recognition of tribal and foreign money judgments.
- Continue the study on state and local agency access to customer information from communications service providers.
- Continue the study on fish and wildlife law.
- Continue the study on the relationship between mediation confidentiality and attorney malpractice and other misconduct.
- If it is not completed in 2014, continue the study on publication of legal notice in a county with a unified superior court.
- If resources permit, continue the study on trial court restructuring.
- If resources permit, resume work on creditor claims against nonprobate assets, focusing on the issue previously identified for initial study.
- If resources permit, pursue some of the minor clean-up issues listed in the Commission's report on *Nonsubstantive Reorganization of Deadly Weapon Statutes*.

Respectfully submitted,

Kristin Burford
Staff Counsel

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April 14, 2014

APR 16 2014

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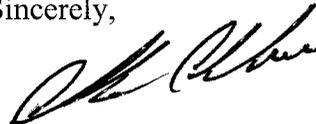
Re: Transfer on Death (TOD) Deed

Dear Brian:

Eight or nine years ago the Commission did a lot of work on the Transfer on Death Deed proposal. See, for example, Memorandum 2006-30, which was the tentative draft for the Revocable Transfer on Death Deed. As I recall, after several years of intensive work on the matter, eventually it was not enacted. Memorandum 2006-30 indicates that the National Conference of Commission on Uniform State Laws was planning to draft a Uniform Revocable TOD. In fact, the Conference approved the Uniform Real Property Transfer on Death Act in 2009, and it is now found in the Uniform Probate Code, Part 6, Section 6-401-417.

With the enactment of the Uniform Law several years after the Law Revision Commission terminated its efforts, I wonder if it is appropriate to again look at the TOD proposal. As far as I've been able to ascertain, it has not yet been enacted in California. I would appreciate your thoughts.

Sincerely,



Charles A. Collier, Jr.

CAC:lms

EX 1

EMAIL FROM JAN RAYMOND
(02/25/14)

I ran across an odd quirk in the Codes I thought the CLRC might be interested. It involves inconsistency's in various Code sections that provide how word tenses will be construed.

When the 1872 codes were adopted language from an 1864 NY Penal Code draft providing the present tense would include the future, and the future would be construed to include the present was in Section 781 of that code. It was picked up in our 1872 Penal Code as Section 7, then added to the CCP (Sec 17) and Civil Code (Sec 11) in 1873-74 amendments, and the Political Code in 1911.

Then when the Code Commission started working in 1929 they developed a new variation on the language which provides the present tense includes both the past and the future.

It seems to me there could be good reasons that the different codes might have slightly different rules of construction, based on subject matter, but that doesn't appear to be what has happened. All the original Codes that were not touched by the Code Commission still have all the old definition that does not include the past (Civil code Section 11, CCP Sec 17, Penal Section 7). All the newer Codes developed by the Code Commission that I have looked at have the new definition that includes the past (Ag Code Section 19. Labor Code Section 11, Probate Code Section 9).

This came to my attention when I was looking at the Labor Code definition that includes "past" even though the Civil Code the Labor Code substance was pulled out of does not include "past".

Evidently it hasn't caused a problem in the 50+ years since the Code Commission finished its work, but it does seem a little inconsistent to me, so thought I would let you know.

...

Senate Bill No. 406

CHAPTER 243

An act to amend, add, and repeal Section 1714 of, and to add and repeal Title 11.5 (commencing with Section 1730) to Part 3 of, the Code of Civil Procedure, relating to tribal court civil judgments.

[Approved by Governor August 22, 2014. Filed with
Secretary of State August 22, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

SB 406, Evans. Tribal Court Civil Money Judgment Act.

The existing Uniform Foreign-Country Money Judgments Recognition Act provides that foreign judgments that grant or deny recovery of a sum of money and that are final and conclusive are enforceable in California, with specified exceptions. The act includes within the definition of "foreign-country judgment" a judgment by any Indian tribe recognized by the government of the United States.

This bill would, until January 1, 2018, exempt Indian tribal judgments from the Uniform Foreign-Country Money Judgments Recognition Act, and would instead enact the Tribal Court Civil Money Judgment Act. The new act would likewise provide for the enforceability of tribal court money judgments in California, except as specified. The act would prescribe the procedure for applying for recognition and entry of a judgment based on a tribal court money judgment, the procedure and grounds for objecting to the entry of judgment, and the bases upon which the court may refuse to enter the judgment or grant a stay of enforcement. The bill would require the Judicial Council to prescribe a form for the notice of filing the application for recognition of the tribal court money judgment, as specified. The bill would require that this application be executed under penalty of perjury, which would expand the scope of the crime of perjury and thus impose a state-mandated local program. The bill would require the California Law Revision Commission to conduct a study of the standards for recognition of a tribal court or a foreign court judgment under the Tribal Court Civil Money Judgment Act and the Uniform Foreign-Country Money Judgments Recognition Act, and submit a report of its findings and recommendations to the Legislature and the Governor no later than January 1, 2017.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. The California Law Revision Commission shall, within existing resources, conduct a study of the standards for recognition of a tribal court or a foreign court judgment, under the Tribal Court Civil Money Judgment Act (Title 11.5 (commencing with Section 1730) of Part 3 of the Code of Civil Procedure) and the Uniform Foreign-Country Money Judgments Recognition Act (Chapter 2 (commencing with Section 1713) of Title 11 of Part 3 of the Code of Civil Procedure). On or before January 1, 2017, the California Law Revision Commission shall report its findings, along with any recommendations for improvement of those standards, to the Legislature and the Governor.

SEC. 2. Section 1714 of the Code of Civil Procedure is amended to read: 1714. As used in this chapter:

(a) “Foreign country” means a government other than any of the following:

(1) The United States.

(2) A state, district, commonwealth, territory, or insular possession of the United States.

(3) Any other government with regard to which the decision in this state as to whether to recognize a judgment of that government’s courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.

(b) “Foreign-country judgment” means a judgment of a court of a foreign country.

(c) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 3. Section 1714 is added to the Code of Civil Procedure, to read:

1714. (a) “Foreign country” means a government other than any of the following:

(1) The United States.

(2) A state, district, commonwealth, territory, or insular possession of the United States.

(3) Any other government with regard to which the decision in this state as to whether to recognize a judgment of that government’s courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.

(b) “Foreign-country judgment” means a judgment of a court of a foreign country. “Foreign-country judgment” includes a judgment by any Indian tribe recognized by the government of the United States.

(c) This section is operative on and after January 1, 2018.

SEC. 4. Title 11.5 (commencing with Section 1730) is added to Part 3 of the Code of Civil Procedure, to read:

TITLE 11.5. TRIBAL COURT CIVIL MONEY JUDGMENT ACT

1730. This title shall be known and may be cited as the Tribal Court Civil Money Judgment Act.

1731. (a) This title governs the procedures by which the superior courts of the State of California recognize and enter tribal court money judgments of any federally recognized Indian tribe. Determinations regarding recognition and entry of a tribal court money judgment pursuant to state law shall have no effect upon the independent authority of that judgment. To the extent not inconsistent with this title, the Code of Civil Procedure shall apply.

(b) This title does not apply to any of the following tribal court money judgments:

(1) For taxes, fines, or other penalties.

(2) For which federal law requires that states grant full faith and credit recognition, including child support orders under the Full Faith and Credit for Child Support Orders Act (28 U.S.C. Sec. 1738B).

(3) For which state law provides for recognition, including child support orders recognized under the Uniform Child Custody Jurisdiction and Enforcement Act (Part 3 (commencing with Section 3400) of Division 8 of the Family Code), other forms of family support orders under the Uniform Interstate Family Support Act (Chapter 6 (commencing with Section 4900) of Part 5 of Division 9 of the Family Code).

(4) For decedents' estates, guardianships, conservatorships, internal affairs of trusts, powers of attorney, or other tribal court money judgments that arise in proceedings that are or would be governed by the Probate Code.

(c) Nothing in this title shall be deemed or construed to expand or limit the jurisdiction of either the state or any Indian tribe.

1732. For purposes of this title:

(a) "Applicant" means the person or persons who can bring an action to enforce a tribal court money judgment.

(b) "Civil action or proceeding" means any action or proceeding that is not criminal, except for those actions or proceedings expressly excluded by subdivision (b) of Section 1731.

(c) "Due process" includes, but is not limited to, the right to be represented by legal counsel, to receive reasonable notice and an opportunity for a hearing, to call and cross-examine witnesses, and to present evidence and argument to an impartial decisionmaker.

(d) "Good cause" means a substantial reason, taking into account the prejudice or irreparable harm a party will suffer if a hearing is not held on an objection or not held within the time periods established by this title.

(e) "Respondent" means the person or persons against whom an action to enforce a tribal court money judgment can be brought.

(f) "Tribal court" means any court or other tribunal of any federally recognized Indian nation, tribe, pueblo, band, or Alaska Native village, duly established under tribal or federal law, including Courts of Indian Offenses organized pursuant to Part 11 of Title 25 of the Code of Federal Regulations.

(g) “Tribal court money judgment” means any written judgment, decree, or order of a tribal court for a specified amount of money that was issued in a civil action or proceeding that is final, conclusive, and enforceable by the tribal court in which it was issued and is duly authenticated in accordance with the laws and procedures of the tribe or tribal court.

1733. (a) An application for entry of a judgment under this title shall be filed in a superior court.

(b) Subject to the power of the court to transfer proceedings under this title pursuant to Title 4 (commencing with Section 392) of Part 2, the proper county for the filing of an application is either of the following:

(1) The county in which any respondent resides or owns property.

(2) If no respondent is a resident, any county in this state.

(c) A case in which the tribal court money judgment amounts to twenty-five thousand dollars (\$25,000) or less is a limited civil case.

1734. (a) An applicant may apply for recognition and entry of a judgment based on a tribal court money judgment by filing an application in superior court pursuant to Section 1733.

(b) The application shall be executed under penalty of perjury and include all of the following information:

(1) The name and address of the tribal court that issued the judgment to be enforced and the date of the tribal court money judgment or any renewal thereof.

(2) The name and address of the party seeking recognition.

(3) (A) Any of the following statements, as applicable:

(i) If the respondent is an individual, the name and last known residence address of the respondent.

(ii) If the respondent is a corporation, the corporation’s name, place of incorporation, and whether the corporation, if foreign, has qualified to do business in this state under the provisions of Chapter 21 (commencing with Section 2100) of Division 1 of Title 1 of the Corporations Code.

(iii) If the respondent is a partnership, the name of the partnership, whether it is a foreign partnership, and if it is a foreign partnership, whether it has filed a statement pursuant to Section 15800 of the Corporations Code designating an agent for service of process.

(iv) If the respondent is a limited liability company, the company’s name, whether it is a foreign company, and if so, whether it has filed a statement pursuant to Section 17060 of the Corporations Code.

(B) Except for facts that are matters of public record in this state, the statements required by this paragraph may be made on the basis of the applicant’s information and belief.

(4) A statement that an action in this state to enforce the tribal court money judgment is not barred by the applicable statute of limitations.

(5) A statement, based on the applicant’s information and belief, that the tribal court money judgment is final and that no stay of enforcement of the tribal court money judgment is currently in effect.

(6) A statement that includes all of the following:

(A) The amount of the award granted in the tribal court money judgment that remains unpaid.

(B) If accrued interest on the tribal court money judgment is to be included in the California judgment, the amount of interest accrued on the tribal court money judgment, computed at the rate of interest applicable to the judgment under the law of the tribal jurisdiction in which the tribal court money judgment was issued.

(C) The rate of interest applicable to the money judgment under the law of the jurisdiction in which the tribal court money judgment was issued.

(D) A citation to the supporting authority.

(7) A statement that no action based on the tribal court money judgment is currently pending in any state court and that no judgment based on the tribal court money judgment has previously been entered in any proceeding in this state.

(c) All of the following items shall be attached to the application:

(1) An authenticated copy of the tribal court money judgment, certified by the judge or clerk of the tribal court.

(2) A copy of the tribal court rules of procedure pursuant to which the tribal court money judgment was entered.

(3) A declaration under penalty of perjury by the tribal court clerk, applicant, or applicant's attorney stating, based on personal knowledge, that the case that resulted in the entry of the judgment was conducted in compliance with the tribal court's rules of procedure.

1735. (a) Promptly upon the filing of the application, the applicant shall serve upon the respondent a notice of filing of the application to recognize and enter the tribal court money judgment, together with a copy of the application and any documents filed with the application. The notice of filing shall be in a form that shall be prescribed by the Judicial Council, and shall inform the respondent that the respondent has 30 days from service of the notice of filing to file objections to the enforcement of the tribal court money judgment. The notice shall include the name and address of the applicant and the applicant's attorney, if any, and the text of Sections 1736 and 1737.

(b) Except as provided in subdivision (c), service shall be made in the manner provided for service of summons by Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2.

(c) If a respondent is the State of California or any of its officers, employees, departments, agencies, boards, or commissions, service of the notice of filing on that respondent may be by mail to the office of the Attorney General.

(d) The fee for service of the notice of filing under this section is an item of costs recoverable in the same manner as statutory fees for service of a writ as provided in Chapter 5 (commencing with Section 685.010) of Division 1 of Title 9 of Part 2, but the recoverable amount for that fee shall not exceed the amount allowed to a public officer or employee of this state for that service.

(e) The applicant shall file a proof of service of the notice promptly following service.

1736. (a) If no objections are timely filed in accordance with Section 1737, the clerk shall certify that no objections were timely filed, and a judgment shall be entered.

(b) The judgment entered by the superior court shall be based on and contain the provisions and terms of the tribal court money judgment. The judgment shall be entered in the same manner, have the same effect, and be enforceable in the same manner as any civil judgment, order, or decree of a court of this state.

1737. (a) Any objection to the recognition and entry of the tribal court money judgment shall be served and filed within 30 days of service of the notice of filing. If any objection is filed within this time period, the superior court shall set a time period for replies and set the matter for a hearing. The hearing shall be held by the superior court within 45 days from the date the objection is filed unless good cause exists for a later hearing. The only grounds for objecting to the recognition or enforcement of a tribal court money judgment are the grounds set forth in subdivisions (b) and (c).

(b) A tribal court money judgment shall not be recognized and entered if the respondent demonstrates to the superior court that at least one of the following occurred:

- (1) The tribal court did not have personal jurisdiction over the respondent.
- (2) The tribal court did not have jurisdiction over the subject matter.
- (3) The judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law.

(c) The superior court may, in its discretion, decline to recognize and enter a tribal court money judgment on any one of the following grounds:

(1) The defendant in the proceeding in the tribal court did not receive notice of the proceeding in sufficient time to enable the defendant to defend.

(2) The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case.

(3) The judgment or the cause of action or claim for relief on which the judgment is based is repugnant to the public policy of the state or of the United States.

(4) The judgment conflicts with another final and conclusive judgment.

(5) The proceeding in the tribal court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that tribal court.

(6) In the case of jurisdiction based on personal service only, the tribal court was a seriously inconvenient forum for the trial of the action.

(7) The judgment was rendered under circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment.

(8) The specific proceeding in the tribal court leading to the judgment was not compatible with the requirements of due process of law.

(9) The judgment includes recovery for a claim of defamation, unless the court determines that the defamation law applied by the tribal court

provided at least as much protection for freedom of speech and the press as provided by both the United States and California Constitutions.

(d) If objections have been timely filed, the applicant has the burden of establishing that the tribal court money judgment is entitled to recognition. If the applicant has met its burden, a party resisting recognition of the tribal court money judgment has the burden of establishing that a ground for nonrecognition exists pursuant to subdivision (b) or (c).

1738. The superior court shall grant a stay of enforcement if the respondent establishes one of the following to the superior court:

(a) An appeal from the tribal court money judgment is pending or may be taken in the tribal court, in which case the superior court shall stay state execution of the tribal court money judgment until the proceeding on appeal has been concluded or the time for appeal has expired.

(b) A stay of enforcement of the tribal court money judgment has been granted by the tribal court, in which case the superior court shall stay enforcement of the tribal court money judgment until the stay of execution expires or is vacated.

(c) Any other circumstance exists where the interests of justice require a stay of enforcement.

1739. An action to recognize a tribal court money judgment or any renewal thereof shall be commenced within the earlier of the following periods:

(a) The time during which the tribal court money judgment is effective within the territorial jurisdiction of the tribal court.

(b) Ten years from the date that the tribal court money judgment became effective in the tribal jurisdiction.

1740. (a) The superior court may, after notice to all parties, attempt to resolve any issues raised regarding a tribal court money judgment by contacting the tribal court judge who issued the judgment.

(b) The superior court shall allow the parties to participate in, and shall prepare a record of, any communication made with the tribal court judge pursuant to this section.

1741. (a) The Uniform Foreign-Country Money Judgments Recognition Act (Chapter 2 (commencing with Section 1713) of Title 11 of Part 3) applies to all actions commenced in superior court before the effective date of this title in which the issue of recognition of a tribal court money judgment is raised.

(b) This title applies to all actions to enforce tribal court money judgments as defined herein commenced in superior court on or after the effective date of this title. A judgment entered under this title shall not limit the right of a party to seek enforcement of any part of a judgment, order, or decree entered by a tribal court that is not encompassed by the judgment entered under this title.

1742. This title shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.