Admin. Nov. 30, 2018

Memorandum 2018-57

New Topics and Priorities

Annually, the Commission[1] 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 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 communications and other materials are attached to and discussed in this memorandum:

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.

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 an administrative analyst. The Commission also receives some assistance from externs and other law students, particularly from UC Davis School of Law. The law students are typically assigned "relatively modest and uncontroversial law reform projects, within the Commission's study authority"[2] with the objective of providing opportunities for students to assist with implementing legislation.[3]

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 2014 committee 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.[4]

2. Minutes (Apr. 2015), p. 3.
3. *Id*.
4. Assembly Committee on Judiciary Analysis of SCR 83 (Jun. 6, 2014), p. 3 (emphasis added).

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 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.[5]

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. Currently, the majority of the Commission's active studies are direct assignments from the Legislature.

CURRENT LEGISLATIVE ASSIGNMENTS

Several topics have been specifically assigned to the Commission by statute or resolution. The Commission received one new assignment during the 2018 legislative session. All of the current legislative assignments are described below.

Recodification of Toxic Substance Statutes

In August 2018, the Legislature approved Senate Concurrent Resolution 91 (Roth).[6] This resolution includes the following assignment from the Legislature:

> [T]he Legislature authorizes and requests that the California Law Revision Commission study, report on, and prepare recommended legislation to revise Chapter 6.5 (commencing with Section 25100) and Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code, and related provisions, to improve the organization and expression of the law. Such revisions may include, but are not limited to, grouping similar provisions together, reducing the length and complexity of sections, eliminating obsolete or redundant provisions, and correcting technical errors. The recommended revisions shall not make any substantive changes to the law. The commission's report shall also include a list of substantive issues that the commission identifies in the course of its work, for possible future study[.]

5. Gov't Code § 8293.
6. 2018 Cal. Stat. res. ch. 158.

Although this study assignment does not have a specified deadline, the Commission typically will accord high priority to a legislative assignment.

The staff recommends that the Commission prioritize work on this study in 2019.

California Public Records Act

In August 2016, the Legislature approved Assembly Concurrent Resolution 148 (Chau).[7] This resolution includes the following assignment from the Legislature:

> [T]he Legislature authorizes and requests that the California Law Revision Commission study, report on, and prepare recommended legislation as soon as possible, considering the commission's preexisting duties and workload demands, concerning the revision of the portions of the California Public Records Act and related provisions, and that this legislation shall accomplish all of the following objectives:
>
> (1) Reduce the length and complexity of current sections.
>
> (2) Avoid unnecessary cross-references.
>
> (3) Neither expand nor contract the scope of existing exemptions to the general rule that records are open to the public pursuant to the current provisions of the Public Records Act.
>
> (4) To the extent compatible with (3), use terms with common definitions.
>
> (5) Organize the existing provisions in such a way that similar provisions are located in close proximity to one another.
>
> (6) Eliminate duplicative provisions.
>
> (7) Clearly express legislative intent without any change in the substantive provisions[.]

Although this study assignment does not have a specified deadline, the Legislature has requested that the Commission undertake this study "as soon as possible" given the Commission's current duties and workload demands. Typically, the Commission will accord high priority to a legislative assignment, particularly one where the Legislature itself indicates that the work should receive priority.

The staff is hopeful that this project can be completed in 2019. **The staff recommends that the Commission continue to prioritize work on this study.**

7. 2018 Cal. Stat. res. ch. 158.

Transfer on Death Deeds

In August 2016, the Governor signed Assembly Bill 1779 (Gatto),[8] which expanded the Commission's previously-assigned[9] study on Transfer on Death Deeds. With the 2016 amendment, the Commission is directed to

> … study the effect of California's revocable transfer on death deed set forth in Part 4 (commencing with Section 5600) of Division 5 of the Probate Code and make recommendations in this regard. The commission shall report all of its findings to the Legislature on or before January 1, 2020.
>
> … [T]he commission shall address all of the following:
>
> (1) Whether the revocable transfer on death deed is working effectively.
>
> (2) Whether the revocable transfer on death deed should be continued.
>
> (3) Whether the revocable transfer on death deed is subject to misuse or misunderstanding.
>
> (4) What changes should be made to the revocable transfer on death deed or the law associated with the deed to improve its effectiveness and to avoid misuse or misunderstanding.
>
> (5) Whether the revocable transfer on death deed has been used to perpetuate financial abuse on property owners and, if so, how the law associated with the deed should be changed to minimize this abuse.
>
> (6) Whether it is feasible and appropriate to expand the revocable transfer on death deed to include the following:
>
> (A)The transfer of stock cooperatives or other common interest developments.
>
> (B) Transfers to a trust or other legal entity.

This study is a direct legislative assignment with a specified deadline. Typically, the Commission gives highest priority to such a study.

When the Commission originally received this assignment, the Commission decided to delay most of the work in this study, in order to provide as much time as possible for the development of experience with the new law.[10] At that time, it was anticipated that analysis would begin in earnest in 2018 or 2019.

In the interim, the Commission addressed a narrow issue, which required more immediate attention, relating to the recordation requirement for a transfer on death deed. The resulting Commission recommendation,[11] clarifying that a

8. 2016 Cal. Stat. ch. 179.
9. 2015 Cal. Stat. ch. 293.
10. See Memorandum 2015-53; Minutes (Dec. 2015), p. 5.
11. *Revocable Transfer on Death Deed: Recordation*, 45 Cal. L. Revision Comm'n Reports __ (2017).

failure to record the "Common Questions" page of the statutory deed form does not invalidate the deed, was enacted into law in 2018.[12]

Given the January 1, 2020 deadline, the Commission will need to devote the staff resources required to complete the transfer on death deed study in 2019.

Electronic Communications: State and Local Agency Access to Customer Information from Communications Service Providers & Government Interruption of Communication Services

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 whether a subpoena, warrant, court order, or other process or documentation is required[.][13]

In accordance with that authorization, the Commission has studied two topics: (1) Government Access to Electronic Communications and (2) Government Interruption of Communications.[14] The Commission has completed its work on the second topic;[15] the status of work on the first topic is discussed in more detail below.

In general, although SCR 54 does not set a deadline for completion of the assignment, the Legislature presumably would like the work completed promptly. **The Commission should continue to give this topic high priority, as appropriate.**

12. 2018 Cal. Stat. ch. 65 (AB 1739 (Chau)).
13. 2013 Cal. Stat. res. ch. 115.
14. See Minutes (Feb. 2015), p. 4.
15. See Memorandum 2017-55, p. 7; Minutes (Dec. 2017), p. 3.

Government Access to Electronic Communications

In 2015, as the Commission was nearing the point of developing reform recommendations in this study, Senator Leno introduced Senate Bill 178. That bill addressed most of the same substance as the Commission's study. In response to the introduction of SB 178, the Commission decided to postpone the development of proposed legislation. Instead, it finalized an informational report on *State and Local Agency Access to Electronic Communications: Constitutional and Statutory Requirements* (Aug. 2015).[16]

Senate Bill 178 was enacted, establishing the California Electronic Communications Privacy Act ("Cal-ECPA").[17] The Commission suspended further work on the study of government access to electronic communications, to give the new law time to develop and settle.[18]

Although Senate Bill 178 addressed nearly all of the issues that the Commission identified in its study, there are a few narrow issues and technical clean-up reforms that might be worthwhile for the Commission to pursue.[19]

While the Commission should return to this study soon, the staff recommends against reactivating the study of government access to electronic communications in 2019. Cal-EPCA is still relatively new. The staff believes that it may be premature to pursue additional reforms at this point.

Fish and Game Law

In January 2012, the Commission received a letter jointly signed by the Chair of the Senate Natural Resources and Water Committee (now former 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.[20] 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

16. See generally Memorandum 2015-51.
17. 2015 Cal. Stat. ch. 651.
18. See Minutes (Dec. 2015), pp. 4-5.
19. See First Supplement to Memorandum 2015-3, pp. 5-7; Memorandum 2015-51,pp. 14-23.
20. See Memorandum 2012-5, Exhibit pp. 32-33.

> funding sources, and make other minor improvements, without making any significant substantive change to the effect of the law ….[21]

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

The Commission made significant progress on this topic in 2018, including a discussion draft of an informational report[22] on the funding specified in the Fish and Game Code and a complete draft tentative recommendation for the recodification project.[23]

The staff expects that this project can be completed in 2019. **The Commission should continue to give this topic high priority.**

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.[24]

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:

21. 2012 Cal. Stat. res. ch. 108.
22. See Discussion Draft on *Fish and Game Code: Funding Provisions* (Feb. 2018).
23. See Memorandum 2018-67 and its First Supplement.
24. 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.[25]

The Commission completed a recommendation on this topic in 2018.[26] The Commission staff did not find a legislator interested in introducing legislation to enact this recommendation.[27] However, in 2018, the Legislature enacted another piece of legislation related to mediation confidentiality.[28] Given these developments, the Commission directed the staff not to make any further effort to pursue implementing legislation for the Commission's recommendation on this topic.[29]

With that, the Commission's work on this issue can be considered complete.

Deadly Weapons

In 2006, the Legislature directed the Commission to study the statutes relating to control of deadly weapons.[30] 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

25. 2012 Cal. Stat. res. ch. 108 (ACR 98 (Wagner)).
26. See *Relationship Between Mediation Confidentiality and Attorney Malpractice*, 45 Cal. L. Revision Comm'n Reports __ (2018).
27. See Memorandum 2018-4.
28. 2018 Cal. Stat. ch. 350 (SB 954 (Wieckowski)).
29. Minutes (Oct. 2018), p. 3.
30. 2006 Cal. Stat. res. ch. 128 (ACR 73 (McCarthy)).

due date of July 1, 2009. Two voluminous bills[31] and some follow-up legislation[32] have since been enacted, fully implementing the recodification.

In addition to the recodification, the 2009 report included a list of "Minor Clean-Up Issues for Possible Future Legislative Attention."[33] The Legislature authorized the Commission to study those issues.[34]

In 2014 and 2018, the Legislature enacted bills to implement Commission recommendations addressing some of the minor clean-up issues.[35]

As time permits, the Commission should continue to consider the minor clean-up matters identified in its earlier report.

Trial Court Restructuring

California's trial court system was dramatically restructured in the past quarter century. The restructuring involved three major reforms: (1) trial court unification, (2) state funding of trial court operations, and (3) a new personnel system for the trial courts.[36] Achieving these reforms required extensive statutory and constitutional revisions. In addition, hundreds of statutes became obsolete as a result of the reforms, necessitating repeals or adjustments to reflect the structural changes.

At the request of the Legislature, the Commission has been involved in trial court restructuring since late 1993. It has done a massive amount of work in the area, involving preparation of numerous reports and enactment of many bills (affecting about 1,800 code sections) and a constitutional measure.[37]

Nonetheless, there is still more work to do[38] and the Commission is responsible for continuing the code clean-up pursuant to Government Code Section 71674, which provides:

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31. See 2010 Cal. Stat. ch. 178 (SB 1115 (Committee on Public Safety)); 2010 Cal. Stat. ch. 711 (SB 1080 (Committee on Public Safety)).
32. 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)).
33. *Nonsubstantive Reorganization of Deadly Weapon Statutes,* 38 Cal. L. Revision Comm'n Reports 217, 265-80 (2009).
34. See 2010 Cal. Stat. ch. 711, § 7.
35. See 2014 Cal. Stat. ch. 103 (AB 1798), implementing *Deadly Weapons: Minor Clean-Up Issues*, 43 Cal. L. Revision Comm'n Reports 63 (2013); 2018 Cal. Stat. ch. 185 (AB 2176), implementing *Deadly Weapons: Minor Clean-Up Issues (Part 2)*, 44 Cal. L. Revision Comm'n Reports 471 (2015).
36. For a more detailed discussion of these reforms, see First Supplement to Memorandum 2014-53, pp. 2-5.
37. For further discussion of the Commission's role, see *id.*
38. For a description of the remaining work, see *id.* at 7-23.

> 71674. The California Law Revision Commission shall determine whether any provisions of law are obsolete as a result of the enactment of [the Trial Court Employment Protection and Governance Act], the enactment of the Lockyer-Isenberg Trial Court Funding Act of 1997 (Chapter 850 of the Statutes of 1997), or the implementation of trial court unification, and shall recommend to the Legislature any amendments to remove those obsolete provisions. The commission shall report its recommendations to the Legislature, including any proposed statutory changes.

In 2017, the Commission directed the staff to recommence work on this topic.[39] The staff has made significant progress on this topic in 2018. However, there is still substantial work to be done. **The staff recommends that the Commission continue work on this topic in 2019.**

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.

There are currently no active studies focusing 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.[40] The Commission exercises this authority from time to time.

In 2015, the Commission, in conjunction with preparing a final recommendation on Fish and Game Law,[41] uncovered several cross-reference errors in a section of the Health and Safety Code, which were unrelated to fish and game.[42] The Commission conducted a study to identify and correct the remaining cross-reference errors in the Health and Safety Code provision and has circulated a tentative recommendation on this topic for public comment.[43]

This work is ongoing and proceeding on a low priority basis.

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39. See Minutes (Dec. 2017), p. 3; Memorandum 2017-55, pp. 39-40.
40. Gov't Code § 8298.
41. See Memorandum 2015-40, pp. 8-9.
42. Health & Safety Code § 131052.
43. See Tentative Recommendation on Technical and Minor Substantive Corrections: Health and Safety Code (October 2018).

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.[44] The Commission fulfills this directive annually in its Annual Report, identifying statutes that have been held unconstitutional or impliedly repealed and recommending that they be repealed (to the extent that the problematic defect has not been addressed).[45] The Commission does not ordinarily propose specific legislation to effectuate that general recommendation. **There are no new cases this year that require Commission study.**

However, in 2016, the Commission undertook study of a case, *Property Reserve, Inc. v. Superior Court*,[46] in which the California Supreme Court concluded that the pre-condemnation entry and testing statutes in California's Eminent Domain Law were constitutionally deficient. The status of this work is discussed under "Eminent Domain" below.

CALENDAR OF TOPICS

The Commission's Calendar of Topics currently includes 25 topics.[47] 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, 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.

44. Gov't Code § 8290.
45. See draft Annual Report attached to Memorandum 2018-56.
46. 1 Cal. 5th 151 (2016).
47. See 2018 Cal. Stat. res. ch. 158.

A possible subject for study under this topic is 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.

Previously, the Commission has received suggestions from a number of sources regarding foreclosure procedure.[48] The Commission has not pursued any of those suggestions, but has kept them on hand.

Over the last several years, the Legislature has enacted a number of foreclosure-related reforms,[49] and the federal government has also pursued reforms in this area.[50] In 2016, the California Supreme Court decided two cases focused on foreclosure-related issues on the merits.[51] And, the California Supreme Court currently has two pending cases involving foreclosure issues.[52] **Given the 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 has initiated or previously expressed interest in studying a number of probate-related topics, as discussed below.

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48. 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.

49. See, e.g., 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)); 2013 Cal. Stat. ch. 65 (SB 426 (Corbett)); 2013 Cal. Stat. ch. 251 (SB 310 (Calderon)); 2014 Cal. Stat. ch. 198 (SB 1051 (Galgiani)); 2018 Cal. Stat ch. 404 (SB 818 (Beall)); 2018 Cal. Stat. ch. 1183 (SB 1183 (Morrell)).

50. 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 generally https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/ (Final Rules of Consumer Financial Protection Bureau).

51. See Coker v. JP Morgan Chase Bank, N.A., 62 Cal. 4th 667, 364 P.3d 176, 197 Cal. Rptr. 3d 131 (2016); Yvanova v. New Century Mortgage Corp., 62 Cal. 4th 919, 365 P.3d 845, 199 Cal. Rptr. 3d 66 (2016).

52. See Dr. Leevil, LLC v. Westlake Healthcare Center, 395 P.3d 697, 218 Cal. Rptr. 3d 663 (2017); Black Sky Capital, LLC v. Cobb, 12 Cal. App. 5th 887, 219 Cal. Rptr. 3d 793 (2017).

Creditor Claims, Family Protections, and Nonprobate Assets

Several 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 and to protect a decedent's surviving spouse and children in probate has been shredded by the ad hoc development of nonprobate transfer law.[53]

In 2010, the Commission circulated the background study for a 120-day public comment period.[54] 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.[55] The study was to have a very narrow scope, focusing solely on codifying the general principle that property transferred outside of probate is liable for creditor claims and family protection claims. However, further work on the topic was suspended due to other demands on staff resources.

The Commission reactivated this study in 2017. In 2018, the Commission, based on stakeholder input, decided to suspend work on a general reform of the law on nonprobate transfer liability.[56] The Commission decided to proceed with work on two narrower issues:

53. See Memorandum 2012-45, Exhibit p. 2.
54. See Memorandum 2010-27; Minutes (June 2010), p. 7.
55. Memorandum 2013-25; Minutes (June 2013), p. 14.
56. Minutes (May 2018), p. 6.

(1) Scope of the surviving spouse liability rule in Probate Code Sections 13550 and 13551.
(2) Application of probate family protections to nonprobate transfers.[57]

On the first of these topics, the Commission will be considering a draft tentative recommendation at the December meeting. Depending on the public comment received, it may be possible to complete a recommendation on this topic in early 2019.

For the second topic, the timeline for study will depend on decisions about the scope of the project. **The staff recommends that the Commission continue work on these narrower topics in 2019.**

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., the drafter of the donative instrument, a fiduciary who transcribed the donative instrument, or 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.[58] 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.[59] In other words, should there be a presumption of fraud or 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.[60]

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57. *Id*. at 7.
58. See *Donative Transfer Restrictions*, 38 Cal. L. Revision Comm'n Reports 107 (2008).
59. See generally Memorandum 2009-22.
60. See 2010 Cal. Stat. ch. 620; Prob. Code §§ 21360-21392; see also 2017 Cal. Stat. ch. 56 (amending Probate Code Section 21380).

With the resolution of SB 105 settled, the Commission could return to this topic at any time. However, the topic does not appear to be as pressing as some of the other topics awaiting the Commission's attention.

Simplified Administration Procedures

The Probate Code provides several procedures authorizing heirs or devisees to receive a decedent's property without probate administration.[61] These procedures are referred to here collectively as simplified administration procedures.

In 2017, in response to a request for input on Transfer on Death Deeds ("TOD deeds"), the Commission received a letter from the Executive Committee of the Trusts and Estates Section of the State Bar ("TEXCOM"). TEXCOM's letter raised concerns about the liability of a TOD deed beneficiary for a decedent's unsecured debts.[62] The governing liability provisions for TOD deed beneficiaries were very closely modeled on provisions governing liability of a recipient of the decedent's property under the simplified administration procedures.[63] Thus, TEXCOM's concerns suggest that the liability provisions for the simplified administration procedures may be in need of reform.

At the time that TEXCOM's letter was presented, the Commission approved the staff recommendation to study the simplified administration procedures.[64]

In 2018, the staff, building on the work of student externs, completed two recommendations related to the simplified administration procedures.[65] The staff is currently working on several issues related to provisions that require the return of the property collected using these procedures.[66]

The staff recommends continuing work on these issues in 2019.

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61. See generally Prob. Code Division 8.
62. See Memorandum 2017-35, Exhibit pp. 5-8; see also Memorandum 2017-35, pp. 4-6.
63. Compare Prob. Code §§ 5672-5676 (liability for RTODD beneficiary) with Prob. Code §§ 13109-13111 (liability of recipient of personal property of small value received without administration); 13204-13206 (liability of recipient of real property of small value received without administration); 13561-13562 (liability of surviving spouse due to reciept of decedent's property without administration).
64. See Minutes (Aug. 2017), p. 8.
65. *Disposition of Estate Without Administration: Dollar Amounts*, 45 Cal. L. Revision Comm'n Reports __ (2018); *Disposition of Estate Without Administration: Interest Rate*, 45 Cal. L. Revision Comm'n Reports __ (2018).
66. See, e.g., Memorandum 2018-45.

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 specific topics that fall within this comprehensive authority are discussed below.

Eminent Domain

In 2016, the staff identified a case, *Property Reserve, Inc. v. Superior Court*,[67] in which the California Supreme Court concluded that the pre-condemnation entry and testing statutes in California's Eminent Domain Law were constitutionally deficient. The statutes at issue were enacted on the Commission's recommendation.[68]

In 2016, the Commission decided, when considering the New Topics memorandum, to undertake study of the constitutional issue identified by the Supreme Court.[69] In 2017, the Commission made significant process in studying this topic, including completion of a draft recommendation.[70] In the course of preparing the draft recommendation, the Commission received comments suggesting additional, related statutory reforms.[71] In response to those comments, the Commission decided to expand the scope of the study to include

67. 1 Cal. 5th 151 (2016).
68. See *Recommendation Proposing The Eminent Domain Law*, 12 Cal. L. Revision Comm'n Reports 1741-42 (1974) (proposed Code of Civil Procedure Section 1245.060).
69. See Memorandum 2016-53, p. 13; Minutes (Dec. 2016), p. 4.
70. See Memorandum 2017-43.
71. See Memorandum 2017-43, pp. 4-5, 8-9; see also First Supplement to Memorandum 2017-43.

those issues.[72] Due to other demands on staff time in 2018, work on this topic was suspended. **The staff recommends continuing work on these issues, as a law student extern project, in 2019.**

Mechanics Lien Law

Several years ago, the Commission recommended a complete recodification of mechanics lien law. The laws implementing the recodification of mechanics lien law became operative on July 1, 2012.[73]

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

As discussed below, the Commission undertook work in 2016 on the application of mechanics lien law to common area property.[74]

The staff is not currently aware of any other high priority issues on this topic. The Commission may wish to return to this topic after the Commission's higher priority workload eases.

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.

72. See Minutes (Sept. 2017), p. 4.
73. See 2010 Cal. Stat. ch. 697 (SB 189 (Lowenthal)); 2011 Cal. Stat. ch. 44 (SB 190 (Lowenthal)).
74. See discussion of "14. Common Interest Developments" *infra*.

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.[75] In particular, the Commission could study circumstances in which the right to support can be waived.[76]

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.

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, including the Commission's recommendation on *Deposition in Out-of-State Litigation,* which was enacted in 2008.[77]

While it was actively working on civil discovery, the Commission received numerous suggestions from interested persons, which the staff has kept on hand. The Commission has also identified other discovery topics it might address.

The Commission, in its consideration of work priorities for 2017, directed the staff to begin work on a discovery topic suggested by Commissioner Capozzola (related to depositions) and to prepare a list of other discovery topics suggested for study.[78] However, the Commission suspended that work in light of then-pending discovery-related legislation — AB 383 (Chau) — that would expressly authorize informal discovery conferences.[79] After AB 383 was enacted into law with a sunset date of January 1, 2023,[80] the Commission decided to suspend study of discovery-related issues until the sunset of AB 383.[81]

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75. See Memorandum 2005-29, p. 25 & Exhibit pp. 21-36; see also, e.g., *In re* Marriage of Clarke & Akel, 19 Cal. App. 5th 914, 228 Cal. Rptr. 3d 483 (2018).
76. See *In re* Marriage of Pendleton & Fireman, 24 Cal. 4th 39, 5 P.3d 839, 99 Cal. Rptr. 2d 278 (2000).
77. 37 Cal. L. Revision Comm'n Reports 99 (2007); see 2008 Cal. Stat. ch. 231.
78. See Minutes (Dec. 2016), p. 3.
79. See Minutes (Aug. 2017), p. 7; Memorandum 2017-26, pp. 22-24.
80. 2017 Cal. Stat. ch. 189.
81. Minutes (Dec. 2018), p. 3.

Consistent with the Commission's decision, work on this topic is currently suspended.

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,[82] 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.

The staff later compiled a list of specific evidence issues for possible study, which appear likely to be relatively noncontroversial.[83] 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 the Commission's higher priority workload eases.**

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.

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82. The background study consists of a series of reports prepared by Prof. Méndez. See http://www.clrc.ca.gov/Menu3_reports/bkstudies.html.

At the time the reports were prepared, Prof. Méndez served as a Professor of Law at Stanford Law School and UC Davis School of Law.

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

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.**

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 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, after its higher priority workload eases.

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.

The Commission should retain this topic on its Calendar of Topics as related work is currently ongoing.[84]

13. Contract Law

The Commission's Calendar of Topics authorizes 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, for the past decade or so the staff has been lightly monitoring developments relating to the Uniform Electronic Transactions Act ("UETA"), including possible preemption of California's version of UETA by the federal Electronic Signatures in Global and National Commerce Act.[85] **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 studied various aspects of this topic since that time, and has issued several recommendations, most of which have been enacted.

84. See discussion of "Trial Court Restructuring" *supra*.
85. See Memorandum 2014-41, p. 19.

In 2013, the Legislature enacted Commission recommendations to (1) recodify the Davis-Stirling Common Interest Development Act,[86] and (2) create a new and separate act for commercial and industrial common interest developments.[87]

In 2016, the Commission completed a recommendation related to the application of mechanics lien law to common area property.[88] In 2017, AB 534 (Gallagher), which implements the Commission's recommendation, was enacted.

The Commission has a long list of possible future CID study topics. For example, the Commission previously decided to consider situations 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.[89]

Given our extensive work in this area of law, it would make sense to return to such matters eventually. However, this topic does not appear to be as pressing as some of the other topics awaiting the Commission's attention.

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

86. 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)).

87. 2013 Cal. Stat. ch. 605 (SB 752 (Roth)).

88. See *Mechanics Liens in Common Interest Developments*, 44 Cal. L. Revision Comm'n Reports 739 (2016).

89. See Minutes (Oct. 2008).

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 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.[90] **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.**

90. See discussion of "Deadly Weapons" *supra*.

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. **For this reason, the staff does not recommend that the Commission undertake this project at this time.**

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."[91] 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."[92] 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 might want to turn to this topic in the future, after its higher priority workload eases.

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.[93] The Commission issued its final report on that topic in 2012.[94] 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**.

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91. 2007 Cal. Stat. res. ch. 100.
92. See Memorandum 2005-29, Exhibit p. 59.
93. See 2009 Cal. Stat. res. ch. 98.
94. See *Charter Schools and the Government Claims Act*, 42 Cal. L. Revision Comm'n Reports 225 (2012).

22. Fish and Game Law

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

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

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

24. California Public Records Act

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

25. Recodification of Toxic Substance Statutes

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

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 assignments, **the staff expects that the Commission will lack the staff 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. **The staff recommends that these issues be retained for consideration as staff-directed student work, as appropriate, or as staff projects once the Commission's higher priority workload eases.**

Intestate Inheritance by a Half-Sibling[95]

Marlynne Stoddard of Newport Beach asked the Commission to study intestate inheritance by a half-sibling who lacks a familial relationship with the decedent.[96] 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."[97] Ms. Stoddard provides the example of the estate of her brother, who died intestate; Ms. Stoddard, who "had a very close relationship"

95. See full analysis in Memorandum 2013-54, pp. 22-23.
96. See Memorandum 2012-5, Exhibit pp. 48-51.
97. Prob. Code § 6406.

with her brother, and two estranged half-siblings each received a one-third share of her brother's estate.[98] Ms. Stoddard indicated that "the current half-blood statute … produces grossly unfair and irrational results in cases like mine."[99]

Homestead Exemption — Challenge to Existence of a Dwelling[100]

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."[101] 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 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).

In 2017, the study work on this topic was undertaken by a law student extern working with the staff.[102] The Commission approved a final recommendation on this topic.[103] **The staff will seek implementing legislation in 2019.**

Civil Procedure: Stay of Trial Court Proceeding During Appeal[104]

Attorney H. Thomas Watson suggested that the Commission consider a proposed amendment[105] 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.[106] 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."[107]

Uniform Trust Code[108]

Nathaniel Sterling, the Commission's former Executive Secretary, wrote on behalf of the California Commission on Uniform State Laws, to request that the

98. See Memorandum 2012-5, Exhibit pp. 48-51.
99. *Id.* at 50.
100. See full analysis in Memorandum 2013-54, pp. 23-24.
101. *Id.*
102. See Memorandum 2017-13.
103. See *Homestead Exemption: Dwelling*, 45 Cal. L. Revision Comm'n Reports ___ (2017).
104. See full analysis in Memorandum 2013-54, p. 27.
105. First Supplement to Memorandum 2012-5, Exhibit p. 12.
106. *Id.* at 12-13.
107. *Id.* at 13.
108. See full analysis in Memorandum 2013-54, pp. 32-33.

Law Revision Commission "make a study to determine whether the Uniform Trust Code should be enacted in California, in whole or in part."[109]

Social Security Number Disclosure Requirement in Probate Code[110]

Attorneys Peter Stern and Jennifer Wilkerson shared a concern about Probate Code Section 1841, which requires that a conservatorship petition include the social security number of the proposed conservatee if that person is an absentee. Mr. Stern further indicated that social security numbers are generally not used in any non-confidential pleadings or filings. The staff, in reviewing the issue, found another section of the Probate Code (Section 3703), which requires a social security number of an absentee to be included in a court filing.

Revocability of Trusts by Surviving Co-Trustee & Disposition of Trust Assets[111]

Attorney Beverley Pellegrini wrote to request statutory clarification as to the meaning of the "joint lifetimes of the trustors" when that phrase is used in trust documents.[112] In particular, Ms. Pellegrini believes that the phrase is ambiguous as it could mean either the time period when *all* trustors are alive (i.e., until the first trustor dies) or the time period when *any* trustor is alive (i.e., until all trustors are deceased).[113]

Ms. Pellegrini's concern relates to the ability of co-Trustors to achieve their intended result during the survivorship period (i.e., after the first Trustor is deceased) with respect to both the revocation and disposition of trust property. For instance, should a marital trust that provides for revocability during the "joint lifetimes" of the Trustors permit the surviving spouse to revoke as to the entire property or only that spouse's share of the property?[114] To the extent that

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109. *Id.* at Exhibit p. 36.
110. See full analysis in Memorandum 2014-41, pp. 26-29.
111. See full analysis in Memorandum 2015-47, pp. 27-29; see also First Supplement to Memorandum 2015-47, p. 2.
112. Memorandum 2015-47, Exhibit pp. 28-29; see also Email from Beverly Pellegrini to Kristin Burford and Brian Hebert (Nov. 2, 2016) (on file with Commission)..
113. *Id.* at Exhibit p. 28.
114. Generally, the answer to this question would be determined according to Probate Code Section 15401. In relevant part, that section reads:

> (b) (1) Unless otherwise provided in the instrument, if a trust is created by more than one settlor, each settlor may revoke the trust as to the portion of the trust contributed by that settlor, except as provided in Section 761 of the Family Code [which permits either spouse to unilaterally revoke the trust as to community property while both spouses are living].
> (2) Notwithstanding paragraph (1), a settlor may grant to another person, including, but not limited to, his or her spouse, a power to revoke all or part of that portion of the trust contributed by that settlor, regardless of whether that portion was separate property or

the surviving spouse has the power to revoke the entire trust corpus, does that spouse also control the disposition of that property?[115]

Bond and Undertaking Law[116]

Attorney Frank Coats raised concerns that recent changes to California's Bond and Undertaking Law do not adequately account for the operation of the law in non-litigation matters.[117] Perhaps the most troubling issue raised by Mr. Coats is that the recent amendments could be read to only permit the use of bonds or notes as a deposit in lieu of an appeal bond and, thus, to preclude the deposit of bonds or notes in lieu of a bond required as a condition of a permit or contract.[118]

In addition, Mr. Coats identifies a few provisions in the current law that may cause confusion.[119] These issues may be appropriate to address if the Commission undertakes a study of the issue discussed above.

Timing Rules for Service by Mail and Email[120]

Attorney Joshua Merliss expressed concern about differing judicial interpretations of the rules governing the timing of service by mail (Code Civ.

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community property of that settlor, and regardless of whether that power to revoke is exercisable during the lifetime of that settlor or continues after the death of that settlor, or both.

115. Generally, the answer to this question would be determined according to Probate Code Section 15410. In relevant part, that section reads:

> At the termination of a trust, the trust property shall be disposed of as follows:
> (a) In the case of a trust that is revoked by the settlor, the trust property shall be disposed of in the following order of priority:
> (1) As directed by the settlor.
> (2) As provided in the trust instrument.
> (3) To the extent that there is no direction by the settlor or in the trust instrument, to the settlor, or his or her estate, as the case may be.
> (b) In the case of a trust that is revoked by any person holding a power of revocation other than the settlor, the trust property shall be disposed of in the following order of priority:
> (1) As provided in the trust instrument.
> (2) As directed by the person exercising the power of revocation.
> (3) To the extent that there is no direction in the trust instrument or by the person exercising the power of revocation, to the person exercising the power of revocation, or his or her estate, as the case may be.
> ….

116. See full analysis in Memorandum 2015-47, pp. 30-31; see also First Supplement to Memorandum 2015-47, p. 1.

117. Memorandum 2015-47, Exhibit pp. 1-2.

118. See Code Civ. Proc. § 995.710(a)(2).

119. See Memorandum 2015-47, Exhibit pp. 1-2; see also First Supplement to Memorandum 2015-47, Email from Frank Coats to Brian Hebert (Sept. 16, 2015) (on file with Commission).

120. See full analysis in Memorandum 2015-47, pp. 31-32.

Proc. § 1013) and service by email (Code Civ. Proc. § 1010.6(a)(4)).[121] Each provision extends litigation deadlines, notice periods, and the like for a certain number of days after service occurring by the specified means (mail or email).

However, the statutes do not expressly say who can take advantage of the extension of time. With respect to whether a person other than a recipient of the service is entitled to the extension of time, Mr. Merliss indicated that two appellate courts have reached differing conclusions.[122]

Given the similarities between Sections 1010.6 and 1013, the differing interpretations as to who is entitled to a time extension seem problematic and potentially confusing. Addressing this issue would clarify the applicable deadlines and help to avoid inadvertent late filings, which could have significant legal consequences.

Attachment of Limited Liability Company Property[123]

Attorney Dana Cisneros wrote with concern that the prejudgment attachment statutes (in particular, Code of Civil Procedure Section 487.010) make no provision for limited liability company property.[124] However, Ms. Cisneros indicates that, in practice, "courts are issuing attachments for LLCs."[125]

Code of Civil Procedure Section 487.010 authorizes attachment of specified property for defendants who are corporations, partnerships, or other unincorporated associations, and natural persons. Section 487.010 does not mention limited liability companies.

The staff's initial analysis of this issue suggests that the failure to address LLCs in the prejudgment attachment statute may have been an oversight.[126] Assuming further study confirms this assessment, the statutes would benefit from a clarifying reform that specifies that LLCs are subject to the same rules for prejudgment attachment as other legal entities.

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121. *Id.* at Exhibit pp. 6-27.
122. *Id.* at Exhibit pp. 6-7. The cases are *Westrec Marina Management v. Jardine Ins. Brokers Orange County*, 85 Cal. App. 4th 1042, 102 Cal. Rptr. 2d 673 (2000), and *Kahn v. The Dewey Group*, 240 Cal. App. 4th 227, 192 Cal. Rptr. 3d 679 (2015); see also Memorandum 2015-47, Exhibit pp. 8-27.
123. See full analysis in Memorandum 2017-55, pp. 31-32.
124. *Id.* at Exhibit p. 1.
125. *Id.*
126. See 1994 Cal. Stat. ch. 1010 (SB 2053 (Killea)); 1994 Cal. Stat. ch. 469 (SB 469 (Beverly)).

Application of Marketable Record Title Act to Oil & Gas Leases[127]

Attorney Jack Quirk wrote to identify ambiguities regarding the application of certain provisions in the Marketable Record Title Act ("MRTA") to oil and gas leases.[128] In particular, Mr. Quirk is concerned that the statutes are not sufficiently clear on whether the MRTA's abolition of possibilities of reverter applies to such interests in oil and gas leases.[129]

Mr. Quirk notes that a typical oil and gas lease includes an initial, defined term of years and a secondary, indefinite term (often, contingent upon continued production).[130] California case law construes such leases as creating a fee simple determinable interest held by the lessee and a complementary possibility of reverter in favor of the lessor.[131] Essentially, this treatment means that the lease automatically terminates when the specified condition occurs (e.g., failure to produce paying quantities of oil and gas).[132]

In the original enactment of the MRTA, it seems clear that the Legislature did not intend to modify the treatment of oil and gas leases (i.e., convert the possibility of reverter to a power of termination).[133] Several years later, the MRTA was amended, on Commission recommendation, to change the terminology used to refer to certain property interests.[134] However, the change introduced a circular reference problem in the statutory language regarding the treatment of oil and gas leases.

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127. See full analysis in Memorandum 2017-55, pp. 33-35.

128. *Id*. at Exhibit pp. 5-8. Mr. Quirk's emails refer to several cases that he provided as attachments. Those attachments are not reproduced in the Exhibit, but are on file with the Conmmission.

129. See Civ. Code § 885.020. ("Fees simple determinable and possibilities of reverter are abolished. Every estate that would be at common law a fee simple determinable is deemed to be a fee simple subject to a restriction in the form of a condition subsequent. Every interest that would be at common law a possibility of reverter is deemed to be and is enforceable as a power of termination.").

130. See Memorandum 2017-55, Exhibit p. 5.

131. See *id*.; see also, e.g., Dabney v. Edwards, 5 Cal. 2d 1, 11-13, 53 P.2d 962 (1935), Lough v. Coal Oil, Inc., 217 Cal. App. 3d 1518, 1526, 266 Cal. Rptr. 611 (1990) ("In California, an oil and gas lease with a 'so long thereafter' habendum clause creates a determinable fee interest in the nature of *profit a prendre*, an interest that terminates upon the happening of the specified event with no notice required.").

132. See *supra* note 131; see also Renner v. Huntington-Hawthorne Oil and Gas Co., 39 Cal. 2d 93, 244 P.2d 895 (1952) ("A determinable fee terminates upon the happening of the event named in the terms of the instrument which created the estate; no notice is required for, and no forfeiture results from, such termination.").

133. See Memorandum 2017-55, pp. 33-34.

134. See 1991 Cal. Stat. ch. 156 (AB 1577); *Application of Marketable Title Statute to Executory Interests*, 21 Cal. L. Revision Comm'n Reports 53 (1991).

While the current understanding in practice is in accord with the apparent legislative intent (i.e., the MRTA does not convert the possibility of reverter in oil and gas leases), the statutory language itself is somewhat troubling and could be conformed for clarity.

SUGGESTED NEW TOPICS

During the past year, the Commission received several new topic suggestions from various sources. A number of those suggestions are discussed below. Other 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.

Real Property

The Commission has received one new topic suggestion that may fall within the Commission's existing authority to study real property issues.

Clarify What Documents a Motion for Summary Judgment Must Include for Unlawful Detainer Proceedings

Attorney Bonnie Maly writes, on behalf of Continuing Education of the Bar ("CEB"), to request that the Commission clarify "what supporting documents are required in summary judgment motions in unlawful detainer actions."[135] Ms. Maly also provided an excerpt from CEB's publication, California Summary Judgment, which discusses the problem.[136]

Ms. Maly explains that subdivision (b) of Code of Civil Procedure Section 437c specifies, among other things, the required contents of motions for summary judgment generally.[137] That subdivision provides, in part:

> (b) (1) The motion [for summary judgment] shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. The supporting papers shall include a separate statement setting forth plainly and concisely all material facts that the moving party contends are undisputed. Each of the material facts stated shall be followed by a reference to the supporting evidence. The failure to comply with this requirement of a separate statement may in the court's discretion constitute a sufficient ground for denying the motion.

135. Exhibit p. 19.
136. *Id*. at 20-21.
137. *Id*. at 19.

…

However, subdivision (s) of that section makes subdivisions (a) and (b) expressly inapplicable to actions, like unlawful detainer, which are "brought pursuant to Chapter 4 (commencing with Section 1159) of Title 3 of Part 3."[138] Similarly, California Rule of Court 3.1350(c), which specifies what documents must be submitted in support of a motion for summary judgment, also expressly limits its application in unlawful detainer situations (as well as other summary proceedings for obtaining possession of real property).[139] For this reason, it is not clear what supporting papers should be attached to a motion for summary judgment in an unlawful detainer proceeding.[140]

Code of Civil Procedure Section 1170.7, which governs motions for summary judgment in summary proceedings, like unlawful detainer, provides:

> A motion for summary judgment may be made at any time after the answer is filed upon giving five days notice. Summary judgment shall be granted or denied on the same basis as a motion under Section 437c.

In addition, California Rule of Court 3.1351(b) provides that "[a]ny opposition to the motion and any reply to an opposition may be made orally at the time of the hearing…."[141] These procedures and timeframes differ significantly from those set forth in Code of Civil Procedure Section 437c for a motion for summary judgment in the standard case.[142]

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138. See also *id*. at 19-21.

139. California Rule of Court 3.1350(c) specifies the contents for motions for summary judgment "[e]xcept as provided in Code of Civil Procedure section 437c(r) and rule 3.1351."

The current subdivision (s) of Code of Civil Procedure Section 437c was formerly subdivision (r). *Compare* Code Civ. Proc. § 437c(s) *with* Code Civ. Proc. § 437c(r), as amended by 2004 Cal. Stat. ch. 182, § 9; see also Exhibit p. 21. California Rule of Court 3.1351 involves "[m]otions for summary judgment in summary proceeding involving possession of real property," but does not specify the required contents for such motions.

140. See Exhibit p. 21.

141. California Rule of Court 3.1351(c) also allows a party to submit written opposition for consideration in advance of the hearing if it is "filed and served on or before the court day before the hearing." This rule also permits a court to consider later filed written opposition "in its discretion."

142. A motion for summary judgment "may be made at any time after 60 days have elapsed since the general appearance in the action or proceeding of each party against whom the motion is directed or at any earlier time after the general appearance that the court, with or without notice and upon good cause shown, may direct." Code Civ. Proc. § 437c(a)(1). Notice and supporting papers must be served on all other parties at least 75 days before the hearing. *Id*. § 437c(a)(2). The provision also specifies timing for service and filing of an opposition to the motion ("not less than 14 days preceding the noticed or continued date of hearing") and a reply ("not less than five days preceding the noticed or continued date of hearing"). *Id*. § 437c(b)(2), (4).

The fundamental problem in this instance is the scope of subdivision (s) of Section 437(c). Subdivision (s) states "[s]ubdivisions (a) and (b) do not apply to actions brought pursuant to Chapter 4 (commencing with Section 1159) of Title 3 of Part 3." Subdivisions (a) and (b) include several timing rules for the summary judgment procedure, as well other provisions about motions for summary judgment and hearings.[143] CEB's California Summary Judgment publication provides the following practice tip:

> The best course of action is to act on the probability that CCP § 437c (s) is directed only at the scheduling and timing provisions of subdivisions (a)-(b).[144]

Ms. Maly suggests that subdivision (s) should be narrowed to specify that only the standard time periods for filing and serving papers and the scheduling of hearings are inapplicable to motions for summary judgment in unlawful detainer proceedings.[145] She indicates that this proposed amendment is based on her assessment of the probable original legislative intent.[146] Ms. Maly also acknowledges, however, that

> [t]his lack of specificity in the governing statutes and court rules may simply be the result of an assumption that a notice of motion and a properly verified complaint will adequately support a summary judgment brought by the plaintiff in most unlawful detainer actions (if so, the statutes should say just that). If, however, the defendant brings the summary judgment motion, and as to any opposing party, the statutes and rules are incomplete & quite unclear.[147]

It seems reasonable that the Legislature would not want to impose the lengthier timelines for other proceedings to motions for summary judgment in summary proceedings, like unlawful detainer. It is more difficult to discern why the Legislature would not provide guidance regarding the contents of a motion for summary judgment in summary proceedings.

The staff believes that the rules for motions for summary judgment in summary proceedings should be clarified in the statutes. In addition, the Commission has done previous work on unlawful detainer and has identified a

143. See, e.g., Code Civ Proc. § 437c(b)(5) ("Evidentiary objections not made at the hearing shall be deemed waived.").
144. See Exhibit p. 20.
145. See *id*. at 19.
146. Exhibit p. 19; see also *id*. at 20-21.
147. Exhibit p. 19.

few issues pertaining to discovery in unlawful detainer proceedings to be addressed when time permits.[148] If the Commission decides to pursue Ms. Maly's suggestion, it may be possible to put together a package of minor reforms related to unlawful detainer proceedings.

While the staff sees benefit to pursuing work on this topic, the staff is unsure when the Commission will have the resources to undertake this project. **The staff recommends that this issue be added to the list of carryover topics for future consideration.** Given that Ms. Maly and CEB have a proposed legislative solution, they might consider contacting the Legislature directly rather than waiting for the Commission's workload to clear.

Probate Code

The Commission has received one new topic suggestion that falls within the Commission's existing authority to study issues in the Probate Code.

Reforms to Trust Law

Antoinette ("Toni") Amorteguy writes with several proposals for changes to the trust laws and a proposal regarding the Commission's process.

Ms. Amorteguy's procedural suggestion is that the Commission make an effort to broaden outreach to stakeholders representing beneficiaries of trusts.[149] The Commission has not worked on the Trust Law in recent years and, thus, has not reached out to stakeholders on this topic. As is the Commission's practice, when the Commission commences work on a new study in this area, stakeholder outreach will be one of the initial issues considered by the Commission. The staff will prepare a memorandum discussing which stakeholders are represented on the Commission's distribution lists, consider whether there are other interested stakeholders to contact, and request suggestions on any further outreach. The staff will be mindful of Ms. Amorteguy's suggestion for any future work the Commission undertakes on the Trust Law.

148. See Memorandum 2006-40, pp. 9-10 ("Timetable for Other Forms of Discovery" and "Interrelationship Between Discovery Cutoff and Hearing Date"); Memorandum 2007-3, pp. 3-4.

149. In particular, Ms. Amorteguy suggests reaching out to "outside investment managers, [certified public accountants], financial economists, real estate investors, appraisers, attorneys[,] and other professionals and groups who work with and for beneficiaries." She also suggests the possibility of sending "press releases to all major newspapers." Exhibit p. 3 (emphasis omitted).

Ms. Amorteguy's submission notes that her goal is "equity for those held in trust" and her proposals are "only some of the areas" she is concerned with.[150] Ms. Amorteguy makes several specific suggestions, including:

- Providing an oversight agency to protect beneficiaries as an alternative to court proceedings, which deplete resources.
- Requiring certification of the bank trustee or money manager or both.
- Clarifying the law on liability of a trustee for the acts of an agent.[151]

Some of Ms. Amorteguy's suggestions would involve major reforms of the state's role in resolving or preventing disputes between beneficiaries and trustees (i.e., providing an administrative oversight agency, requiring certification of trustees). Given the nature of these suggestions, they do not appear to be ones that the Commission's study process is well suited to address. The fundamental question of whether to create a new state oversight agency or impose significant, new oversight responsibilities on an existing state agency is primarily a decision about costs and benefits, as opposed to legal questions. Similarly, the question of whether to impose licensing requirements on a trustee of a private trust is a question about the dedication of state resources and oversight to private trust management.

Ms. Amorteguy also suggests clarifying the law on the liability of a trustee for acts of an agent. Probate Code Section 16401 addresses that issue:

> … the trustee is liable to the beneficiary for an act or omission of an agent employed by the trustee in the administration of the trust that would be a breach of the trust if committed by the trustee:
>
> (1) Where the trustee directs the act of the agent.
>
> (2) Where the trustee delegates to the agent the authority to perform an act that the trustee is under a duty not to delegate.
>
> (3) Where the trustee does not use reasonable prudence in the selection of the agent or the retention of the agent selected by the trustee.
>
> (4) Where the trustee does not periodically review the agent's overall performance and compliance with the terms of the delegation.
>
> (5) Where the trustee conceals the act of the agent.

150. Exhibit p. 4.
151. *Id*. at 3-4.

> (6) Where the trustee neglects to take reasonable steps to compel the agent to redress the wrong in a case where the trustee knows of the agent's acts or omissions.

Ms. Amorteguy states that these provisions are too vague. In her view, "[m]ost trustees do not have enough expertise in the area they are hiring (whatever it may be) to properly oversee or direct the agent in the first place."[152] While this lack of expertise certainly poses a practical problem, it is unclear how the law should address such a situation. Presumably, a trustee hires an agent precisely *because* the trustee lacks expertise or capacity to address a particular issue. In a situation where the trustee lacks expertise on an issue, it is not clear that outcomes would be improved by imposing a heightened oversight duty on the trustee. Although the "reasonableness" standard is somewhat vague, the trustee's liability for an agent's acts seems to be an issue that is best decided by considering the facts of the case.

Ms. Amorteguy also makes suggestions about revising the Uniform Principal and Income Act.[153] In particular, her submission suggests that the distinction between legal "income" and price appreciation is "absurd" and "the power to adjust" is subject to abuses.[154] As described in the material provided by Ms. Amorteguy, the "power to adjust" allows the trustee to "circumvent the strictures imposed by the legal income concept" and attribute monies that would otherwise be deemed income to principal.[155] The fundamental concern seems to be that the law permits a trustee to grow the trust corpus through appreciation, as opposed to distributing that value to beneficiaries as income. And, the law permits trustees to "adjust" the values attributed to income and principal, while the trustee can have a financial interest in building the value of the trust corpus (since a bank trustee's fees are typically assessed based on the value of the trust holdings).[156]

Given the Commission's lack of resources to undertake study of these issues in the near term, the staff would recommend referring the issues regarding the Uniform Principal and Income Act to the Uniform Law Commission for consideration. As noted above, the staff's assessment is that

152. See *id*.
153. See Exhibit pp. 4-7.
154. Exhibit pp. 4, 6; see generally *id*. at 4-7.
155. Exhibit p. 6.
156. See *id*. at 4.

the other issues raised by Ms. Amorteguy are not issues that should be addressed through the Commission's study process.

Technical and Minor Substantive Defects

During the legislative process for AB 1739, which implements the Commission's recommendation on *Revocable Transfer on Death Deed: Recordation* (April 2017), the staff became aware of a potentially problematic statutory ambiguity. Civil Code Section 1189(a) provides that

> Any certificate of acknowledgment taken within this state shall include a notice at the top of the certificate of acknowledgment in an enclosed box stating: "A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

Section 1189 also prescribes a form for a certificate of acknowledgment taken within this state.[157]

In some instances, the statutes include a specified form to conduct certain types of property transactions, including revocable transfer on death deeds.[158] If there are any discrepancies between the prescribed statutory form and the prescribed certificate of acknowledgment format (e.g., the certificate of acknowledgment is not in an enclosed box on the prescribed statutory form), it is unclear what effect this might have on the validity of the acknowledgment and, in turn, the form itself.

Providing a statutory clarification would help to avoid uncertainty about the outcome in situations where a discrepancy between prescribed forms exists.

The staff recommends that this issue be studied by the Commission, as resources permit, in the coming year.

Other Suggestions

The Commission has received five new topic suggestions that do not appear to fall within the Commission's existing study authority. These suggestions are discussed below.

157. Civ. Code § 1189(c).
158. See Prob. Code § 5642.

Citation Policies in Vehicle Code

Maxwell Andrews raises concerns about due process in connection with vehicle citations.[159] Mr. Andrews describes his situation:

> In my case, the original citation was both in error (I was in compliance with the posted signs), and illegible (the device used to print the citation did not print any information, i.e. the citation left on my vehicle was completely blank, and I thought it a mistake). I later received a written notice by mail, but it arrived while I was traveling on business. Upon opening the notice upon my return, I discovered two concerning facts:
>
> 1. The period in which I could contest the citation had already elapsed.
> 2. The due date for payment had already elapsed, and a late fee would now be assessed.[160]

Mr. Andrews' situation is certainly unfortunate. With only an incomplete citation, Mr. Andrews was unaware of the alleged violation until after the timeframe for contesting the citation. And, the timeframe for contesting the citation and the original due date for the penalty had passed before he received complete information about the alleged violation.

Mr. Andrews' situation, however, should be an anomaly. Typically, citations will include all of the information about the alleged violation and time of payment. Vehicle Code Section 40202(a) provides:

> If a vehicle is unattended during the time of the violation, the peace officer or person authorized to enforce parking laws and regulations shall securely attach to the vehicle a notice of parking violation setting forth the violation, including reference to the section of this code or of the Public Resources Code, the local ordinance, or the federal statute or regulation so violated; the date; the approximate time thereof; the location where the violation occurred; a statement printed on the notice indicating that the date of payment is required to be made not later than 21 calendar days from the date of citation issuance; and the procedure for the registered owner, lessee, or rentee to deposit the parking penalty or, pursuant to Section 40215, contest the citation. The notice of parking violation shall also set forth the vehicle license number and registration expiration date if they are visible, the last four digits of the vehicle identification number, if that number is readable through the windshield, the color of the vehicle, and, if possible, the make of the vehicle. The notice of parking violation, or copy thereof, shall be considered a record kept in the ordinary course of

159. Exhibit pp. 17-18.
160. *Id*. at 17.

> business of the issuing agency and the processing agency and shall be prima facie evidence of the facts contained therein.

Aside from receiving a blank citation, Mr. Andrews also notes that there are several other ways that notice of a citation left on a vehicle or sent by mail may not reach the intended recipient.[161] The Vehicle Code seems to accommodate situations where a person may have failed to receive the initial notice left on the vehicle. The law permits a person to request initial review of the notice "[f]or a period of 21 calendar days from the issuance of a notice of parking violation or 14 calendar days from the mailing of a notice of delinquent parking violation."[162] Mr. Andrews suggests that a notice sent by certified mail would ensure that the recipient would receive proper notice and should be used for parking citations.[163]

Mr. Andrews also expresses concern that an unforeseen expense, like a parking citation, could be a significant burden for an indigent person, particularly if the person was not given an opportunity to dispute an erroneous citation.[164] The Vehicle Code includes provisions ensuring that indigent persons subject to parking penalties have access to a payment plan option that waives late fees and other assessments.[165]

The Commission does not have authority to study the issue of parking citations. And, the Commission will not have the resources to study this topic in the foreseeable future. **The staff does not recommend that the Commission seek authority to work on this topic.**

Organ Donation by Incarcerated Indviduals

Steven Phillips and Andre M. Edmund write with concerns about the inability of incarcerated men and women in California prisons to become organ donors.[166] Mr. Phillips and Mr. Edmund write a heartfelt letter describing the desire to donate organs as an opportunity to make a "life-changing 'Act of Contribution.'" They write

> Our hearts break each day knowing that we have the ability to help someone have a reasonable change to "Live" and extend their time with family, friends, spouses, etc….however, we are currently prevented or prohibited, by some existing rule or law. After my

161. *Id*.
162. Veh. Code § 40215(a).
163. Exhibit p. 17.
164. *Id*.
165. See Veh. Code § 40220(a)(1)(A)(i).
166. Exhibit pp. 36-37.

> unforgiveable crime of taking someone's life, to think that I can somehow make "Amends" by giving them a part of myself, but cannot because of a restriction, is a crime within itself. We don't author this letter from a position of wanting to do this for a family member or specific person but for anyone and everyone in need of help.[167]

As an initial matter, it is worth noting that ethical, moral, and practical issues around organ donation by incarcerated individuals (or some subset thereof) have been discussed in medical literature.[168] This memorandum does not address those issues, but focuses on the law governing organ donation by incarcerated individuals.

For some background, California has adopted the Uniform Anatomical Gift Act.[169] This law, along with a federal law – the National Organ Transplant Act,[170] appear to be the primary laws governing organ donation. In the staff's initial research of this topic, we did not find any provisions of law that expressly prohibit incarcerated persons from becoming organ donors. It may be that the hurdles preventing incarcerated individuals from registering as organ donors are practical, as opposed to legal.

Under California's enactment of the Uniform Anatomical Gift Act, Health & Safety Code Section 7150.20 provides in part:

> (a) A donor may make an anatomical gift through any of the following:
>
> (1) By authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's driver's license or identification card and included on a donor database registry.
>
> (2) Directly through the Donate Life California Organ and Tissue Donor Registry Internet Web site.
>
> (3) In a will.
>
> (4) During a terminal illness or injury of the donor, by any form of communication that clearly expresses the donor's wish, addressed to at least two adults, at least one of whom is a disinterested witness. The witnesses shall memorialize this communication in a writing and sign and date the writing.

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167. *Id*. at 36.

168. See, e.g., M.A. Mills & M. Simmerling, *Prisoners as Organ Donors: Is it Worth the Effort? Is it Ethical?*, 41 Transplantation Proceedings 23 (Jan.-Feb. 2009); A. Caplan, *The Use of Prisoners as Sources of Organs – An Ethically Debious Practice*, 10 Am. J. Bioethics 1 (2011); S.S. Lin, et al., *Prisoners on Death Row Shuld be Accepted as Organ Donors*, 93 Annals Thoracic Surgery 1773 (Jun. 2012).

169. Health & Safety Code §§ 7150-7151.40.

170. National Organ Transplantation Act of 1984, Pub L. 98-507, 98 Stat. 2339-2348.

(5) As provided in subdivision (b).

(b) A donor or other person authorized to make an anatomical gift under Section 7150.15 may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol, indicating that the donor has made an anatomical gift, be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and shall comply with all of the following:

(1) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person.

(2) State that it has been signed and witnessed as provided in paragraph (1).

From a practical perspective, many people register to be organ donors when they get their driver's license or state identification card from the Department of Motor Vehicles ("DMV"). Since 2006, a state-authorized nonprofit organization, Donate Life California, began a partnership with the DMV.[171] The Donate Life California Registry maintains a confidential database of donors, including those who registered on an application to DMV and have a pink "Donor" dot on their license or ID card.[172] Donate Life California also allows for people to register as an organ donor online.[173] The law also permits other means of making an anatomical gift (e.g., in a will), which do not require registration with Donate Life California.[174]

In 2016, the Legislature considered a bill that would have required the Department of Corrections to "develop and adopt a form that will allow a prisoner in the custody of the department to elect to make an anatomical gift in the event of his or her death."[175] The bill would have also required that the form "be presented to the prisoner upon his or her first admittance into the state prison system" and "be made available for completion and signature at the prisoner's request."[176] The form would have been required to "clearly indicate the prisoner's election to be added to the donor registry."[177] The bill did not pass;

171. See https://donatelifecalifornia.org/about-us/.
172. *Id*.
173. https://register.donatelifecalifornia.org/register/. An email address is required to register online.
174. See Health & Safety Code § 7150.20.
175. See SB 1419 (Galgiani, 2015-2016), as amended April 13, 2016.
176. *Id*.
177. *Id*.

it was placed on the suspense file in the Senate Committee on Appropriations. The bill analysis indicated:

> The Department of Corrections and Rehabilitation currently has a policy in place regarding advanced health care directives. Advanced health care directives allow patients (including inmates) to make decisions about future health care services that they wish to receive. Under the advanced health care directive used by the Department, inmates can give someone the power of attorney (in order to make health care decisions on the inmates behalf) and to specify the types of medical treatment that the inmate does and does not want. The advanced health care directive form used by the Department also includes the option for an inmate to indicate whether he or she wishes to donate organs or tissues upon death and to specify which organs may be donated. The Department provides advanced health care directive forms to any inmate who requests one and to any inmate who is facing a life threatening condition or medical treatment.[178]

Given this, it appears that an incarcerated individual could request an advanced health care directive form and use that form to indicate the desire to donate organs or tissues upon death. Assuming that the form complies with the requirements of Health & Safety Code Section 7150.20, the form would be a legally effective way to make an anatomical gift.

While, perhaps, the process for incarcerated individuals to join the donor registry could be improved or clarified, this is an issue that the Legislature has recently considered. **Given the Legislature's recent consideration of this topic without having assigned the issue to the Commission for study, the staff recommends against seeking authority to study this topic.**

Paid Sick Leave

Commissioner Crystal Miller-O'Brien proposed a suggested new topic at the Commission's December 2017 meeting, relating to California's Healthy Workplaces, Healthy Families Act of 2014 (hereinafter, "Paid Sick Leave Act").[179] Commissioner Miller-O'Brien provided a written description of the issues, which was attached to and discussed in an earlier Commission memorandum.[180] For ease of reference, the materials are also attached as an Exhibit to this memorandum.[181]

178. Senate Committee on Appropriations Analysis of SB 1419 (May 23, 2016), p. 1.
179. See Labor Code §§ 245-249.
180. Memorandum 2018-2.
181. Exhibit pp. 22-35.

As described in Memorandum 2018-2, Commissioner Miller-O'Brien

> indicates that since the Act was enacted, numerous cities and counties have enacted their own paid sick leave laws. She believes that the resulting patchwork of requirements complicates employment law in problematic ways and that legislative clarification would be helpful. She also suggests creating new exceptions to the application of the law (e.g., limiting the law so that it only applies to businesses with five or more non-family-member employees).[182]

Commissioner Miller-O'Brien provided a chart comparing the different paid sick leave requirements imposed under California law and in several local jurisdictions.[183]

As Memorandum 2018-2 describes, the Paid Sick Leave Act was subject to a "unusually high degree of legislative scrutiny" and many stakeholders were involved in the legislative process.[184]

> Given the intensity of the legislative efforts on this subject, it seems unlikely that the policies established in the Act, including its scope of application, were inadvertent. In particular:
>
> • The precision with which the Legislature crafted exceptions to the application of the Act, in response to opposition concerns, suggests that the decision to apply the Act to all other employers was an intentional policy choice.
>
> • It seems clear that the Legislature anticipated that local jurisdictions might adopt their own, more generous, paid sick leave laws. Labor Code Section 249(d) expressly provides that the Act "does not preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater accrual or use by employees of sick days, whether paid or unpaid, or that extends other protections to an employee." Moreover, committee analyses of the Act acknowledge that San Francisco had already enacted its own paid sick leave law.

Since the original enactment of the legislation in 2014, the Act has been amended three times.[185] This is an issue that has been subject to ongoing legislative attention for a number of years.[186]

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182. Memorandum 2018-2, p. 1.
183. Exhibit pp. 23-35.
184. See generally Memorandum 2018-2, pp. 2-3.
185. See 2015 Cal Stat. ch. 67 (AB 304 (Gonzalez)); 2016 Cal. Stat. ch. 4 (SB 3 (Leno)); 2018 Cal. Stat. ch. 35 (AB 1811 (Committee on Budget)).
186. Prior to introduction of the Paid Sick Leave Act in 2014, "the Legislature had considered similar paid sick leave laws in 2008, 2009, and 2011." See Memorandum 2018-2, p. 2 n. 7. Since the Paid Sick Leave Act was enacted, three bills have been enacted amending the legislation. See *supra* note 185.

While the Paid Sick Leave Act could perhaps be clarified and improved, this is not a topic that the Commission is particularly well-suited to study substantively, as the Commission has not done prior work on this topic and the issue as a whole is politically sensitive. As Memorandum 2018-2 summarizes,

> The question of whether the Act should be reformed along the lines suggested by Commissioner Miller-O'Brien might well involve the kind of fundamentally political choices that are best made by the People's elected representatives. Even if the Legislature were inclined to invite study and input from an outside body, it probably would look first to an entity with special expertise in labor and employment policy. Also, if there are substantive problems with the application or operation of the Act, any of the business groups listed above would be in a position to understand the nature and practicalities of the issues and sponsor legislation to make needed reforms.[187]

In any event, the Commission will lack the resources to work on this topic in the coming year. **For that reason, the staff recommends against seeking new authority to work on this topic at this time.**

Policies for Addressing Victim of DUI Driver

Paul Siman writes with concerns about the treatment of a victim of a collision caused by another driver who was driving under the influence.[188] In the materials he provides, he describes the situation of Ms. Giaume, who was the victim of such an accident.[189]

According to Mr. Siman, Ms. Giaume was driving and stopped at a red light, when her vehicle was hit by a drunk driver.[190] The impact of the collision "sheared off three-quarter[s] of the left side (drivers side) of the car."[191] Ms. Giaume was removed from the vehicle by EMS and, having suffered serious injuries, taken to the hospital where she remained for two days.[192] In the meantime, Ms. Giaume's vehicle was removed from the scene of the accident by a tow service, at the request of the Los Angeles Police Department, and held at an official police garage.[193]

187. Memorandum 2018-2, p. 4.
188. Exhibit pp. 38-48.
189. See Exhibit p. 47.
190. *Id*. at 41, 44.
191. *Id*.
192. *Id*. at 40, 44.
193. *Id*. at 44, 47.

Storage fees for Ms. Giaume's vehicle began accruing after 24 hours (i.e., while she was still in the hospital).[194] Ms. Giaume's vehicle had a lien placed on it within a week.[195]

> The car was auctioned, before the two [insurance] adjustors could finalize their assessments and come to a mutual agreement. In less than approximately sixty (60) days, the vehicle was gone, with the proceeds going into the pocket of the tow company.[196]

As Mr. Siman's materials illustrate, an innocent victim of a collision caused by the criminal behavior of another person can face a combination of serious injuries, additional expenses, and administrative burdens. Any of these challenges, alone, can be a great burden, but, dealing with these in combination, can be overwhelming. In the case of Ms. Giaume, Mr. Siman raises concerns about the lack of information provided to the victim about the location of the vehicle, the treatment of the victim and her representatives throughout the process, and the accrual of vehicle storage fees and the placement of a lien on the victim's vehicle for payment of those fees.[197] Mr. Siman raises particular concern about the accrual of "storage fees, the clock ticking away when the individual is hospitalized or even killed by the incident," describing this as "[i]nsensitive and inhumane."[198]

To address these issues, Mr. Siman suggests that

> [A]ny and all statutes dealing with how a victim and their vehicle are handled when associated with the enforcement of the drunk driving regulations, be reviewed, aligned and balanced to favor the victim, and have clarification that is clear and concise in order to stop the unjust enrichment by the semi-quasi-government authorized towing firms.

While the staff is sympathetic to a crime victim who faces the kinds of administrative burdens that Mr. Siman describes, the Commission does not currently have the authority to study this topic. Mr. Siman may want to contact his legislative representatives to describe his experience and discuss possible legislative reforms to address his concerns.

194. *Id*. at 38, 42.
195. *Id*. at 45.
196. *Id*. at 45.
197. See *id*. at 41-43, 44-45.
198. *Id*. at 38.

AVAILABLE RESOURCES

A chart attached to this memorandum shows the staff's best estimates as to the projected completion of our currently active studies.[199]

The chart makes the following assumptions about the allocation of staff resources in 2019:

- The Commission will allocate three-quarters of an attorney to the study of Fish and Game Law.
- The Commission will allocate three-quarters of an attorney to the study of the Toxic Substances Recodification.
- The Commission will allocate one-half of an attorney to the study of the Public Records Act.
- The Commission will allocate one-half of an attorney to the study of Transfer on Death Deeds.
- The Commission will allocate one-half of an attorney to the study of Disposition of Estate without Administration.
- The Commission will allocate one-half of an attorney to the study of Nonprobate Transfer Liability.
- The Commission will allocate one-half of an attorney to the study of Trial Court Restructuring.

With these assumptions, the listed studies would consume all of the Commission's staff resources in 2019.

SUGGESTED PRIORITIES

The Commission needs to determine its priorities for work during 2019. Traditionally, the Commission's highest priority has been assisting with legislation to implement recently-completed Commission recommendations. That activity typically consumes substantial staff resources, but requires little of the Commission's time.

Aside from the legislative work, the Commission's highest priority has been 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 studies for which a consultant has delivered a background report, because it is desirable to take up the matter before the research goes stale and while the consultant is still available. Finally,

199. Exhibit p. 49.

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 traditional scheme of priorities for Commission work is:

(1) Managing the Commission's legislative program.
(2) Studies assigned by the Legislature and other matters the Commission has concluded deserve immediate attention.
(3) Studies for which the Commission has an expert consultant.
(4) Studies that have been previously activated but not completed.
(5) New topics that appear appropriate for the Commission to study.

In addition, the Commission staff and student employees[200] typically address technical and minor substantive issues within the Commission's authority as resources permit.

This priority scheme has worked well over the years. Generally, the staff recommends that the Commission continue to follow it in 2019, as detailed below.

Legislative Program for 2019

In 2019, the **Commission's legislative program will likely include legislation on the following topics**:

- Homestead Exemption: Dwelling
- Disposition of Estate without Administration: Dollar Amounts
- Disposition of Estate without Administration: Interest Rate

Managing this legislative program will consume some staff resources in 2019, but should not require much attention from the Commission.

Legislative Assignments and Other Matters Deserving Immediate Attention

The Commission has received one new legislative assignment in 2018: Recodification of Toxic Substance Statutes. **The staff recommends dedicating three-quarters of an attorney position to the Recodification of Toxic Substance Statutes study in 2019.**

The Commission should also continue its work on the other legislatively-assigned studies for which work is ongoing: (1) Fish and Game Law, (2) the California Public Records Act Clean-Up, (3) Transfer on Death Deeds, and (4) Trial Court Restructuring. Conducting these studies, plus the Recodification of

200. Minutes (Apr. 2015), p. 3.

Toxic Substance Statutes study, would fully occupy three of the Commission's four attorneys in 2019.

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 recommenced work on this topic in 2017. In 2018, the Commission decided to suspend work on a broader nonprobate transfer liability reform and focus on two narrower issues:

(1) Scope of the surviving spouse liability rule in Probate Code Sections 13550 and 13551.
(2) Liability of nonprobate transfers for family protections.

Given this narrower scope, the staff recommends that the Commission devote one-half of an attorney position to this study in 2019.

In addition, the Commission 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 issues addressed by these background studies do not appear to be as pressing at this time, but should be addressed when resources permit.

Other Activated Studies

In 2017, the Commission initiated a study of Disposition of Estate Without Administration. This study involves liability rules governing property claimed under simplified administration procedures. Those liability rules were used as models for the liability rules for transfer on death deeds. Given that work on this topic is ongoing and the work complements the Commission's study of transfer on death deeds, **the staff recommends that the Commission dedicate one-half of an attorney position to this topic in 2019.**

The Commission has previously activated studies on three other topics: (1) civil discovery, (2) attorney's fees and (3) presumptively disqualified fiduciaries. Those studies are currently on hold.

In line with the Commission's decision to table the civil discovery study, that study should be revisited in 2023, after the sunset of the legislation expressly authorizing informal discovery conferences. The attorney's fees and presumptively disqualified fiduciaries studies should be addressed when resources permit, but they do not appear to be particularly pressing at this time.

New Topics

Given the Commission's traditional priority scheme and the number of outstanding, active and higher priority issues, the Commission almost certainly will not be able to commence any new studies this year.

The staff does not recommend seeking any new authority at this time.

Summary

If the Commission approves the staff recommendations made in this memorandum, the Commission's priorities for 2019 would include:

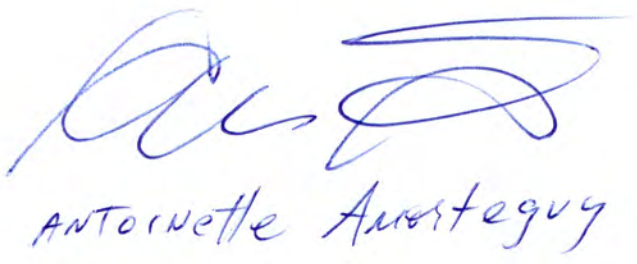
- Manage the 2019 legislative program.
- Continue the study on transfer on death deeds.
- Continue the study on fish and game law.
- Continue the study on recodification of toxic substance statutes.
- Continue the study on the California Public Records Act and related laws.
- Continue the study on the liability rules for the disposition of estates without administration.
- Continue the study on nonprobate transfers, focusing on surviving spouse liability rules and family protection liability, as directed by the Commission.
- Continue the study of trial court restructuring.

Does the Commission approve of these staff recommendations?

Respectfully submitted,

Kristin Burford
Staff Counsel

PROPOSAL ON TRUST LAW TO THE CALIFORNIA LAW REVIEW COMMISSION



INTRODUCTION

My name is Toni Amorteguy. I am 77 years old and the beneficiary of a 1947 trust overseen first my uncle and then Wells Fargo. I was able to go to school and get braces because of my grandfather's generosity. Later I was able to stay home, rather than work, to care for my children while my husband was in graduate school. In the late 60's the head of the investment department at Wells Fargo (who I meet under different circumstances) warned me I must move to San Fransisco to protect my income. That wasn't possible at the time but a few years later I did move closer. Soon, with my family in trust, we were forced to sue Wells Fargo for secretly withholding 1/3 of our income in a depreciation reserve. They were charged with fraud. Now my income is again reduced by 2/3 due what I see as the bad management of our banks CNB and BoW. I have to supplement my income by dipping into savings. Even though my nieces and nephew already have other jobs, they now have to live off a reduced $2000 a month from the trust. A few are in a very bad financial situation. These are only two difficulties we have had in trying to protect our trust.

Please let me put a spotlight on **Banks** in general. Many will agree that Banks are too big and too powerful and (see Wells Fargo) even corrupt! When Banks were local they knew their clients personally and were supported or not depending on their quality of service. Wells Fargo's employees were good friends with Grandfather. He trusted them and so put them on the trust as trustees should my uncle decide to resign. He did not expect the bank to work against us. In my opinion, what is needed now, is to review the old anti-trust laws...break up banks "too big to fail". I am not alone in this idea. I personally would like to also see banks become more local again.

Now lets look at **Bank Trust Accounts** and trusts in general. Banks used to have what were called TRUST Departments but no longer. Why? Because they no longer operate the same way. They operate as investment brokers; yet, they are not fully held accountable by an agency beneficiaries can go to for relief. The only remedy for beneficiaries is the expensive system of going to court. What is needed is here a system of oversight that is currently not available to them. Instead trusts look to old fashioned common law with antiquated, vague language now mixed into investment law. Though I am usually against too much regulation, Banks are just too powerful so another power is needed. Employee and Pensions Funds have an appointed body to oversee their investments and behavior. Trusts need the same.

Finally, *and most important,"The California Law Revision Commission* recommendations for trusts" was finished in 1985. It was merged in 1999 with the Uniform Principal and Income Act.. That is almost twenty years ago! I propose that the California Law Revision Commission return to reviewing Trust Law in total, or at least in areas needing a second look. I will suggest a few of these ideas on the following page(s)

Proposal Concerning Trust Law.

Proposal regarding process:

Because little has changed since our suit against Wells Fargo, I am asking the commission to reconsider who they reach out to and how they request public comment in order that **beneficiaries** get a *fair hearing*. I ask that not just banks and their consultants are contacted for comment but also those who work *with and for* beneficiaries. These professionals should be given ample notice and opportunity to make remarks before the commission.
How can you improve your outreach to attorneys and groups that work to *protect* **beneficiaries?**
In what way can you improve a way to include other stakeholders like... outside investment managers, CPA's, financial economists, real estate investors, appraisers, attorneys and other professionals and groups who work *with and for beneficiaries*? Would it help to send press releases to *all* major newspapers for this purpose?

Proposals on trust laws:

I.Because beneficiaries must use the **court** to protect themselves they end up depleting their resources in order to do so. Our trust was written so long ago we are required to go to court, even for hearings others are not. In most cases beneficiaries pay attorneys from *both* their trusts and their own pockets in order to have the legal help needed against any outside actions against the trust and perceived trustee abuses. The attorney and other specialists the bank hires for the beneficiary usually follows whatever the trustee thinks, rarely consulting the beneficiaries. Especially expensive are cases against a bank because of their deep pockets. Banks often go to appeal making it even more expensive. This obviously makes going to court not just financially burdensome but at times fruitless.
16420 and 17000 require court hearings as the only remedy. This is too costly and time consuming (is it designed too be so?). Banks are too powerful so I suggest an oversight agency similar to ERISA . Or, perhaps an existing agency like the Comptroller of Currency (who already does some bank oversight) or the Office of Control and Audit, the Attorney General, Justice Department, or S.E.C. What new agency or whose expanded oversight would best protect the beneficiary?(Remember, Trusts are a multi-trillion dollar industry).

II. Because banks now act as money mangers for trusts in their care, I propose that either the trustee or money manager or both be required to be ***certified***. Trust law, meaning trust "common" laws, are based on vague uses of words like "prudent man, fugal, good faith, ordinary care, special skills, highest good" and the likes. Some of this obtuse language has been corrected with the New Uniform Prudent Investor Act but not totally. While the Labor department requires **licensing** for florists and tree trimmers, it ignores bank trustees and their money managers. Trustees have "absolute or sole power" over large trust holdings and should be required to have training and oversight in order to *prove* they *do* have special skills. *The New Fiduciary Standard* points out that most trustees, and money managers they hire, do not really know the law that well nor how to implement it (OR I would say even, if they know it, they do not follow it!) For instance when I ask my bank for their "investment policy statement" on my accounts, they don't seem to know how to answer (or provide that information). The same is true for a "5 year cash flow statement".

III Because banks often need to hire other professionals to help with their management but have NO *specific* rules governing the acts of the agent, the law on trustee liability, especially

"standard care"s is again too vague. 16401. Most trustees do not have enough expertise in the area they are hiring (whatever it may be) to properly oversee or direct the agent in the first place. Our trust is 95% real estate. The banks count almost totally on the direction of the manager who advises them to take out a multi-million dollar loan, thus putting us in potential jeopardy during this down retail market. They also gave him a private loan out of our resources while not doing so for us. Our real estate manager has made some bad decisions over time that have cost us huge amounts (even a million plus). We cannot fire him because he is now a joint owner of our property by buying some(we don't know how many) of my uncles outside portions originally given to non-profits. For some reason this has not been considered a conflict of interest. This is also true with Minerals and Gas..16363.

IV. Because the ***Power to Adjust*** is complicated, it can be easily abused. Please see the comment in my page on "quotes" and especially the enclosed response by Richard Roll to Seth Skootsky's article in *Estate Planning and California Probate Reporter.* Mr Skootsky being an attorney, not an economist, missed the ramifications of his proposal. See 16336

V. Because Bank Trustee ***fees*** are based on the value in their trust holdings there can be abuses in this area. Two different banks attempted to with hold our income in a depreciation reserve which would have added to their base. The high appraisal of our building when the value has actually gone down due to lack of a tenant also keeps their fee higher than it should be. The same goes for their putting more money in growth than in income stocks. Income stocks *can and do* grow, often at less risk.
The bank's excuse is that they must protect the remainder men.(see IV). yet most trusts (and I'm sure my grandfather was one...after all I was 7 years old when he died and I am a named beneficiary), did not mean for remainder men to receive more than the actual named beneficiaries, unless of course, that is specified. The duty of impartiality 16003 is too vague saying " a matter of judgement and interpretation".

Because banks are so powerful my experience is that they do not feel they have to fully "communicate" to beneficiaries (following 16060) nor does there seem to be a Duty of Loyalty (16002) which states the trust should operate "solely in the interest of the beneficiaries" (see quote from City National)There is no real incentive for them to do so under the current system.

These are only some pf the areas I am concerned about. I am not an attorney or professional of any kind. All I want equity for those held in trust. Thank you for your consideration.

attachment: previous letter to Law Revision 1988

LAW

Comments on
The New Principal and Income Act:
California Trustees Adjust to the Power to Adjust
By
Seth M. Skootsky

The "4 % rule" mentioned on page 22 is clearly a rule of thumb which would not be appropriate in every circumstance. This is recognized explicitly throughout the paper. A four percent distribution is too high in some cases and too low in other cases even when the trust is obliged to maintain the real (inflation adjusted) value of the corpus.

Instead, the supportable distribution percentage depends closely on the investment performance of the trust assets, which, in turn, is determined over time mainly by the asset classes owned in the trust.

For example, if the trust is entirely invested in completely safe assets such as Treasury bills, a four percent annual distribution to current beneficiaries would be much too large. Historical returns on Treasury bills exceed inflation by somewhat less than one percent per annum! Consequently, the corpus would fall in real value by at least three percent per annum if a "4% rule" were followed.

At another extreme, imagine that all the trust's assets were invested in small companies, which have experienced annual returns historically (1926 to the present) of about 13% per annum. If this level of return continues into the future, a four percent distribution rule to the current trust beneficiaries would be far too small since the corpus would grow in nominal terms by about nine percent per annum, five to six percent in real terms given current inflation.

There is absolutely no economic reason to even think about "income" as defined in legal terms. On page 38, for instance, the paper mentions that the current dividend yield of S&P stocks is under one percent, which would not "produce a reasonable level of benefits for the income beneficiary." Legal income (dividends, bond coupons, rents, etc.) is an anachronism, which makes no sense to anyone with even an rudimentary understanding of investments. It's way past time for the legal profession and the courts to recognize that the partition of payments between current beneficiaries and remaindermen should be not be affected in any way by legal income.

Indeed, adherence to the legal income concept does much harm because it often motivates trustees to purchase poorly performing assets simply to generate current "income." For a trust where both the current beneficiaries and the remaindermen are young, most investment professionals would advise allocating virtually the entire trust to equities or real estate because the total return is likely to be considerably higher in the long run. This implies that both classes of claimants will be better off since there will be a bigger pie to slice up. A similar view is expressed in the first full paragraph on page 39. But I would go even further to say that any trustee adhering to a legal income concept

Revised 4

Comments from Richard Roll, Allstate Professor of Finance.
The Anderson School at UCLA

is not acting in accordance to the "prudent man" rule, at least from the perspective of a financial economist.

The trustee's power to adjust seems, broadly construed, simply a device to allow him to circumvent the strictures imposed by the legal income concept. This is good. But the section beginning on page 40 is questionable. It mentions a

> ...widespread recognition that the 4-percent level is the highest that can be maintained in the long run without reducing the purchasing power of the principal even if the trust portfolio is heavily weighted toward growth investments.

Whose recognition is this? The current inflation rate is less than three percent and most financial experts think that even blue-chip equities will return at least ten percent. This leaves three percent for real growth of a trust's corpus even after a 4% distribution.

The author is certainly correct, however, on pages 40-41, where the risk of an equity portfolio is mentioned as the impetus for a smoothing method of adjustment, such as in alternative 2. High average returns are inexorably linked to risk, which implies that the corpus could fluctuate dramatically in real value if a fixed percentage were distributed to current beneficiaries. Perhaps a trustee has a contingent liability that a remainderman could claim imprudence if performance turned out badly over a long period.

On the other hand, what if investment returns turn out better than expected? The impartiality principle would seem to suggest that the current beneficiary should participate in such excess returns even though the resulting distribution would exceed four percent. What rule should be in place for distributing a trust's corpus in excess of the original real value? When should such a distribution take place? What level of excess accumulation, if any, should trigger a distribution?

It's clear that this second violation of impartiality has been the most common circumstance over the past few decades Stocks, bonds, and real estate have all performed splendidly. Many trusts have grown dramatically in real value even while current beneficiaries have languished. I am firmly convinced that trustees often resist paying a fair share of such gains to current beneficiaries because trustee fees depend on the assets remaining in the corpus over time. This is an agency problem which dwarfs the first possibility (i.e., that remaindermen could end up with too little). This situation is really a scandal and the epitome of unfairness since it enriches mainly the trustee.

One final comment: it would be possible for a truly conscientious trustee to design an investment strategy suitable for all parties, one that would make everyone better off. The strategy would exploit financial engineering and the availability of hedging instruments to maximize total return while guaranteeing that the trust corpus does not fall in real value (or meets whatever target was specified by the original grantor.) This can be done quite efficiently with portfolio insurance or dynamic trading methods. For example, a "floor" for the trust corpus can be guaranteed with options or indexed instruments while

QUOTES from other professionals:

Tim Hatton, Accredited Investment Fiduciary and author of *The New Fiduciary Standard in* cooperation with Foundation for Fiduciary Studies and published by Bloomberg Press:
"I would recommend anyone acting as trustee acquire the Accredited Investment Feduciary (AIF)credential fi360.com/what-we-do/learning-developement/aif designation.The center for Fiduciary Studies is the standard setting body for fi360 which is the leading fiduciary training organization." (classroom and on-line classes, and continuing education)

Barry Cappello, one of the nations leading litigators:
"the banks fund the politicians in the legislature and Governors office and they have a say is what appellate justices serve"

Richard Roll, former chaired professor at Anderson school UCLA , currently at Cal Tech with many honors including nominations for the Nobel Prize. He would be happy to testify before CCLC.(see inclosed rebuttal on "power to adjust"):
"In terms of proposals to the California Law Commission, one thing that should be part of any reform is to remove the absurd distinction between legal "income" and price appreciation. This allows banks to keep almost ALL the price appreciation in a trust for as long as they can, while paying out only dividends and interest. No investor would adopt such a scheme if they had a choice. I know it's meant to protect remaindermen , allegedly, but it enriches banks from continued fees on the corpus."

Sue Farley, attorney and author of "Trust, Are You Kidding". She is dedicated to helping those who wish to set up trusts and their beneficiaries. She has done so following representing us in our case against Wells Fargo where she saw that banks were abusing their power. She also produced a sophisticated program for trustees to use to streamline their trust implementation:
"Your money is not safe..if you have it in a trust. Do you know that is you sign broad grant of powers to your trustee, that trustee can invest your hard-earned money and assets in whatever way the trustee wants?"
Do you realize that because most estate planners don't address how your trust will p[lay out, you risk at trustee playing god and distributing funds in whatever way they wish
Do you know that no one oversees whether your trustee actually complies with the terms of your trust?"
This is only the tip of the iceberg.The trust industry is worth trillions of dollars. It is rife with problems that no one in the industry wants to fix because they make too much money off the system as is." (this includes all their outside contractors who she says bleed the trust dry)

Former City National Bank Trustee and separately the head of their investment department:
"We are the trustees and we can do whatever we want with your money"

WIKIPEDIA on the word **Shomer,** Biblical Hebrew for "to watch over". It is also used for one who watches over people's property in exchange for compensation. They are liable if the item (item/money) is stolen or misplaced, even if not a result of negligence (but not for armed robbery). They are expected to preform at a higher level of custodianship than an unpaid shomer.(It would not hurt for the legislature to look up the various biblical laws on "watching over" peoples property.... our laws *were* once founded on Judeo/Christian values.

#L-3010

su276
04/28/88

First Supplement to Memorandum 88-36

Subject: Study L-3010 - Fees of Corporate Trustees

Attached to this supplement is a letter and some additional material sent to the Commission by Antoinette Gump Amorteguy relating to her experience as a beneficiary of a trust. In her letter, Ms. Amorteguy proposes several matters for Commission study and makes several suggestions for changes in the law.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

EXHIBIT 1

TO: LAW REVISION COMMITTEE

FEB 10, 1988

FROM: ANTOINETTE AMORTEGUY

FEB 18 1988

RECEIVED

SIR:

I AM CONCERNED THAT YOUR RECENT WORK ON "TRUST LAW REVISION" MIGHT BE OVERLOOKING SOME IMPORTANT AND BASIC ISSUES THATYOU MIGHT LIKE TO HAVE ADDRESSED BY YOUR TRUST DIVISION. I BELIEVE FEES ARE ACTUALLY A SIDE ISSUE TO MORE BASIC PROBLEMS

1) ESTABLISH THAT BENEFICIARIES ARE A CONSUMER GROUP AND SET GUIDELINES FOR THAT GROUP INCLUDING THE PUBLICATION OF A BOOKLET FOR THEIR BENEFIT.
2) SET METHODS FOR NOTIFICATION TO BENEFICIARIES (FREEDOM OF INFORMATION) ON UPCOMING LAWS AND WHO IN GOVERMENT THEY CAN CONTACT FOR HELP(AS WITH UTILITIES COMMISION)
3) SET PROFESSIONAL STANDARDS FOR "TRUST OFFICERS" AND THEIR STAFF (INVESTMENT OFFICER, LEASE MANAGER, TAX ACCOUNTING DEPT, ECT) BASED ON THE STANDARDS NOW SET FOR OTHER PROFESSIONS SUCH AS PHYSICIANS, ACCOUNTANTS, REAL ESTATE BROKERS, ETC-AND INCLUDING A DEFINITION OF "GOOD BUSINESS PRACTICES")
4) SET ACCOUNTABILITY STANDARDS(LIKE THOSE IN OTHER PROFESSIONS) THAT INCLUDE WHO IN STATE GOVERNMENT IS REQUIRED TO OVERSEE ALL THE ACTIVITIES OF PROPERTIES HELD IN TRUST(USING THE METHODS NOW EMPLOYED FOR NON-PROFIT TRUSTS (THIS IMPLIES STRICT ENFORCEMENT AND STIFF PENALTIES)

OTHER AREAS THAT NEED TO BE ADDRESSED(AND THAT EFFECT FEES)ARE:

4) DEFINE THE ROLE OF AN ATTORNEY OR OTHER CONSULTANTS FOR A TRUST(WHO DO THEY WORK FOR?THE BENEFICIARY OR THE TRUSTEE?(HOW CAN YOU TELL?) WHO PAYS FOR WHAT/WHEN HOW?IN A DISPUTE? WHEN WIN/LOSE?BY INCOMEORPRINCIPLE?BENEFICIARY,REMAINDERMAN,TRUSTEE? HOW DETERMIN FEES?WHAT IS THE CRITERIA FOR HIRING,WHEN, WHO, HOW ,WHY?AND ALL THE ECT?)
5)RESEARCH OTHER METODS FOR DETERMINING FEES THAN "PRINCIPLE". (THIS EXISTING METHOD IS MISUSED FOR THE BENEFIT OF THE TRUSTEE WHO WITH HOLDS INCOME FOR" PRINCIPLE" AND THUS INCREASES FEES)IF THE TRUSTEE IS ACTING AS A PROFESSIONAL(ENOUGH TO RECOMMED SUCH FEES AS FAIR PAYMENT FOR WORK COMMESURATE WITH THE TASK- SHOULD HE NOT RECEIVE FAIR PAYMENT FOR HIS SERVICES? ON THE OTHER HAND IF HE IS JUST"CLIPPING COUPONS " OR HIRING OTHER PROFESSIONALS TO DO COMPICATED WORK,SHOULD HIS FEES NOT BE ADJUSTED ACCORDINGLY?

6) DEFINE, IN DETAIL, THE DIFFERENCE BETWEEN THE BENEFICIARY AND THE REMAINDERMAN. (THIS AREA IS ALSO MISUSED BY TRUSTEES WHO WITH HOLD FUNDS FOR REMAINDERMEN THAT SHOULD HAVE GONE TO A BENEFICIARY SINCE AN INCREASE IN "PRINCIPLE" INCREASES FEES).
7) SET GUIDELINES FOR APPROPRIATE DIVISION OF ONE TRUST FOR VARIOUS BENEFICIARIES INTO PARTS(USED TO INCREASE FEES) OR COMMINGLE SUB-TRUSTS INTO ONE(USED TO MAKE IT DIFFICULT TO OVERSEE BY THE INDIVIDUAL BENEFICIARY)

AS BOTH A BENEFICIARY AND A TRUSTEE, I WOULD LIKE TO SEE THSES AREAS INVESTIGATED AND ADDRESSED.

SHOULD YOU WISH TO SPEAK TO ME FURTHER, I AM AT YOUR DISPOSAL AND CAN BE REACHED AT 969-5686.

THANK YOU FOR YOUR CONSIDERATION.

*ENCLOSURES

IF YOU DO THIS, YOU WILL GIVE A VOICE TO A CONSUMER NOT NOW HEARD AND TAKE SOME OF THE BURDEN OFF THE COURTS.(PLEASE DO NOT BE MISLED THAT "BENEFICIARIES" ARE ALL RICH OR THAT THERE ARE ONLY A LIMITED FEW. THERE ARE MANY BENEFICIARIES WHO ARE ELDERLY OR UNDER AGE, AND HAVE INHERTITED LIMITED FUNDS TO LIVE ON. THEY DO NOT HAVE THE EDUCATION OR FUNDS TO DEFEND THEMSELVES AGAINST IMPROPER OR INADEQUATE MANAGEMENT OF THEIR INCOMES **MANY DO NOT EVEN KNOW THEY HAVE ANY RIGHTS AT ALL.)**
SO FAR YOUR SURVEYS HAVE BEEN BIASED IN FAVOR OF BANK TRUSTEES AND ATTORNEYS (SINCE THAT IS WHOM YOU HAVE BEEN IN CONTACT,) PROBATE ATTORNEYS ARE MORE LIKELY TO BE AFFILIATED WITH BANKS AND AS YOU KNOW, EVEN WHEN PAID FOR BY A BENEFICIARY(DISPUTES INCLUDED) ARE HIRED BY THE TRUSTEE(LAWS DIFFER IN OTHER STATES)MAKING A SEPERATE LEGAL FEE PROHIBITIVE.
TRUSTEE FEES ARE NOT THE PRIMARY ISSUE, **ACCOUNTABLITY** IS.*

I AM CONCERNED ABOUT BANKS THEIR MANAGEMENT AND POWER
I AM ESPECIALLY CONCERNED WITH HOW THEY HANDLE TRUST ACCOUNTS

I BELIEVE GOOD BUSINESSES SHOULD MAKE MONEY. I DO NOT BELIEVE BAD BUSINESSES SHOULD BE PROTECTED . I BELIVE A BANK TRUST DEPT SHOULD BE AS ANSWERABLE(OR MORE) AS ANY NON-PROFIT TRUSTEE. THEY SHOULD FULFILL ALL THE REQUIREMENTS FOR GOOD BUSINESS PRACTICES WITHIN EACH TRUST. THEY SHOULD BE ACCOUNTABLE FOR FOLLOWING THE ETHICS OF EACH SUB-INDUSTRY THEY REPRESENT TO THE BENEFICIARY(ACCOUNTING, REAL ESTATE, BROKERAGE,AUDIT,ECT)

I DO NOT SEE THIS IN THE BANK TRUST INDUSTRY. THE COURTS THAT OVERSEE THEM ARE OFTEN RUBBER STAMPS. THE LEGISLATORS ARE HEAVILY LOBBIED. THE HORROR STORIES ARE NEVER ENDING ON PROPERTY LOST BY TRUST DEPTS BECAUSE OF CARELESS ERROR AND OUT RIGHT ERROR(TRY TO PROVE FRAUD WHEN A BANK SELLS A VALUABLE PEICE OF PROPERTY TO A FRIEND FOR LESS THAN VALUE, OR OTHER SUCH STORIES)

THERE ARE MANY AREAS THAT NEED ADDRESSING. PLEASE CALL ON ME IF YOU ARE INTERESTED

Financial Institution Directors

[¶ 61,721] Guidelines for Financial Institution Directors

Federal Deposit Insurance Corporation. Guidelines approved at Agency Meeting on October 6, 1987.

Guidelines for Financial Institution Directors

A financial institution's board of directors oversees the conduct of the institution's business. The board of directors should:

—select competent management;

—establish with management the institution's long and short term business objectives and adopt operating policies designed to achieve these objectives in a manner consistent with law and safe and sound practices;

—monitor operations to ensure they are controlled adequately and are in compliance with laws and policies;

—oversee the institution's business performance; and

—ensure the institution helps to meet its community's credit needs.

These responsibilities are governed by a complex framework of federal and state law and regulation. These guildelines do not modify the legal framework in any way and are not intended to cover every conceivable situation that may confront an insured institution. Rather, they are intended only to offer general assistance to directors in meeting their responsibilities. Underlying these guidelines is the assumption that directors are making an honest effort to comply with all applicable laws, regulations, and safe and sound practices.

In meeting the board's responsibilities, the board and its members should:

1. *Maintain the independence of the board of directors.* Effective corporate governance requires a high level of cooperation between an institution's board and its management. Nevertheless, a director's duty to oversee the conduct of the institution's business necessitates that each director exercise independent judgment in evaluating management's actions and competence, Critical evaluation of issues before the board is essential. Directors who routinely approve management decisions without exercising their own informed judgment are not serving their institutions, their stockholders, or their communities adequately.

2. *Keep informed.* Directors must keep themselves informed of the activities and condition of their institution and of the environment in which it operates. They should attend board and any assigned committee meetings regularly and should be careful to review closely all meeting materials, auditor's findings and recommendations, and supervisory communications. Directors also should stay abreast of general industry trends and any statutory and regulatory developments pertinent to their institution's operations. Directors should work with management to develop a program to keep members informed. Periodic briefings by management, counsel, auditors or other consultants might be helpful and more formal director education seminars should be considered.

The pace of change in the nature of the business of financial institutions today makes it particularly important that directors commit adequate time in order to be informed participants in the affairs of their institution.

Act to ensure qualified management. The board of directors is responsible for ensuring that the day-to-day operations of their institution are in the hands of qualified management. If the board becomes dissatisfied with the performance of the chief executive officer or senior management, it should address the matter directly. If hiring a new chief executive officer is necessary, the board should act quickly to find a qualified replacement. Ability, integrity, and experience are the most important qualifications for a chief executive officer.

Supervise management adequately. Supervision is the broadest of the board's duties and the most difficult to describe, as its scope varies according to the facts and circumstances of each case. Consequently, the following suggestions should be viewed as general.

a. *Establish Policies.* The board of directors should ensure that all significant activities are covered by written policies that are clearly communicated so that the policies can be readily understood by affected parties, including all employees. All policies should be monitored to ensure all employees. All policies should be monitored to ensure that they conform with changes in laws and regulations, economic conditions, and the institution's circumstances. Specific policies should cover at a minimum:

—loans, including internal loan review procedures
—investments
—asset-liability/funds management
—profit planning and budget
—capital planning
—internal controls
—compliance activities
—audit program
—conflicts of interest
—code of ethics

These policies should be formulated to further the institution's business plan in a manner consistent with safe and sound practices. They should contain procedures, including a system of internal controls, designed to foster sound practices, to comply with relevant laws and regulations, and to protect the institution against external crimes and internal fruad and abuse.

b. *Monitor implementation.* The board's policies should establish mechanisms for providing the board the information needed to monitor the institution's operations. In most cases, these mechanisms will include management reports to the board. These reports should be carefully framed to present information in a form meaningful to the board. The

EX 12

1962 EAST VALLEY
SANTA BARBARA,CA
AUGUST 17, 1985

Stone

V.P. IN CHARGE
TRUST DEPARTMENT
UNION BANK
LOS ANGELES

DEAR SIR:

AS THE ENCLOSED LETTER SHOWS AND AS IT NOW STANDS, THE BANK EMPLOYEES THAT WE HAVE BEEN DEALING WITH ARE NOT REALLY COMPETENT TO HANDLE THE MATTERS OF OUR TRUST(AS IT WAS PREVIOUSLY SET FORTH IN OUR CORRESPONDENCE AND BY THE COURT) I AM , HOWEVER, MOST GRATEFUL THAT THEY, AT LEAST, ARE AWARE OF THEIR LACK OF EXPERTIZE. BUT, THEN, WHY SHOULD WE HAVE TO PAY INCREASED FEES WHEN WE MUST ALSO HIRE OUTSIDE EXPERTS TO PROTECT OUR TRUST ASSETS?

ONLY A FEW YEARS BACK, PART OF OUR FEES AS WELL AS OUR TRUST LEGAL FEES INCLUDED COURT APPEARANCES. SINCE THIS IS NO LONGER THE CASE, YOUR FEES IN ESSENCE HAVE ALREADY BEEN RAISED.

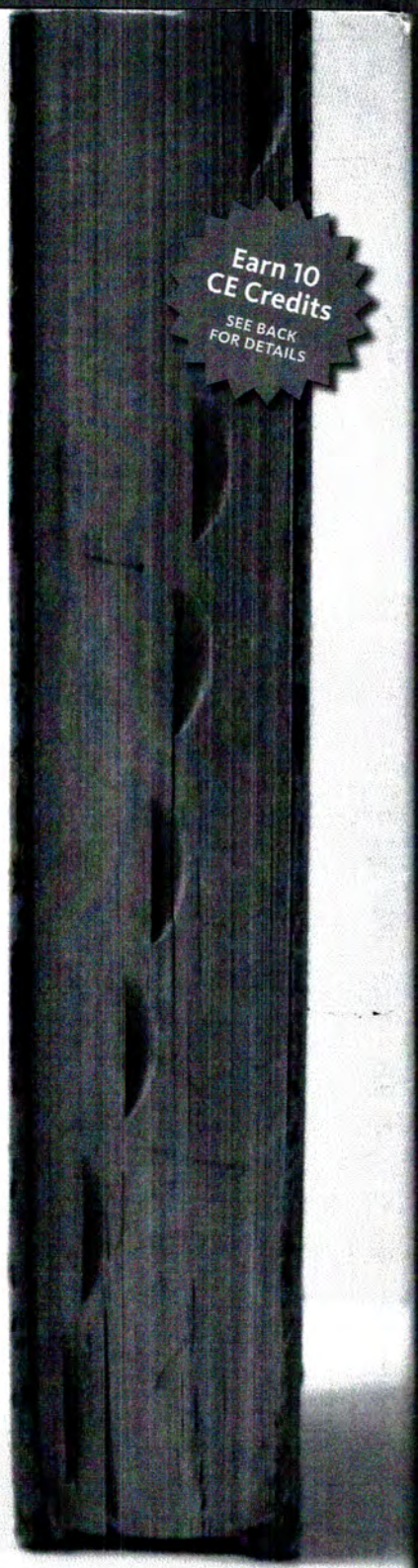
AN EXAMPLE OF YOUR DESIRE TO REDUCE SERVICES IS YOUR RECENT POSITION TO SELL OUR INCOME PRODUCING PROPERTY AND TURN IT INTO NON-TAXABLE BONDS. THIS IS A TRUSTEES DREAM BECAUSE IT ONLY REQUIRES CLIPPING COUPONS. WE PAY FOR MOPRE THAN THIS - AND WE EXPECT MORE- OR A REDUCTION IN FEES AND MORE DIRECT ACCESS TO PERSONS IN AUTHORITY WITH EXZPERTIZE IN THE MATTERS OF OUR TRUST AS PER OUR AGREEMENTS.

SINCE WE HAVE BEEN APPROACHED BY OTHER BANKS TO MOVE OUR TRUST AND SINCE DE-REGULATION HAS CHANGED THE FEE STRUCTURE , PERHAPS IT IS TIME TO GO SHOPPING FOR THE BEST SERVICES FOR THE MONEY?

SINCERELY,

ANTOINETTE GUMP

Bloomberg



THE NEW FIDUCIARY STANDARD

The 27 Prudent Investment Practices

for Financial Advisers, Trustees, and Plan Sponsors

Tim Hatton, CFP, CIMA, AIF

In cooperation with the
Foundation for Fiduciary Studies

Foreword by
Donald B. Trone

EX 14

From: **Toni Amorteguy** toniga@cox.net
Subject: Accredited Investment Fiduciary training
Date: September 5, 2018 at 12:07 PM
To: [redacted] toniga@cox.net

Accredited Investment Fiduciary® (AIF®) training empowers investment professionals with the fiduciary knowledge and tools they need to serve their clients' best interests while successfully growing their business. Advisors who earn the AIF® Designation are immediately able to demonstrate the added value they bring to prospective and existing clients.

Reasons to Become an AIF® Designee

- Meet your legal obligations by applying Fi360's Prudent Practices® and investment procedures with your wealth, retirement and foundation and endowment clients
- Reduce business risks through documentation of fiduciary best practices
- Increase your business efficiency, effectiveness and earning potential by adopting a consistent repeatable process
- Earn credibility and distinction in the marketplace as a fiduciary specialist
- Join an elite professional community of over 10,000 Fi360-trained advisors

Training Options

Blended Learning:
Our Capstone course is a combination of online and classroom training with an exam administered at the end of the classroom portion. We host Capstone classes throughout the year and across the country. Check out our calendar for a full list of events.

Price $1,950§

Online:
Our Self-Paced Online course is available on demand to be completed within 90 days of purchase. The exam is administered online in coordination with a Proctor.

Price $1,450[§]

EMAIL FROM MAXWELL ANDREWS
(2/19/18)

Dear honorable members of the law revision commission,

I am writing to you today to request a review of the citation policies in the california vehicle code, specifically: **ARTICLE 3. Procedure on Parking Violations [40200 - 40230].**

My experience in dealing with a recent parking citation resulting in the abridgment of my due process rights, and the payment of substantial penalties, through no error or violation on my part.

In my case, the original citation was both in error (I was in compliance with the posted signs), and illegible (the device used to print the citation did not print any information, i.e. the citation left on my vehicle was completely blank, and I thought it a mistake). I later received a written notice by mail, but it arrived while I was traveling on business. Upon opening the notice upon my return, I discovered two concerning facts:

1. The period in which I could contest the citation had already elapsed.

2. The due date for payment had already elapsed, and a late fee would now be assessed.

So I was stuck with a $105 fee with no legal recourse, for an erroneous violation that I could not protest, which strikes me as abridging my rights to due process, and at the very least, not providing me with a reasonable opportunity to respond to the citation. Luckily, I was able to afford the $105 charge, but I can imagine for others less fortunate, this type of unforeseen expense could be very burdensome. Changes should be made to allow for a more reasonable protest protocol for parking violations, as is fair to california residents and required by our constitution.

I would suggest the following modification:

- Citation notices must be sent via certified mail, and the 21-day period should start from the receipt of the notice by the correct recipient. Otherwise, it cannot be guaranteed that vehicle owners receive notice of the citation with enough time to act before additional fees are levied and the opportunity to protest expires. For example, notices left on vehicles are unreliable since they may be misprinted or left blank (as in my case), missing due to wind or poor anchoring, or damaged by weather. So a mailed notice must be the standard starting point of the countdown period. Concerning the mailed notices, these must be sent certified mail, to guarantee they are received by the correct recipient. Otherwise, such notices could be lost in transit, delivered to the wrong address, discarded with junk mail accidentally, or delivered when the recipient is absent for an extended period, such as in the case of a vacation or business trip (as in my case). The state must make a good faith effort to ensure that the owner has received proper knowledge of the violation, before a judgement or penalty may be levied against them. The same standard

applies for other civil legal judgments, and should be respected regarding parking citations as well.

Thank you for your considerate review,

Maxwell Andrews

EMAIL FROM BONNIE MALY
(4/2/18)

Hi Brian, Barbara & Kristin,

I work at CEB on landlord-tenant print products, and respectfully ask that the Law Revision Commission work with the legislature to please clarify the law in CCP 437c on what supporting documents are required in summary judgment motions in unlawful detainer actions. I have offered a simple statutory amendment (below) for you all to consider.

To simply summarize the problem, the summary judgment statute ordinarily requires that a party moving for summary judgment must file and serve a notice of motion, a supporting memorandum, supporting evidence (declarations & responses to discovery), and a separate statement of undisputed material facts containing specific citations to the supporting evidence. See CCP §437c(b)(1). But CCP §437c(s) expressly makes CCP §437c(b) inapplicable to unlawful detainer actions; consequently, no other statute or rule of court states what a moving party or an opposing party must file and serve as supporting or opposing documents in an unlawful detainer action besides the notice of motion required by Cal Rules of Ct 3.1351(a). Code of Civil Procedure §1170.7 (the unlawful detainer action summary judgment statute) simply refers to CCP §437c for the basis on which a summary judgment "shall be granted or denied." This lack of specificity in the governing statutes and court rules may simply be the result of an assumption that a notice of motion and a properly verified complaint will adequately support a summary judgment brought by the plaintiff in most unlawful detainer actions (if so, the statutes should say just that). If, however, the defendant brings the summary judgment motion, and as to any opposing party, the statutes and rules are incomplete & quite unclear.

I offer an amendment that I believe was probably the original legislative intent. I suggest that subdivision (s) be amended so it reads instead: The time periods for filing and serving moving papers or opposing papers and the scheduling of the hearing on the motion in subdivisions (a) and (b) do not apply to actions brought pursuant to Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, which are instead governed by Code of Civil Procedure Sections 1013 and 1170.7 and Cal Rules of Ct 3.1351(a).

I attach an excerpt from a CEB book on summary judgment motions, where this statutory uncertainty is more fully discussed in sections 13.7--13.8 in the attached file, where I recently did some updating and noticed that this uncertainty has existed for about 10 years. I was a litigation attorney for nearly 20 years before coming to CEB, so I know this confuses practitioners and very likely judges too.

If you wish to discuss this further, please do not hesitate to contact me by phone (510-302-0713) or US mail or email.

§13.7 D. Uncertainty Exists About Type of Supporting Papers Required by Statute

Although CCP §437c(s) makes CCP §437c(a)–(b) inapplicable to unlawful detainer actions, no other statute or rule of court states what a moving party must file and serve as supporting documents besides the notice of motion required by Cal Rules of Ct 3.1351(a). Code of Civil Procedure §1170.7 (the unlawful detainer action summary judgment statute) simply refers to CCP §437c for the basis on which a summary judgment "shall be granted or denied." This lack of specificity in the governing statutes and court rules may simply be the result of an assumption that a notice of motion and a properly verified complaint will adequately support a summary judgment brought by the plaintiff in most unlawful detainer actions. If, however, the defendant brings the summary judgment motion, the statutes and rules are unclear. See §13.8.

NOTE: It seems likely that the legislature intended to make the exceptions in CCP §437c(s) apply only to the motion scheduling and timing provisions of subdivisions (a)–(b) because subdivisions (c)–(e), which remain applicable to unlawful detainer suits, all assume the requirements of (and directly refer to) the supporting evidence and papers originally described in subdivisions (a)–(b).

PRACTICE TIP: The best course of action is to act on the probability that CCP §437c(s) is directed only at the scheduling and timing provisions of subdivisions (a)–(b). At a minimum, always submit declarations of competent witnesses and a separate statement of undisputed facts with a summary judgment motion because it enables the court to review properly the merits of the motion. These papers are particularly crucial if the defendant is the moving party or if verification of the complaint is defective in any way and the plaintiff is the moving party.

Although §437c(b) does not apply to unlawful detainer actions (CCP §437c(s); Cal Rules of Ct 3.1351(a)), party admissions, answers to interrogatories, depositions, and judicially noticed matters would be relevant and admissible, and, presumably, the legislature did not intend that they be inadmissible when it enacted §437c(s).

§13.8 E. Uncertainty Exists About Type of Supporting Papers Required by Rules of Court

Ordinarily a party moving for summary judgment must file and serve a notice of motion, a supporting memorandum, supporting evidence, and a separate statement of undisputed material facts containing specific citations to the supporting evidence. See CCP §437c(b)(1); Cal Rules of Ct 3.1350(c)–(d). The Judicial Council amended Cal Rules of Ct 3.1350(c) and (e) in 2009 to provide that the supporting documents listed in the Rule are mandatory except as provided in CCP §437c(s) and Cal Rules of Ct 3.1351. (Currently, Rule 3.1350(c) refers erroneously to CCP §437c(r) instead of CCP §437c(s), because after 2009, some subdivisions in the summary judgment statute were renumbered.) Although CCP §437c(s) makes CCP §437c(a)–(b) inapplicable to unlawful detainer actions, and §437c(a)–(b) govern both timelines and required supporting documents for summary judgment motions, no other statute or rule of court states what a moving party must actually file and serve as supporting documents besides the notice of motion required by Cal Rules of Ct 3.1351(a). Code of Civil Procedure §1170.7 (the unlawful detainer action summary judgment statute) simply refers to CCP §437c for the basis on which a summary judgment "shall be granted or denied." See §13.7.

PRACTICE TIP: Check with the trial court hearing a summary judgment motion in an unlawful detainer action to ascertain the requirements of that court. Because CCP §437c(b) discusses documents to be used in support of the motion, the requirement for a separate statement of facts, and the timing of filing opposition to the motion and a reply to the opposition, some judges take the position that CCP §437c(s) only eliminates the timing requirements under CCP §437c(b) for summary judgments in unlawful detainer cases. These judges expect and require at a minimum a separate statement of facts

Dear Chair, Commissioners, and Staff,

Please allow this letter to supplement my proposal to study California's Paid Sick Leave Law (AB1522) or the Healthy Workplaces, Healthy Families Act of 2014 as a new CLRC topic. This law is relatively new in that it was enacted on September 14, 2014, and became effective in January 2015.

In a nutshell, this law affords California employees and their families with a minimum number of paid hours to use each year to care for themselves and close family members when sickness falls on a regularly scheduled workday. This law, I believe, originated from the City of San Francisco's Paid Sick Leave Ordinance which was drafted to assure that larger employers (of 10 or more), operating within the City and County of San Francisco, provided at least 24 hours of paid sick time benefits to established[1] employees. Like San Francisco's law, AB1522 also began by furnishing "at least" three (3) sick leave days each year but which employers were impacted, which employees (sole employees or one of many), and whether non-exempt or exempt employees, and more was never specified by the statute. In fact, the law was primarily drafted with the duty shifted to the Labor Commission to clarify the details.

Since this law was promulgated, numerous cities and counties have adopted iterations of the same, many adding more benefits imposed indiscriminately on private and public-sector employers. While this may sound helpful in theory, the unintended consequences are quite stark. There is a hodge-podge of laws (and therein causes of action) that color California's already very complicated labor law scheme, and borne out of what was intended to inject as mere fairness in the way of workers' minimum rights. The result will undoubtedly tax the Department of Industrial Relations charged with clarifying these laws and enforcing the same.

Since 2015, Paid Sick Leave Law has expanded to include conceivably every California employer, in every city and county, and rights to guarantee more paid time off expand nearly every six months. Clarity from the Legislature is needed.

As is, the hodge-podge of expectations and regulations mounts each year.[2] Currently, many AB1522 beneficiaries are eligible for up to **48 hours** of guaranteed wages (potentially calculated at the highest average daily rate earned in a year, or more), at the start of each year, while potentially working for small businesses, and as the sole employee. Exceptions under this law are unclear, and there is no deference given to employers of 'Mom and Pop' shops or high-wage earning, large investment firms whose employees traditionally work strictly on commissions. Surely, this is not what our Legislature contemplated. Moreover, in practice, this law runs counter to policies favoring retaining businesses in our state.

Naturally, the question then becomes: what can be done to revise current law? Perhaps, clarifying the definition of who is an "Employer" under AB1522 to include only businesses with five (5) or more, non-family member employees. This standard borrows from the well-established statutory scheme of

[1] Only employees who were employed over a specific time, regularly scheduled to work a specific time, and generally in "good standing" with their employer were intended to be eligible for paid leave benefits.
[2] To illustrate this point, please see the attached matrix from Tyreen Torner of Fox Rothschild, LLP.

the California Fair Employment and Housing Act, Gov. Code §§ 12900 et seq., and would likely alleviate some of the economic burden and confusion caused by the law in its current state. I will defer to the Commission for considering other possible exemptions (e.g., businesses that provide at least 3 sick leave days, etc.). I am sure other stakeholders would also provide more imaginative and creative fixes than myself.

Nonetheless, I thank the Commission for this opportunity to discuss what I am observing those within my practice area grapple with and look forward to providing more discussion regarding this topic at our February CLRC meeting.

Best regards,

Commissioner Crystal Miller-O'Brien,

Attachment: Matrix of Current PSL Laws

California State and City Paid Sick Leave Laws

Tyreen Torner, Esq.
Fox Rothschild LLP
Updated October, 2017

Fox Rothschild LLP
ATTORNEYS AT LAW

	California Paid Sick Leave[1]	Berkeley Paid Sick Leave[2]	Emeryville Paid Sick Leave[3]	Los Angeles City Paid Sick Leave[4]	Oakland Paid Sick Leave[5]	San Diego City Paid Sick Leave[6]	San Francisco Paid Sick Leave[7]	Santa Monica Paid Sick Leave[8]
1. Summary	Accrual Cap: · 48 hours or 6 days per year Annual Use Cap: · 24 hrs. or 3 days Accrual Methods: · One hour per 30 worked · Front load 24 hrs. or 3 days · Other accrual method resulting in the employee having no less than 24 PSL hrs. by the 120th calendar day of employment.	Accrual Cap: · 48 or 72 hours, depending on employer size Annual Use Cap: · Small employers may limit use to 48 hours per calendar year. Accrual Methods: · One hour per 30 worked in the City	Accrual Cap: · 48 or 72 hours, depending on employer size Annual Use Cap: · Not permitted. Accrual Methods: · One hour per 30 worked in the City · Front load annual accrual cap · Any lump sum at the start of the year, with accrual at one hour for every 30 worked after lump sum has been earned	Accrual Cap: · 72 hours Annual Use Cap: · 48 hours Accrual Methods: · One hour per 30 worked in the City · Front load 48 hours at the start of each year	Accrual Cap: · 40 or 72 hours, depending on employer size Annual Use Cap: · Not permitted. Accrual Methods: · One hour per 30 worked in the City	Accrual Cap: · 80 hours Annual Use Cap: · 40 hours Accrual Methods: · One hour per 30 worked in the City · Front load 40 hours at the start of each year	Accrual Cap: · 40 or 72 hours, depending on employer size Annual Use Cap: · Not permitted. Accrual Methods: · One hour per 30 worked in the City · Any lump sum at the start of the year, with accrual at one hour for every 30 worked after lump sum has been earned	Accrual Cap: · *1/1/2017:* 32 or 40 hours, depending on employer size · *1/1/2018:* 40 or 72 hours, depending on employer size Annual Use Cap: · Not permitted. Accrual Methods: · One hour per 30 worked in the City · Front load annual accrual cap
2. Interaction of Laws	Employers subject to state and local paid sick leave laws must follow the stricter standard or the law that is most beneficial to the employee when there are conflicting requirements in the laws.							
3. Effective Date	July 1, 2015	October 1, 2017	July 2, 2015	July 1, 2016[9]	March 2, 2015	July 11, 2016	February 5, 2007	January 1, 2017

EX 24

	California Paid Sick Leave[1]	Berkeley Paid Sick Leave[2]	Emeryville Paid Sick Leave[3]	Los Angeles City Paid Sick Leave[4]	Oakland Paid Sick Leave[5]	San Diego City Paid Sick Leave[6]	San Francisco Paid Sick Leave[7]	Santa Monica Paid Sick Leave[8]
4. Covered Employers	All employers regardless of size.							
5. Covered Employees	Employees who work at least 30 days in California for the employer. Includes: · Employees who are exempt from overtime requirements Excludes: · Union workers who explicitly waive the law's benefits in their union contract · Airline flight deck or cabin crew · Providers of publicly-funded in-home support services · Certain public sector workers	Employees who: · In a calendar week work at least 2 hours in the City; and · Are entitled to be paid a minimum wage. Excludes: · Union workers who explicitly waive the ordinance's benefits in their union contract	Employees who: · In a calendar week work at least 2 hours in the City; and · Are entitled to be paid a minimum wage Includes: · Learners as defined by the California Industrial Welfare Commission. Excludes: · Union workers who explicitly waive the city ordinance's benefits in their union contract	Employees who: · In a particular week work at least 2 hours in the City; · Are entitled to be paid a minimum wage; and · On or after 7/1/16, work in the City for the same employer for at least 30 days within a year from the start of employment. Excludes: · Employees who are exempt from the California minimum wage · Government employees	Employees who: · In a particular week work at least 2 hours in the City; and · Are entitled to be paid a minimum wage. Excludes: · Union workers who explicitly waive the city's benefits in their union contract	Employees who: · In one or more calendar weeks work at least 2 hours in the City; and · Are entitled to be paid a minimum wage, or participate in a state Welfare-to-Work Program. Excludes: · Employees who are exempt from the California minimum wage · Paid a sub-minimum wage under a specific license · Who work for a publicly subsidized summer or short-term youth employment program · Who work as student employees, camp counselors, or program counselors of an organized camp as defined in California Labor Code § 1182.4.	Employees who work in the City. Includes: · Participants in Welfare-to-Work Programs who are engaged in work activity that would be considered "employment" under federal law. Excludes: · Union workers who explicitly waive the city ordinance's benefits in their union contract · Those who work in the City on an occasional basis not exceeding 55 hours in a calendar year	Employees who: · In a particular week, work at least 2 hours in the City; and · Are entitled to be paid a minimum wage. Excludes: · Employees who are exempt from the California minimum wage · Government employees

EX 25

	California Paid Sick Leave[1]	Berkeley Paid Sick Leave[2]	Emeryville Paid Sick Leave[3]	Los Angeles City Paid Sick Leave[4]	Oakland Paid Sick Leave[5]	San Diego City Paid Sick Leave[6]	San Francisco Paid Sick Leave[7]	Santa Monica Paid Sick Leave[8]
6. Permitted Uses	· Medical need of the employee or the employee's family member · Purposes related to domestic violence, sexual assault or stalking suffered by the employee	· Medical need of employee or employee's family member	· Medical need of employee or employee's family member · To provide care for a guide dog, signal dog or service dog of the employee or family member	Same as California law.	· Medical need of employee or employee's family member	Same as California law, plus: · Public health emergencies resulting in the closure of the employee's worksite, child-care provider, or child's school.	· Medical need of employee or family member · Purposes related to domestic violence, sexual assault or stalking suffered by the employee · Bone marrow or organ donation	Same as California law.
7. Covered Family Members	Children, parents, spouse or registered domestic partner, grandparents, grandchildren, and siblings.	Same as California law, plus a designated person if the employee does not have a spouse or registered domestic partner.	Same as California law, plus a designated person if the employee does not have a spouse or registered domestic partner.	Same as California law, plus those related to the employee by blood or affinity equivalent to a family relationship.	Same as California law, plus a designated person if the employee does not have a spouse or registered domestic partner.	Same as California law.	Same as California law, plus a designated person if the employee does not have a spouse or registered domestic partner.	Same as California law.
8. First Day PSL Can Be Used	On the 90th calendar day of employment.	Same as California law.	Same as California law.	On the 90th day of employment, or 7/1/2016*, whichever is later. * *7/1/2017 for employers with 25 or fewer covered employees.*	Same as California law.	On the 91st day of employment, or 7/11/2016, whichever is later.	Same as California law.	Same as California law.
9. Start of Accrual	First day of work or 7/1/2015, whichever is later.	First day of work or 10/1/2017, whichever is later.	First day of work or 7/2/2015, whichever is later.	*Employers with 26 or more covered employees*: · First day of work or 7/1/16, whichever is later. *Employers with 25 or fewer covered employees*: · First day of work or 7/1/17, whichever is later.	First day of work.	First day of work or 7/11/2016, whichever is later.	90 days after start of employment. For employees hired on or after 1/1/2017, on the first day of work.[10]	First day of work.

EX 26

	California Paid Sick Leave[1]	Berkeley Paid Sick Leave[2]	Emeryville Paid Sick Leave[3]	Los Angeles City Paid Sick Leave[4]	Oakland Paid Sick Leave[5]	San Diego City Paid Sick Leave[6]	San Francisco Paid Sick Leave[7]	Santa Monica Paid Sick Leave[8]
10. Accrual Methods	*Option 1:* One PSL hour for every 30 worked. *Option 2:* Front load 24 PSL hours or 3 days at the start of each year. *Option 3:* PSL accrues on a regular basis, resulting in the employee having no less than 24 hours of accrued PSL by the 120th calendar day of employment.	One hour of PSL for every 30 hours worked in the City.	*Option 1:* One hour of PSL for every 30 hours worked in the City. *Option 2:* At the start of each year, front load a PSL amount equal to the applicable accrual cap (see Row 11).* *Option 3:* A combination of Options 1 and 2.	*Option 1:* One hour of PSL for every 30 hours worked in the City. *Option 2:* Front load 48 PSL hours at the start of each year.* Employers front-loading PSL on a calendar-year basis can provide 24 PSL hours on 7/1/16 or 7/1/17, depending on which effective date applies (see Row 9), and the full 48 hours starting January 1 of the following year.	One hour of PSL for every 30 hours worked in the City.	*Option 1:* One hour of PSL for every 30 hours worked in the City. *Option 2:* Front load 40 PSL hours at the start of the year.*	*Option 1:* One hour of PSL for every 30 hours worked in the City. *Option 2:* Front load any sum of PSL at the start of each employment year, calendar year, or 12-month period, so long as the employee can accrue additional PSL after working enough hours to have accrued the amount allocated upfront.	*Option 1:* One hour of PSL for every 30 hours worked in the City. *Option 2:* At the start of each year, front load a PSL amount equal to the applicable accrual cap (see Row 11).*
11. Accrual Caps	Employers may cap the amount of PSL an employee can accrue in a year to no less than 48 hours or 6 days, whichever is greater.#	Accrued, unused PSL is capped according to the number of employees the employer has in any location. · *24 or fewer employees:* 48 hours · *25 or more employees:* 72 hours	Employers may cap the amount of accrued, unused PSL, depending on the number of employees it has working in the City.# · *55 or fewer employees:* 48 hours · *56 or more employees:* 72 hours	Employers may cap accrued, unused PSL at 72 hours.	Employers may cap the amount of accrued, unused PSL, depending on the number of employees in any location.% · *9 or fewer employees:* 40 hours! · *10 or more employees:* 72 hours	Employers may cap an employee's total PSL accrual at no less than 80 hours.	Accrued, unused PSL is capped according to the number of employees the employer has in any location.% · *9 or fewer employees:* 40 hours! · *10 or more employees:* 72 hours	Employers may cap the amount of accrued, unused PSL, depending on the number of employees in the City. · *25 or fewer employees:* 2017: 32 hours! 2018: 40 hours! · *26 or more employees:* 2017: 40 hours! 2018: 72 hours

* Employers can use either the employment year, calendar year, or other 12-month period for purposes of PSL accrual or frontloading of PSL.
\# Annual cap - the law clearly allows a limit on how many hours of PSL an employee may accrue in a year.
% Rolling cap - the ordinance clearly allows only a limit on how many hours of PSL an employee may have "in the bank" at any given time. Employers cannot limit how much PSL is accrued in a year.
! Caution: This accrual cap is lower than what is required under the state law (48 hours or 6 days). See Row 12 regarding interactions of laws.

EX 27

	California Paid Sick Leave[1]	Berkeley Paid Sick Leave[2]	Emeryville Paid Sick Leave[3]	Los Angeles City Paid Sick Leave[4]	Oakland Paid Sick Leave[5]	San Diego City Paid Sick Leave[6]	San Francisco Paid Sick Leave[7]	Santa Monica Paid Sick Leave[8]
12. Carry Over	Accrued, unused PSL carries over into the next year but is limited by the employer's accrual cap.	Accrued, unused PSL carries over into the next year but is limited by the accrual cap.	Accrued, unused PSL carries over into the next year but is limited by the employer's accrual cap, if any. If PSL is provided up front, roll over is not required.	Accrued, unused PSL (including unused front-loaded PSL) carries over year to year but may be capped at a minimum of 72 hours.	Accrued, unused PSL carries over into the next year but is limited by the employer's rolling accrual cap, if any.	Accrued, unused PSL carries over year to year. If PSL is provided up front, roll over is not required.	Accrued, unused PSL carries over into the next year but is limited by the employer's rolling accrual cap.	Accrued, unused PSL carries over year to year but is limited to the employer's accrual cap. If PSL is provided up front, roll over is not required.
13. Use Caps	PSL use may be limited to 24 hours or 3 days per year (whichever is more for the employee).	Employers with 24 or fewer employees may limit PSL use to 48 hours per calendar year. Larger employers cannot limit PSL use; their employees may use any PSL they have in their PSL banks. PSL banks are limited by the accrual cap. See Row 11.	Not permitted. Employees may use the PSL they have in their PSL banks. Employers may set accrual caps or use the frontload method to limit PSL banks. See Rows 10-12.	Annual use of PSL may be limited to 48 hours per year.	Not permitted. Employees may use the PSL they have in their PSL banks. Employers may set accrual caps to limit PSL banks. See Row 11.	PSL use may be limited to 40 hours per year.	Not permitted. Employees may use the PSL they have in their PSL banks. Accrual caps limit PSL banks. See Row 11.	Not permitted. Employees may use the PSL they have in their PSL banks: employers may set accrual caps or use the frontload method to limit PSL banks. See Row 11.
14. Use Increments	Employers cannot require that PSL be used in increments larger than 2 hours.	Not addressed.	Employers cannot require that PSL be used in increments larger than 2 hours.	Employers cannot require that PSL be used in increments larger than 2 hours.	Employers cannot require that PSL be used in increments larger than 1 hour.	Employers cannot require that PSL be used in increments larger than 2 hours.	Employers cannot require that PSL be used in increments larger than 1 hour.	Not addressed.
15. When PSL Pay Is Due	On the payday for the next regular payroll period after PSL is taken.	On the payday for the next regular payroll period after PSL is taken.	On the payday for the next regular payroll period after PSL is taken.	Not addressed.	On the payday for the next regular payroll period after PSL is taken.	Not addressed.	On the payday for the next regular payroll period after PSL is taken.	Not addressed.

EX 28

	California Paid Sick Leave[1]	Berkeley Paid Sick Leave[2]	Emeryville Paid Sick Leave[3]	Los Angeles City Paid Sick Leave[4]	Oakland Paid Sick Leave[5]	San Diego City Paid Sick Leave[6]	San Francisco Paid Sick Leave[7]	Santa Monica Paid Sick Leave[8]
16. Cash Out of PSL	An employer is not required to cash out PSL or pay for accrued or unused PSL at separation.							
17. Paid Time Off Policies	No additional benefits are required if, as of 1/1/2015, the employer already had an existing paid leave or paid time off policy meeting the following requirements: · Made available paid leave that could be used for at least as many paid sick days and under the same conditions required by the state PSL law; or · Had conditions more favorable to employees (e.g., more sick days or a more favorable accrual rate than required under the state PSL law).	No additional benefits are required if the paid time off can be used for the same purposes required by the ordinance, and the policy meets the City's accrual and use requirements.	If an employer has a paid leave policy, such as a PTO or vacation policy, that makes available to employees paid time off that may be used for the same purposes specified in the ordinance, and the policy is sufficient to meet the ordinance's requirements for making PSL available, then an employer is not required to provide additional PSL.	No additional benefits are required if the policy provides at least 48 hours of paid time off. Where the policy does not meet all requirements of the ordinance, the City may still determine that additional benefits are not required if the policy is overall more generous to employees.	No additional benefits are required if the paid time off can be used for the same purposes and meets the minimum accrual requirements of the ordinance.	No additional benefits are required if the paid time off can be used for the same purposes and meets the minimum accrual requirements of the ordinance. Nor are additional benefits needed if the paid time off policy provides an enhanced benefit in at least one of the following categories and otherwise meets the minimum requirements for the remaining two: · Accrual rate; · Rate of pay; or · Allowable purposes for PSL use.	No additional benefits are required if the paid time off can be used for the same purposes and meets the minimum accrual requirements of the ordinance.	Other paid time off plans will comply with the ordinance if the benefits are equal to or more generous than the Ordinance.

EX 29

	California Paid Sick Leave[1]	Berkeley Paid Sick Leave[2]	Emeryville Paid Sick Leave[3]	Los Angeles City Paid Sick Leave[4]	Oakland Paid Sick Leave[5]	San Diego City Paid Sick Leave[6]	San Francisco Paid Sick Leave[7]	Santa Monica Paid Sick Leave[8]
18. Rate of Pay	When used, PSL must be paid by one of following methods: *Exempt employees:* · For employees who are exempt from the minimum wage under the Professional, Executive, or Administrative exemptions, PSL is paid using the same method as any other form of paid leave provided by the employer.[11] *Other employees:* · Regular rate of pay for the workweek in which PSL is used; or · Divide the total wages (excluding any overtime premiums) by the total hours worked in the full pay periods of the prior 90 days of employment.	When used, PSL must be paid by one of following methods: · The hourly wage; or · If an employee, in the 90 days of employment before taking PSL, had different hourly pay rates, was paid by piece rate or commission, or was a non-exempt salaried employee, the rate of pay is calculated by dividing the employee's total wages (excluding any overtime premium pay) by the employee's total hours worked in full pay periods of prior 90 days.	PSL is paid at the regular hourly rate of pay for work-week in which PSL is used. If an employee has more than one pay rate, PSL is paid at the rate equal to the scheduled pay rate(s) for the job during which PSL is taken.	When used, PSL must be paid by one of following methods: · The regular hourly rate of pay for the workweek in which PSL is used; or · Divide total wages (excluding overtime premiums) by total hours worked in the full pay periods of the prior 90 days of employment. · If an employee has more than one pay rate, PSL is paid at the rate equal to the scheduled pay rate(s) for the job during which PSL is taken.	PSL is paid at the regular hourly rate of pay for the time PSL is taken. For salaried employees, divide the annual salary by 52 weeks, then divide by 40 hours or by the actual hours worked during a regular workweek if less than 40 hours.	PSL is paid at the regular hourly rate of pay for the workweek in which PSL is used. If an employee has more than one pay rate, PSL is paid at the rate equal to the scheduled pay rate(s) for the job during which PSL is taken.	When used, PSL must be paid by one of following methods: *Non-exempt employees:* · Regular rate of pay for the work-week in which PSL is used; · Total wages (excluding overtime premiums) divided by total hours worked in the full pay periods of the prior 90 days of employment; or · Divide annual salary by 52 weeks, then divide by the actual hours worked during a regular workweek, not to exceed 40 hours. *Exempt employees:* · Same as any other paid leave provided by the employer; or · Divide annual salary by 52 weeks, then divide by the actual hours worked during a regular workweek.	Not addressed.

EX 30

	California Paid Sick Leave[1]	Berkeley Paid Sick Leave[2]	Emeryville Paid Sick Leave[3]	Los Angeles City Paid Sick Leave[4]	Oakland Paid Sick Leave[5]	San Diego City Paid Sick Leave[6]	San Francisco Paid Sick Leave[7]	Santa Monica Paid Sick Leave[8]
19. Requiring Advance Notice from Employees of PSL Use	If the need for PSL is foreseeable, the employee must provide reasonable advance notice. If the need is unforeseeable, the employee must provide notice as soon as practicable.	Same as California. Employees cannot be required, as a condition of taking PSL, to search for a replacement worker.	Employers may require reasonable notice of a PSL absence, but cannot require such advance notice that would deter valid use of PSL. If reasonable notice is required, employers must have a procedure for employees to communicate absences.	Employees must give advance notice if PSL is planned, such as a scheduled medical appointment. If the need is unforeseeable (such as an unanticipated illness or medical emergency) the employee must give notice as soon as practicable.	Employers may require no more than two hours' notice before the start of shift, but greater flexibility is necessary for emergencies or sudden illnesses. If reasonable notice is required, the employer must have a procedure for employees to communicate absences. Employees cannot be required, as a condition of taking PSL, to search for a replacement worker.	If need for PSL is foreseeable, an employer may require reasonable advance notice not to exceed seven days. If need is unforeseeable, notice must be provided as soon as practicable. Employees cannot be required, as a condition of taking PSL, to search for a replacement worker.	Employers may require at least 2 hours' notice of an absence before the start of a shift, except for emergencies or sudden illnesses for which advance notice would be unreasonable. Employees cannot be required, as a condition of taking PSL, to search for a replacement worker.	Not addressed.
20. Requiring Documentation from Employees to Verify PSL Use	Requiring documentation is not permitted under the California Labor Commissioner's interpretation of the law.	An employer may only take reasonable measures to verify or document that PSL use is lawful and cannot require employees to incur expenses in excess of $15 in order to show their eligibility for PSL.[&]	Employers may adopt a policy of verifying and/or documenting that employees' use of accrued PSL is lawful. If the employer adopts such a policy, it need not pay PSL for the time in question until the employee complies with the verification requirement.[&]	Employers may request reasonable documentation. What is reasonable depends on the situation, but a requirement should never be so difficult that it deters legitimate PSL. Documentation may be required after more than three consecutive days of PSL use.[&]	It is presumptively reasonable to require documentation for PSL use exceeding three consecutive work days, or to verify a subsequent absence if abuse is reasonably suspected.[&] Employers cannot require employees to incur expenses in excess of $5 to obtain required documentation.	Requiring documentation is permitted for absences exceeding three consecutive work days.[&]	It is presumptively reasonable to require documentation in the following circumstances: · PSL absences exceeding three consecutive work days; · Medical appointments; or · Where there is a pattern or clear instance of PSL abuse.[&]	The ordinance is silent as to the type of documentation that an employer may request to verify PSL use. Employers should follow applicable state and federal law.

[&] Caution: On this issue, the city ordinance is inconsistent with the California Labor Commissioner's interpretation of the California law.

EX 31

	California Paid Sick Leave[1]	Berkeley Paid Sick Leave[2]	Emeryville Paid Sick Leave[3]	Los Angeles City Paid Sick Leave[4]	Oakland Paid Sick Leave[5]	San Diego City Paid Sick Leave[6]	San Francisco Paid Sick Leave[7]	Santa Monica Paid Sick Leave[8]
21. Employers' Posting and Notice Obligations	Employers must: · Display the state's official poster in a conspicuous place at the worksite; · Include PSL information on non-exempt employees' wage notices (a template is available at www.dir.ca.gov/dlse/LC_2810.5_Notice.pdf); and · Include the amount of available PSL in employees' wage statements.	In addition to the notice requirements under the state law, employers must: · Display the City's official notice of rights in a conspicuous place at all worksites in the City, in all languages spoken by at least 5% of workers at the worksite; · Include the amount of PSL hours accrued to date in records provided to employees at the end of each pay period (*e.g.*, wage statements); and · At the time of hire, provide employees written notice of the employer's name, address, and telephone number.	In addition to the notice requirements under the state law, employers must: · Display the City's official notice of rights in a prominent location in the workplace; · Provide a copy of the City's official notice of rights to current and new employees; and · At the time of hire, provide covered employees written notice of the employer's name, address, and telephone number. Notices must be provided in all languages spoken by 10% or more of employees.	In addition to the notice requirements under the state law, employers must: · Display the City's official notice of rights in a clearly visible place at any workplace of a covered employee; and · At the time of hire, provide covered employees written notice of the employer's name, address, and telephone number. Notices must be provided in English and any other language spoken by at least 5% of covered employees at the workplace or job site.	In addition to the notice requirements under the state law, employers must: · Display the City's official notice of rights in a prominent location in the workplace; · Provide a copy of the City's official notice of rights to current and new employees at the time of hire; and · At the time of hire, provide covered employees written notice of the employer's name, address, and telephone number. Notices must be provided in all languages spoken by 10% or more of employees.	In addition to the notice requirements under the state law, employers must: · Display the City's official notice of rights in a conspicuous place at any workplace where any covered employee works; · At the time of hire, provide written notice of the employer's legal name and any fictitious business name, address, and telephone number, and information on how the employer complies with the ordinance. Notices must be provided in all languages spoken by 5% or more of employees.	In addition to the notice requirements under the state law, employers must: · Display the City's official notice of rights in a conspicuous place in the workplace; and · Include amount of available City PSL in employees' wage statements. The notice of rights must be posted in English, Spanish, Chinese, and any other language spoken by at least 5% of employees at the workplace.	In addition to the notice requirements under the state law, employers must: · Display the City's official notice of rights in a conspicuous place at the workplace in English, Spanish and any other language spoken by 5% or more of the employer's workforce; and · At the time of hire, provide covered employees written notice of the employer's name, address, and telephone number.

EX 32

	California Paid Sick Leave[1]	Berkeley Paid Sick Leave[2]	Emeryville Paid Sick Leave[3]	Los Angeles City Paid Sick Leave[4]	Oakland Paid Sick Leave[5]	San Diego City Paid Sick Leave[6]	San Francisco Paid Sick Leave[7]	Santa Monica Paid Sick Leave[8]
22. Effect of Rehiring	If the employee is rehired within one year from the date of separation, any previously accrued and unused PSL must be reinstated and can be used immediately upon rehire. However, if the employee is compensated for accrued, unused PSL upon separation, the employer is not required to reinstate the paid out PSL if the employee is subsequently rehired.	Not addressed.	Same as California law.	Same as California law.	Same as California law.	If the employee is rehired within six months from the date of separation, any previously accrued and unused PSL must be reinstated and can be used immediately upon rehire.	Same as California law.	Not addressed.
23. Retaliation Prohibited	Employers cannot retaliate against employees for exercising rights under the law. There is a rebuttable presumption of retaliation if an employer takes a negative employment action against an employee within 90 days of that employee engaging in a protected activity.	Employers cannot retaliate against employees for exercising rights under the law. There is a rebuttable presumption of retaliation if an employer takes a negative employment action against an employee within 90 days of that employee engaging in a protected activity.	Employers cannot retaliate against employees for exercising rights under the law. It is unlawful to discharge an employee within 120 days of the employer learning of the employee's protected activity, unless the employer has clear and convincing evidence of just cause for such discharge.	Employers cannot retaliate against employees for exercising rights under the law. There is a rebuttable presumption of retaliation if an employer takes a negative employment action against an employee within 90 days of that employee engaging in a protected activity.	Employers cannot retaliate against employees for exercising rights under the law. It is unlawful to discharge an employee within 120 days of the employer learning of the employee's protected activity, unless the employer has clear and convincing evidence of just cause for such discharge.	Employers cannot retaliate against employees for exercising rights under the law. There is a rebuttable presumption of retaliation if an employer takes a negative employment action against an employee within 90 days of that employee engaging in a protected activity.	Employers cannot retaliate against employees for exercising rights under the law. There is a rebuttable presumption of retaliation if an employer takes a negative employment action against an employee within 90 days of that employee engaging in a protected activity.	Employers cannot retaliate against employees for exercising rights under the law. There is a rebuttable presumption of retaliation if an employer takes a negative employment action against an employee within 90 days of that employee engaging in a protected activity.

EX 33

	California Paid Sick Leave[1]	Berkeley Paid Sick Leave[2]	Emeryville Paid Sick Leave[3]	Los Angeles City Paid Sick Leave[4]	Oakland Paid Sick Leave[5]	San Diego City Paid Sick Leave[6]	San Francisco Paid Sick Leave[7]	Santa Monica Paid Sick Leave[8]
24. Record Retention	Employers must retain for three years records showing each employee's hours worked, and PSL accrual and use.	Employers must retain for four years records showing each covered employee's hours worked in the City, and PSL accrual and use. If the employer fails to maintain or retain adequate records documenting accrued PSL, the City will presume the employee's account of PSL owed is accurate, absent clear and convincing evidence otherwise.	Employers must retain for four years records showing each covered employee's hours worked in the City, pay rates, and PSL accrual and use. Employers must provide employees copies of these records upon their reasonable request.	Employers must retain for four years records showing each covered employee's hours worked in the City, and PSL accrual and use.	Employers must retain for three years records showing each covered employees' names, hours worked, pay rates, and PSL accrual and usage. A copy of the records must be provided to an employee upon reasonable request.	Employers must retain for three years records showing each covered employee's wages paid, hours worked in the City, and PSL accrual and use. Failure to maintain or retain adequate records documenting accrued PSL creates a rebuttable presumption that the employer has violated the ordinance and the City may rely on an employee's reasonable estimate regarding PSL earned and used.	Employers must retain for four years records showing each covered employee's hours worked in the City, and PSL accrual and use.	Employers must retain for three years records showing each covered employee's hours worked in the City, and PSL accrual and use. If the employer fails to maintain or retain adequate records documenting hours worked by the employee and PSL taken by the employee, the City will presume the employer has violated the ordinance absent clear and convincing evidence otherwise.
25. Enforcement	The law does not directly permit a private right of action by an aggrieved employee. It remains unclear, however, if an aggrieved employee can file suit under the California Private Attorney General Act of 2004 (PAGA).	The City is authorized to investigate potential violations, and to impose penalties and fines. The City or an aggrieved employee can bring a civil action in court to enforce the ordinance.	The City is authorized to investigate potential violations, and to award the same relief in its proceedings as a court of law could. The City or an aggrieved employee can bring a civil action in court to enforce the ordinance.	The City is authorized to investigate potential violations, settle complaints, and impose fines and penalties. The City or an aggrieved employee can bring a civil action in court to enforce the ordinance.	The City is authorized to investigate potential violations, and to award the same relief in its proceedings as a court of law could. The City or an aggrieved employee can bring a civil action in court to enforce the ordinance.	The City is authorized to investigate potential violations, settle complaints, and impose fines and penalties. The City or an aggrieved employee can bring a civil action in court to enforce the ordinance.	The City is authorized to investigate potential violations, settle complaints, and impose fines and penalties. The City or an aggrieved employee can bring a civil action in court to enforce the ordinance.	The City contracts with Los Angeles County to process and investigate claims. Violations can result in fines, penalties and criminal liability. Employees have the right to file civil claims, and employers violating the law can be subject to administrative or criminal penalties.

EX 34

	California Paid Sick Leave[1]	Berkeley Paid Sick Leave[2]	Emeryville Paid Sick Leave[3]	Los Angeles City Paid Sick Leave[4]	Oakland Paid Sick Leave[5]	San Diego City Paid Sick Leave[6]	San Francisco Paid Sick Leave[7]	Santa Monica Paid Sick Leave[8]
26. Los Angeles and Long Beach Hotel Workers	This chart does not include two laws applicable to hotel workers only. In 2007, the City of Los Angeles adopted an ordinance requiring hotels with 150+ rooms within the Airport Hospitality Enhancement Zone to provide employees at least 96 paid hours off per year for any purpose, and a proportional amount of hours to part-time hotel workers. (L.A. Mun. Code §186.02.) The L.A. ordinance is available at http://www.foxrothschild.com/content/uploads/2015/05/Citywide-Hotel-Worker-Minimum-Wage-Ordinance.pdf. In 2012, Long Beach voters approved Measure N, which requires hotel employers to provide at least five days of PSL to certain employees. (Long Beach Mun. Code § 5.48.020.) The Long Beach Ordinance is available at http://www.foxrothschild.com/content/uploads/2015/05/Citywide-Hotel-Worker-Minimum-Wage-Ordinance.pdf.							

1 See the California Department of Industrial Relations' Healthy Workplace Healthy Family Act of 2014 (AB 1522) website, www.dir.ca.gov/dlse/ab1522.html, and Frequently Asked Questions at www.dir.ca.gov/dlse/paid_sick_leave.htm.

2 See Berkeley Ordinance No. 7,505-N.S., Minimum Wage Ordinance, www.cityofberkeley.info/Clerk/City_Council/2016/08_Aug/Documents/2016-08-31_Item_01_Ordinance_7505.aspx.

3 See Emeryville's Minimum Wage and Paid Sick Leave Ordinance website, www.ci.emeryville.ca.us/1024/Minimum-Wage-Ordinance/. Information on Emeryville's geographical boundaries can be found here: www.ci.emeryville.ca.us/DocumentCenter/Home/View/678.

4 See City of Los Angeles's Minimum Wage and Paid Sick Leave website: www.wagesla.lacity.org. Information on City of Los Angeles' geographical boundaries can be found here: www.zimas.lacity.org/; www.laalmanac.com/LA/lamap2.htm; and www.neighborhoodinfo.lacity.org.

5 See Oakland's Minimum Wage and Paid Sick website: www2.oaklandnet.com/Government/o/CityAdministration/d/MinimumWage/index.htm. Information on Oakland's geographical boundaries can be found here: www.zipmap.net/California/Alameda_County/Oakland.htm.

6 See the City of San Diego's Paid Sick Leave and Minimum Wage website: www.sandiego.gov/treasurer/minimum-wage-program. Information on the City of San Diego's geographical boundaries can be found here: http://gis.sandag.org/boundary/viewer.htm, and https://www.sandiego.gov/sites/default/files/legacy//planning/programs/mapsua/pdf/cplancd2.pdf.

7 See San Francisco's Paid Sick Leave Ordinance website: http://sfgov.org/olse/paid-sick-leave-ordinance-pslo. Information on San Francisco's geographical boundaries can be found here: http://www.zipmap.net/California/San_Francisco_County.htm.

8 See the City of Santa Monica's Paid Sick Leave and Minimum Wage website: http://beta.smgov.net/strategic-goals/inclusive-diverse-community/minimum-wage-ordinance.

9 City of Los Angeles Effective Date: The effective date of the ordinance depends on the size of the employer. Employers with 26 or more employees must comply by July 1, 2016. Employers with 25 or fewer employees ("small businesses") have until July 1, 2017 to comply.

10 Caution: As it applies to employees hired before 1/1/2017, the San Francisco ordinance is inconsistent with the state law, which requires PSL to begin to accrue on the first day of employment.

11 California Department of Labor Standards Enforcement, Opinion Letter 2016.10.11, "Calculating Payment of Paid Sick Leave," http://www.dir.ca.gov/dlse/opinions/2016-10-11.pdf.

EX 35

For more information, please contact:

Tyreen G. Torner
415.364.5559 | ttorner@foxrothschild.com

To Whom it may concern,

The authors of this letter humbly begin by extending their "individual and collective" appreciation to the distinguished recipients of this initial proposal for taking time out of their daily schedule to read and consider its contents. We write this without having any prior experience or history of addressing such an important and intimate issue.

Currently, in the State of California, people are being denied the opportunity to possibly live a long and happy life due to an existing rule or law that prohibits "Incarcerated Men and Women" from voluntarily become "Organ Donors." and it's outside of our understanding why this is It is important here, to share a brief explanation of my current situation, which may vary with other interested persons, in order to clearly explain my view of this issue.

I am a forty-two year-old man, who is currently serving a life sentence in the California Department of Corrections and Rehabilitation, at Centinela State Prison. I have been incarcerated for twenty years for an inexcusable act of taking another human being's life. During my incarceration, I have witnessed an un-imaginable display of a "waste of life." Currently, I actively participate in self-help groups such as, "A.V.P (Alternative to Violence Project), NA-AA (Narcotics/Alcoholics Anonymous), and C.G.A (Criminals and Gangmembers Anonymous), and during these reflective sessions, when the subject arises, "exactly, what are the opportunities that we have capitalized on to make "Amends" of for their past, or, for our life crime," I draw a blank.

Due to the significant changes that "Proposition 57" ushered in when it effectively became law, CDCR has implemented several programs and reform strategies to help an individual positively utilize their ability to become a responsible, beneficial and productive member of society at some point in time. There are two words that both "haunt and concern" me, "Life" and "Time." There are over one hundred thousand people that are incarcerated within the State, and from that large number, unbeknownst to society, that struggle to accept the fact that they are unable to make a true difference in this world, while having a strong desire and willingness to do just that.

Writing a letter to someone is good for a moment, but it is not a life-changing "Act of Contribution." I and many others want to be able to truly give back to someone in need exactly what we have taken away from them, "Life." There are people, every day, who succumb to illnesses and organ failure, that are on a waiting list; some of whom, are unable to find a suitable match, or the awaiting person is too far down on the waiting list to timely receive the necessary organ, or life-saving/giving procedure.

"Life" and "Time," the two invaluable things that a human can never retrieve once it's gone. Our hearts break each day knowing that we have the ability to help someone have a reasonable chance to "Live" and extend their time with family, friends, spouses, etc...however, we are currently prevented or prohibited, by some existing rule or law. After my unforgivable crime of taking someone's life, to think that I can somehow make "Amends" by giving them a part of myself, but cannot because of a restriction, is a crime within itself. We don't author this letter from a position of wanting to do this for a family member or specific person but for anyone and everyone in need of help.

We know and understand that in society, "there is a price on everything" and despite what some might say contrary, a price "on life" does exist. If the Department of Corrections and Rehabilitation enforce a rule or regulation that prohibit an inmate from being or becoming an organ donor "due to cost" or "budget," then, a price was just placed on "life." The life that I am personally responsible for taking, and for which my soul mourns, was my time on earth. I was punished with "Time" for that crime and I cannot imagine any better way for a person to help another person, then, by being able to place themselves on a list of "Active Organ Donors."

The process of research regarding this matter is still in its infant stages of "brainstorming" its factual, legal and administrative basis. With all the successive and progressive changes that are currently being implemented within the prisons, we hope for a bright future and plausible avenue to eventually implement this policy and opportunity, because it's time to expand this recognition that although a person has committed a terrible crime, it doesn't outright mean that their ability to help society and humanity, at such a sacrifice, is completely lost. Current, and recently amended law reflects this fact.

It is beyond our ability to substantially progress with this movement and proposition for change without help from someone that is "respected, intelligent and active" within the California political forum. We author this letter with the collective and holistic hope that we can be afforded the chance to truly help and make amends.]

We thank you for your time and consideration in this matter. May God continue to bless you and your families.

Sincerely,

10/9/18
Steven Phillips V-26406

Andre M. Edmund 10-9-2018
Andre' M. Edmund H72419

PATIENT ADVOCACY SERVICES

March 7, 2018

Mr. Brian Hebert, Esq.
Executive Director
California Law Revision Commission
c.o. University of CA Davis, School of Law
400 Mrak Hall Drive
Davis, CA 95616

Re: Third-party enrichment at the expense of DWI victims

Dear Mr. Hebert, Esq.:

As the head of a State entity that can affect change, I am writing you to highlight a flaw in the existing Motor Vehicle and Penal Codes and possibly the Insurance code with regard to how a victim of a drunk driver should be viewed and processed by the system; whether local municipality, county or State.

It seems we have regulations for how a victim is to be treated, in all other cases except for those hit by a drunk driver. It may be due to oversight, or being unaware that third-party entities such as the authorized towing firms do not differentiate nor care why they are being called to remove a vehicle from the site of an accident. Flaw number one.

As you will see in the attached, I question if we are so cold and greedy as a society that we should make money or profit from the unfortunate situation; due to no fault of their own, the victim should have to compensate the towing firm to the degree they have been to date. I can appreciate the cost of claiming (towing) the vehicle, but the storage fees, the clock ticking away, when the individual is hospitalized or even killed by the incident? Insensitive and inhumane.

Does the State believe that the grieving family or the injured victim should have to worry about a damaged vehicle within twenty-four hours or be forced to ransom the vehicle when able to do so, and in most cases, lose it to auction because they are not able to deal with the towing firm due to incapacitation or in mourning? Flaw number two.

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While there is a brief mention of circumstances of no lien under 22655.5 (c); Civil Code 3068 contradicts the wording of 22655.5 (c) therefore the victim loses the vehicle. One hand giveth, the other takes it away. Is this how the law was intended? I think not, and for some reason, it has never been questioned. Flaw number three.

I'm asking that any and all statutes dealing with how a victim and their vehicle are handled when associated with the enforcement of the drunk driving regulations be reviewed, aligned and balanced to favor the victim, and have clarification that is clear and concise in order to stop the unjust enrichment by the semi-quasi-government authorized towing firms.

It is a shady business to begin with. It is my hope that revisions to the existing statutes stop the abuse, especially towards any individual who should be obtaining help from the local government agencies as a victim, and not be victimized by the process that was supposed to provide protection.

Thank you for taking the request under consideration. It may not have come through the basic or normal channels to the Commission, but it is my hope that it could be put onto the agenda as an item for consideration, as it affects a lot of innocent individuals, who by no fault of their own other than being in the wrong spot, have had their lives impacted to a significant degree.

Should you or your staff have any questions, please do not hesitate to contact me. I will be happy to provide answers or insight if I can.

Respectfully yours,

Paul E. Siman
C.E.O. & Advocate

Cc: K. Burford, Esq.
S. Cohen, Esq.

Enclosed: Email that never got through
3/2 letter to MADD who handles victims services in CA
9/16/16 complaint to LA Police Commission and the response

Patient Advocacy Services-P Siman

From: Patient Advocacy Services-P Siman <psiman@patientadvocacyservices.com>
Sent: March 3, 2018 7:46 AM
To: 'commission@circ.ca.gov'
Cc: 'bhebert@circ.ca.gov'; 'kburford@circ.ca.gov'; 'scohen@circ.ca.gov'
Subject: Implementation of a clear statute stopping unjust enrichment by third-parties
Attachments: 3.2018-MADD CA LAW REVISION.pdf; 3.2018-PoliceCommission.pdf

Importance: High

There are many Statutes and regulations dealing with victims except individuals who at no fault of their own, are, after being hit by a drunk driver.

The various areas, Motor Vehicle, Penal, and Insurance all address what is to happen when dealing with the drunk driver, but there is no language the prohibits entities from profiting by taking advantage of the victim.

In my formal complaint to the Los Angeles Police Commission regarding the practices of the Official Police Garage (tow vendor), the investigation never addresses the issues raised, subjectively avoiding those aspects of the law that allow for the entity to move forward without regard to the injured party. By only stating that procedures were followed is a lame cover-up for the actions taken.

The Commission does not address how a person in the hospital can handle what is required to remove a destroyed vehicle. Or answer how the clock started to count down when the defendants insurance adjustor took ten days to visit the tow facility.

It appears that the wording of the existing statutes does nothing to protect the victim. It does not address any issues the victim or the victim's family may be facing.
It gives any third-party the right to profit off of the victim or if the individual was killed as a result of being hit by a drunk driver, the grieving family must make it a priority to deal with the tow facility over burying their child/sibling/spouse. How barbaric are we as a civilization?

Therefore I am asking the commission to expedite the inclusion of very clear and concise language that clearly informs all parties that A) a victim of a crime, any crime is not a profit center. They fall outside the conventional rules, and that time frames and regulations that may provide for fee's does not apply. B) a person who is hit by a drunk driver is a victim, afforded the same rights establish under local, State and Federal laws by which unjust treatment and financial enrichment through the application of fees or liens is prohibited. C) Individuals injured as a result of a drunk driver, should be given adequate time to heal, before being asked to deal with the removal of the vehicle. D) Families of an individual killed by a drunk driver should be given six months minimum to cope with the loss and deal with the insurance or District Attorney should the defendant not be insured.

Anyone with common sense understands that the Police will remove the damaged vehicle to keep traffic flowing smoothly once they have completed their investigation. The law must deal with what happens after the vehicle is removed. Included in the law should be the obligation of the investigating police to provide information to the victim and/or their family on an expedited basis. The individual should not have to chase the police to get a police report, information about the defendants insurance, etc.,

The bottom line is that anyone hit by a drunk driver, injured or not, should be provided with compassion and understanding by all parties involved in the disposition of their property. In the situation I dealt with, the individual was hospitalized, suffered a severe concussion, causing radical headaches, double vision and leaving fluid on her skull. Yet the Los Angeles Police Commission does not address or even acknowledge the severity of her injuries.

Now is the time to correct the greed and devious way in which entities serving the public serve themselves first.

Thank you.

PAUL E. SIMAN

March 2, 2018

Ms. Vicki Knox
Interim Chief Executive Officer
MADD-Mothers Against Drunk Driving
511 E. John Carpenter Freeway
Irving, TX 75062

Executive Leadership
Southern CA Chapter - MADD
5455 Garden Grove Blvd
Suite 150
Westminster, CA 92683

Re: Profiting off the victim

Dear Ms. Knox:

Are you aware that in all of the various State of California Statutes and Laws dealing with "Driving under the Influence", not one word discusses Victim's Right's. Nowhere can you find any language that clearly states how the individual is to be dealt with. There are no protections in place for the person who needs the protection the most.

Two years ago while at 10:00 PM while stopped at a red light heading west on Sunset Blvd at La Brea, my daughter driving her Mini Cooper was hit by a speeding Dodge Charger that was going so fast that he sheared off three-quarter's of the left side (drivers side) of the car. She and the car were spun around and stopped on the other side heading east.

The defendant then hit three other vehicles, a bus shelter and came to a stop after running into the front of a bar. She was rushed to the hospital, and the police had the Official Police Garage Tow vehicle come and remove the car. While they are right for doing so, one would think that as a victim, the vehicle would be provided a grace period by which it is removed. Not So.

Forget any of the other mitigating circumstances, and focus on the basic fact that an injured party is still liable to have their car removed within twenty-four hours or the tab starts to run.

I ask the following questions, and I am in total disbelief that a victim or a victim's family must deal with the damaged vehicle as their priority or be charged for it being held for safe keeping.

How egregious and insulting is it on the part of the local municipality to make a profit off of a victim! The fact that the person is injured, taken by ambulance to a hospital in and of itself means that they are not capable of dealing with their car.

The individual is injured, in the hospital, and if they are lucky, their family was called, we hope. The family member, who may or may not be within a reasonable distance to help the injured party, still requires time to get to the injured, and yet the Tow Garage is charging fees beginning two day.

And should the family be concerned with the car, in the event the plaintiff/driver was killed as a result of being hit by the drunk driver? I think it would be inconsiderate and inhumane for anyone to not allow them to grieve and handling what is required to bury their loved one.

It is a moral sin for any entity, governmental in nature or a regular for-profit business to make money off of a victim – it adds insult to the entire episode that was not in their capacity to control or stop.

Victim's services, the victims own insurance or the defendants insurance, if they are insured, will not remit payment or even get involved, until there has been a preliminary hearing. Regardless of the evidence, the driver has not yet been found guilty, so in the United States, the victim has all of the liability until, the day long off in the future, there is a pronouncement of guilt by the court.

I do not think any third-party should be involved at all, since the victim should not be asked to remit any payment for the services rendered at the time of the accident. Is a person who gets shot during a robbery asked to remit payment when taken to the hospital? No. So why are the victims of a drunk driver looked at any differently? They are victims, and should be under the protection of any Federal, State or local Victim's Rights laws, but they are not.

This particular aspect of a DUI accident can be very costly to the victim, who may be out of work due to the injuries sustained. For the towing and storage fee, to the lien and auctioning off the vehicle within 30 to 45 days leaves no room for error.

There is also the defendant's insurance provider, who will stall and low-ball the amount of money required to repair the car if it is possible to repair. The dialog between the two entities is not an overnight situation – the clock ticks and the balance due the tow garage mounts up.

Therefore, in bringing this salient aspect to the attention of the organization who is Chartered to assist the victim and families affected by a drunk driver, and who pushes for legislation at all levels, to please do so. It needs to be specific, no ambiguity to any legislation to add to or amend existing statutes. There should be no wiggle room for any service provider or government agency to deny their obligation to serve and protect the injured party. Government has a fiduciary obligation to its citizens, and that includes any person who has been injured or daily routine affected by a drunk driver.

Your efforts to seeing that a law(s) is enacted that is specific to how the victim of a drunk driver is handled is greatly appreciated. The sooner each State provides individuals the services needed, and ceases to profit by charging the victim any type of fee, which they would not normally incur if they were not hit by the individual the better.

Your organizations clout is key to seeing the laws are put on the books, and individuals who become the injured party are handled with the dignity they deserve.

Thank you for your prompt attention to the issue.

Respectfully yours,

Paul E. Siman

cc: California Law Revision Commission

PAUL E. SIMAN

August 16, 2016

The Honorable Matthew M. Johnson
President
Los Angeles Police Commission
c.o. Los Angeles Police Department
100 West First Street
Suite 134
Los Angeles, CA 90012

Re: OPG [Official Police Garage(s)]

Dear Mr. Johnson:

Is the City of Los Angeles that desperate for revenue that it takes advantage of individuals injured and hospitalized as a result of an auto accident?

Background:

On the evening of April 12, 2016, my Goddaughter was hit by a drunk driver, sustaining injuries due to the impact and the fact that he tore the driver's side of her Mini Cooper away.

EMS had to extract her through the passenger side of the car, taking her to Cedars-Sinai, where she was kept for two days. The car was removed and taken by Hollywood Tow to their lot at the request of the LAPD due to the circumstances. Two tactical errors: The injured party was not provided with information as to where the vehicle was taken. Hollywood OPG did not inventory the vehicle as required by statute.

In fact, not a single LAPD officer came to the hospital that night or the next day. There was no follow-up, and being affiliated with the department, used my connections to track down the information regarding the car and a preliminary accident report.

It took almost two weeks before we were provided with the defendant's insurance company. Yet Hollywood OPG was already in the process of putting a lien on the vehicle, stating the Mini Cooper had been abandoned, even though it was held in the Hollywood lot for the insurance adjustor.

When questioned, Hollywood Tow had signatures of individuals who went to the facility to remove the personal items and photograph the car and the signatures of the Progressive and Geico adjusters, which for some reason, never found their way into the file associated with the vehicle.

There was a total denial by Hollywood Tow of any regulation pertaining to DUI victims and their rights. It's wrong, it's unethical, and it is a deliberate and systematic method of unjust enrichment on the part of the OPG facility and the reason why I have written the Commission.

It is my understanding that oversight of the OPG rests with the Commission, who can take the necessary steps to affect change in order to stop the abuse.

Does the Commission or the OPG honestly think that an injured person, especially one in the hospital is thinking about, or has the Tow Yard as the priority?

What if the person was killed? Is the grieving family to make extracting the vehicle their priority?

This section of the State Statutes alone, should be enough to stop OPG Hollywood from proceeding prematurely. Section 22655.5(b) (c) allow the officer to tow, and it states, (c) Notwithstanding Section 3068....no lien shall attach to a vehicle removed under this section unless the vehicle was used by the alleged perpetrator..." (d) ....the perpetrator of the crime, if convicted, pay the costs of towing and storage and administrative imposed pursuant to Section 22850.5.

Penal Code: Section 679 discusses treating victims of a crime, (a DUI is a felony), with dignity, respect, courtesy, and sensitivity. I would not say that in dealing with the company they were rude; I would classify their actions as unethical, abuse of power, enrichment, and a disregard of the law. For all intensive-purposes, Hollywood tow has their own set of rules by which they operate.

Supervision

OPG Web site states that they are regulated and must comply with the various regulations regarding how they operate. I can assure you that this location does not even acknowledge any regulation other than those by which they can profit.

The firm put a lien on the car within a week. When the lien notice arrived, a call was made to the tow company; given the run around by three different individuals until they finally put the manager on the phone.

John (no last name provided) said the car had been abandoned. The statement was factually inaccurate. I had gone to clean the vehicle out (no inventory was done), I signed in, no record of that visit was put into the file associated with the vehicle. Nor did Hollywood Tow put the business cards of the Geico and Progressive adjustors who visited the day prior to my call. Both also signed in, yet the car was abandoned.

The car was auctioned, before the two adjustors could finalize their assessments and come to a mutual agreement. In less than approximately sixty (60) days, the vehicle was gone, with the proceeds going into the pocket of the tow company.

Note: The defendant hit four vehicles before crashing into the front of a bar on Sunset Blvd. His insurance company wouldn't authorize or pay-out until all claims have arrived in order honor claims at cents on the dollar.

It is unrealistic to expect an individual who is injured to extricate their vehicle within twenty-four (24) or even seventy-two (72) hours. Yet the OPG starts the clock the moment the vehicle is in the yard.

Is it really prudent to tow the vehicle to another location, when the disposition, was not yet determined? No, it would have been foolish and a waste of money to take any action, just to avoid having a lien put on the vehicle

Where is the empathy? Where is the compliance to Statute 22655 and 3068? When referring to the rights of a Victim and both of these statutes, John at Hollywood Tow gave no response, no argument, and no denial – he was silent. In this particular case, silent because of being guilty and self-incrimination.

Fiduciary Obligation to Protect the Victim

First and foremost, there is a need for the operational units reporting into the Commission to actively audit and supervise the 18 OPG properties for compliance in accurate record keeping and adherence to the various state statutes.

The Commission must address the method by which a victim is treated, and the manner by which the various tow operators interpret the laws to enrich themselves. The victim of a DUI driver has rights protected by law, and is not a scofflaw. There is a distinct difference between the two, and the manner in which the tow facility handles each must be highlighted.

I believe that it is incumbent for the Commission to publish a policy memorandum that clearly defines the way in which a victim in an accident, whose vehicle is removed from the accident site is handled. The penalties' the tow operator could face for violating the statutes and the rights of the injured.

Bringing the Official Police Garage franchise in line with the law and changing the culture requires training, supervision, penalties for violations, and posted information for the victim, so they are aware of their rights, and know when to report violations. Web sites that only discuss why or how an impounded vehicle can rectify the problem without address all aspects of its operation is biased and more evidence of unjust enrichment through omitting those areas contrary to how they perceive their mission.

What transpired should not be repeated. The Commission has the jurisdiction to take the steps required, so that the public is protected from the predatory nature of the tow companies.

I am available to meet with the Commission to discuss the particular situation, or to speak with an individual Commissioner.

Your consideration and prompt action is appreciated.

Respectfully yours,

Paul Siman

LOS ANGELES POLICE COMMISSION

EXECUTIVE OFFICE
POLICE ADMINISTRATION BUILDING
100 WEST FIRST STREET, SUITE 134
LOS ANGELES, CA 90012-4112

(213) 236-1400 PHONE
(213) 236-1410 FAX
(213) 236-1440 TDD

October 3, 2016

Paul E. Siman
620 South Sweetzer Ave
Los Angeles, CA 90048

Dear Mr. Siman:

Commission Investigation Division, (CID), is the regulatory arm of the Los Angeles Police Commission, and is responsible for the issuance, regulation and discipline related to police permits in the City of Los Angeles. CID has completed an investigation of Hollywood Tow Service, an Official Police Garage, (OPG), regarding the concerns you have brought to our attention.

Your letter raised several concerns regarding the tow of Ms. Ashton Giaume's vehicle including the issue of a lien being placed on a vehicle impounded for evidence outlined in Section 22655.5(b) of the California Vehicle Code, CVC. The investigating officer has reviewed documents from Hollywood Tow Service and Department Records and discovered that the vehicle was impounded appropriately. In reviewing the Traffic Collision Report, (LAPD DR No. 16-06-10500) the investigating officer has concluded that the responding officers impound of the vehicle was in accordance with the Los Angeles Police Department Traffic Manual, Section 3/1502, Impounding Vehicles Involved in a Collision. The driver of the vehicle was transported from the scene with injuries resulting in hospitalization. The vehicle was on the roadway and required removal by the OPG. Furthermore, responding officers impounded the vehicle under the authority of Section 22651(g) CVC which states *When the person in charge of a vehicle upon a highway or public land is, by reason of physical injuries or illness, incapacitated to an extent so as to be unable to provide for its custody or removal.*

Due to the impound authority used in this case, Hollywood Tow Service was correct in beginning the lien process. The lien sale process was lawfully conducted in accordance with Civil Code 3068. The vehicle storage charges were applied appropriately and would not have been charged if the registered owner, or insurance company representative had removed the vehicle from Hollywood Tow Service at the time of their inspections.

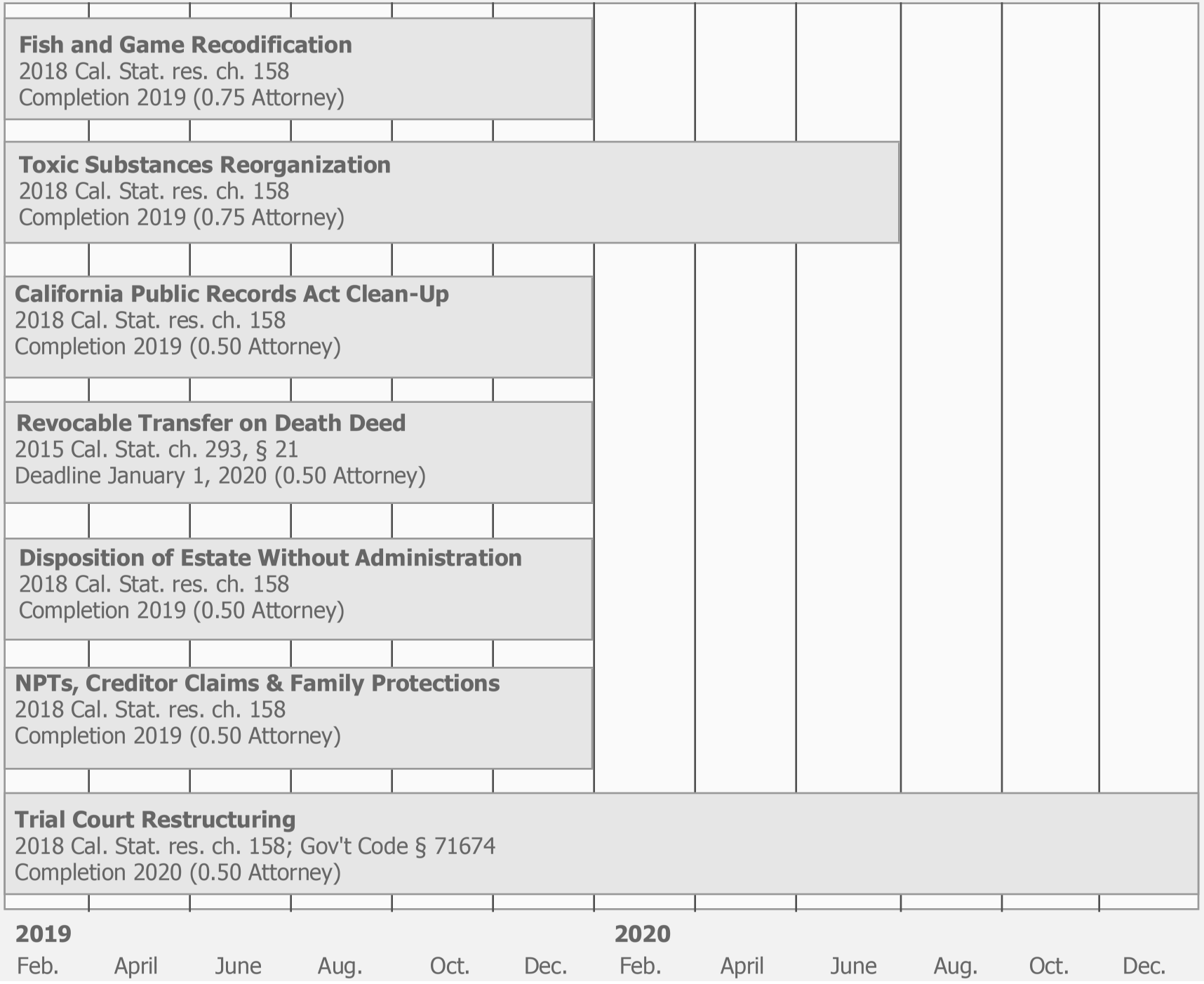
The investigating officer has completed his investigation of Hollywood Tow Service regarding the towing, storage, and lien sale of Ms. Giaume's vehicle and has concluded that the complaint is unfounded. The responding officers acted appropriately and in accordance with established procedures outlined in the LAPD Traffic Manual and California Vehicle Code. The investigating officer has advised Ms. Giaume's attorney of the reason for the impound, and the resulting lien sale process, and she agreed to provide Ms. Giaume with the information.

Should you have any questions regarding this matter, please contact Detective Harmon or Detective II Yamzon, Commission Investigation Division at (213) 996-1270.

Very truly yours.

RICHARD M. TEFANK, Executive Director
Board of Police Commissioners

Projected Completion of Active Studies — 2019 / 2020



EX 49