

PROPOSED AGENDA FOR MEETING OF
CALIFORNIA LAW REVISION COMMISSION

AUGUST 10 - 11, 1956

1. Consideration of minutes of meeting of July 13 and 14, 1956 (to be sent later).
2. Consideration of memorandum re printing of studies and reports (sent to you on August 3, 1956).
3. Consideration of memorandum re selection of topics for 1957-58 agenda (sent to you on July 31, 1956) and report of Southern Committee on certain Suggestions (see minutes of Southern Committee meeting of August 4, enclosed).
4. Consideration of memorandum re changes in staff of commission (sent to you on August 3, 1956).
5. Consideration of proposed budget for 1957-58 (to be sent later or given to you at meeting).
6. Consideration of draft of 1957 report of commission to Legislature (sent to you on July 31, 1956).
7. Consideration of memorandum on revision of Fish and Game Code (enclosed).
8. Discussion of problem raised by letter of Judge Younger (sent to you on August 3, 1956).
9. Discussion of Condemnation study (see letter from Mr. Burrill, enclosed).
10. Study No. 1 - Suspension of Absolute Power of Alienation.
11. Study No. 13 - Bringing in New Parties on Cross-Action (see revised report and recommendation enclosed).
12. Study No. 8 - Marital Testimonial Privilege (see revised report and recommendation enclosed).
13. Consideration of memorandum re study of Uniform Rules (See memo enclosed).

MINUTES OF MEETING
OF
AUGUST 10 AND 11, 1956

Pursuant to the call of the Chairman, the Law Revision Commission met on August 10 and 11 at Stanford, California.

PRESENT:

Mr. Thomas E. Stanton, Jr., Chairman
Mr. John D. Babbage, Vice-Chairman
Honorable Clark L. Bradley
Mr. Bert W. Levit
Mr. Stanford C. Shaw
Mr. John Harold Swan
Professor Samuel D. Thurman
Mr. Ralph N. Kleps, ex officio

ABSENT:

Honorable Jess R. Dorsey
Mr. Joseph A. Ball

Mr. John R. McDonough, Jr., the Executive Secretary of the commission, and Mrs. Virginia B. Nordby, the Assistant Executive Secretary, were present on both days. Professor Lowell Turrentine of the Stanford University School of Law, the research consultant on Study No. 1, was present during a part of the meeting on August 11.

The minutes of the meeting of July 13 and 14, which had been distributed to the members of the commission prior to the meeting, were amended and unanimously approved as amended.

1. ADMINISTRATIVE MATTERS

A. Printing of Studies and Reports: The Executive Secretary reported that, pursuant to the direction of the commission at its meeting of July 13 and 14, he had discussed with Mr. Ralph Titus, the Assistant State Printer, various questions in connection with printing the commission's annual reports and its recommendations to the Legislature. He summarized the cost estimates which Mr. Titus had given and recommended that the following printing procedure be established: (1) Do not print any document until it is in final form to go to the Legislature; (2) Have 2,000 copies of the annual report of each pamphlet containing a recommendation of the commission to the Legislature and a research consultant's or staff study printed in a single run and do not hold type; (3) Have 500 of the 2,000 annual reports and pamphlet studies bound into volumes. The commission unanimously adopted these recommendations.

A motion was made by Mr. Swan, seconded by Mr. Bradley, and adopted that the recommendation of the commission to the Legislature and the research consultant's or staff report for each study be printed as soon as possible after they are completed and that in the future mimeographed copies not be regularly distributed to anyone. Mr. Shaw voted against this motion and Mr. Stanton, although voting in favor of it, expressed doubt about its merit as a general commission policy.

B. Changes in Commission Staff: The commission considered a memorandum by the Executive Secretary recommending that an Assistant Counsel position be added to the commission's staff, that Mrs. Virginia Nordby be promoted

to that position, and that a new Junior Counsel be hired. A motion was made, seconded, and unanimously adopted that these recommendations be adopted and put into effect as soon as possible.

C. Budget for 1957-58 Fiscal Year: The commission considered a proposed budget for fiscal year 1957-58 which had been prepared by the Executive Secretary. The proposed budget was approved in principle and the Chairman and the Executive Secretary were authorized to submit it to the Department of Finance after making any changes which might be necessary, upon further study of the commission's financial requirements for 1957-58, including an increase in the item for research services to as much as \$25,000.

D. 1957 Report to the Legislature: The commission considered a first draft of its 1957 Report to the Legislature which had been distributed to the members prior to the meeting. A number of changes were made and the Executive Secretary was directed to prepare a second draft incorporating these changes.

E. Selection of Research Consultants for 1956-57 Study Topics:

1. The Executive Secretary reported that Judge Evelle J. Younger of the Los Angeles Municipal Court, who had been invited to serve as research consultant on the study of post-conviction sanity hearings, had been advised by the Los Angeles County Counsel that he could not accept payment for work on the study without violating Article VI, Section 18 of the Constitution which provides that municipal court judges are ineligible to any office or public employment other than a judicial office or employment. Mr. Kleps stated that he believed the County Counsel's view was at least open to argument because a research consultant for the commission is more appropriately designated an independent

contractor than an employee or an office holder and also because the court in Abbott v. McNutt, the case relied upon by the County Counsel, said by way of dictum that incidental work is not precluded by the constitutional prohibition. The commission decided that the Executive Secretary should ascertain whether the New York Law Revision Commission has had a similar problem in using judges as research consultants and, if so, what the resolution of the matter in that State has been. It was also agreed that after this information is obtained the Chairman should request the California Attorney General to render an opinion upon the constitutionality of municipal court judges accepting compensation for serving as research consultants to the commission.

2. The Executive Secretary reported that Mr. Sam Kagel of San Francisco, Mr. Augustus Mack, Jr. of Los Angeles and Mr. Melvin Lennard of Beverly Hills were all interested in serving as research consultant on the Uniform Arbitration Act study. After the commission had discussed the matter, a motion was made by Mr. Levit, seconded by Mr. Swan, and unanimously adopted that Mr. Sam Kagel be invited to make the study for \$1,000.

3. The commission considered a memorandum by the Executive Secretary recommending that Professor James H. Chadbourn of UCLA Law School be engaged to do the study on the Uniform Rules of Evidence for a total compensation of \$7,500, the arrangement to be covered by two contracts, one executed now for \$3,750 covering Rules 13-16, 20-22 and 62-66 to be performed during fiscal year 1956-57, and the other, also for \$3,750, to be executed when next year's funds are available to cover the other Rules, and to be performed during fiscal year 1957-58. A motion was made by Mr. Babbage, seconded by Mr. Levit, and unanimously adopted that the recommendation of the Secretary be approved.

F. Revision of Fish and Game Code: The Executive Secretary reported that arrangements had been made to have the State Printer produce 500 copies of the draft code by the photo-offset method for about \$900 to \$1,000 and that these copies would be available for distribution in a week. He stated that the Department of Fish and Game had sent the commission a list of individuals and groups to whom it recommends the draft code be sent. The commission decided that copies of the draft code should be sent to everyone on the Department's list, to everyone who had written requesting copies, and to anyone who might request copies in the future until the supply is exhausted.

It was agreed that the Northern Committee should begin as soon as possible to review the questions on the draft code presented for its consideration by the persons on the Legislative Counsel's staff who are preparing the revised code.

2. AGENDA

The commission considered and discussed a memorandum of the Executive Secretary raising the question of what the commission's policy should be in selecting topics for study - specifically, whether broader topics than those heretofore selected should be chosen and whether narrow topics should be excluded. It was decided that the present policy of selecting both broad and narrow topics for study should be continued.

3. CURRENT STUDIES

A. Study No. 1 - Suspension of the Absolute Power of Alienation:

The commission discussed the research consultant's report and a draft of a

recommendation of the Commission to the Legislature prepared pursuant to the direction of the Northern Committee. The following action was taken:

(1) A motion was made by Mr. Babbage and seconded by Mr. Levit that the commission recommend to the Legislature the repeal of Civil Code Sections 715.1, 770 and 771, which embody the rule against suspension of the absolute power of alienation. The motion carried:

Ayes - Babbage, Bradley, Levit, Shaw, Stanton, Swan, Thurman
Noes - None

(2) A motion was made by Mr. Swan and seconded by Mr. Levit that the commission recommend to the Legislature the repeal of Civil Code Sections 774, 775 and 777. The motion carried:

Ayes - Babbage, Bradley, Levit, Shaw, Stanton, Swan, Thurman
Noes - None

(3) A motion was made by Mr. Babbage and seconded by Mr. Thurman that the commission recommend to the Legislature the technical amendment of Civil Code Section 715.3 to eliminate cross-references made obsolete by other proposed revisions. The motion carried:

Ayes - Babbage, Bradley, Levit, Shaw, Stanton, Swan, Thurman
Noes - None

(4) A motion was made by Mr. Babbage and seconded by Mr. Thurman that the commission recommend to the Legislature the amendment of Civil Code Section 716 as proposed in the draft recommendation of the commission. The motion carried:

Ayes - Babbage, Bradley, Levit, Shaw, Stanton, Swan, Thurman
Noes - None

(5) A motion was made by Mr. Shaw and seconded by Mr. Levit that the commission recommend to the Legislature the amendment of Civil Code

Section 724 as proposed in the draft recommendation and amended by the commission.

The motion carried:

Ayes - Babbage, Bradley, Levit, Shaw, Stanton, Swan, Thurman
Noes - None

The commission discussed whether it should recommend to the Legislature that a statute be enacted limiting the period for which a private trust may be made nonterminable or whether it should recommend that the courts be relied upon to develop decisional rules for this purpose. A number of questions were raised and suggestions made concerning the statute proposed in the draft recommendation of the commission and it was agreed that the staff should, in consultation with Professor Turrentine, do further work along the lines indicated before a vote is taken on the alternative recommendations.

B. Study No. 8 - Marital Testimonial Privilege. The commission considered a revised recommendation of the commission to the Legislature prepared pursuant to action taken by the commission at its July meeting. The Executive Secretary read a letter from Senator Dorsey stating:

"I believe that both husband and wife and those who maintain that status at the time to be covered by the testimony, should both agree to make the testimony competent. I believe that neither should be a witness against the other unless both agree, in order to make the spouse a competent witness against the other."

A motion was made by Mr. Shaw and seconded by Mr. Babbage that the revisions of Code of Civil Procedure Section 1882 and Penal Code Section 1322 proposed in the draft recommendation be changed in a minor respect and that as thus amended the recommendation be approved for printing. The motion carried:

Ayes - Babbage, Bradley, Levit, Shaw, Thurman
Noes - Stanton, Swan

C. Study No. 13 - Parties to Cross-Actions: The commission considered a revised recommendation of the commission to the Legislature prepared pursuant to suggestions made by the commission at its July meeting. A number of questions were raised about the proposed revision of Code of Civil Procedure Section 389 and it was decided that the matter should be returned to the staff and the Southern Committee for further work in consultation with the research consultant.

D. Study No. 15 - Attorney's Fees and Costs: The Executive Secretary called attention to the fact that at the July meeting there had been no formal vote on the draft recommendation of the commission to the Legislature relating to this study, although there had appeared to be general approval of it. A motion was made and seconded that the draft recommendation be approved for printing. The motion carried:

Ayes - Babbage, Bradley, Levit, Shaw, Stanton, Swan, Thurman
Noes - None

There being no further business the meeting was adjourned.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary

AUG 3 1956

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EVELLE J. YOUNGER
Judge of the Municipal Court
Los Angeles Judicial District
Los Angeles 12, California

July 12, 1956

Mr. John R. McDonough, Jr.
Executive Secretary
School of Law
Stanford, California

Dear Mr. McDonough:

I enclose a copy of a letter from the Los Angeles County Counsel. The letter is self-explanatory. Under the circumstances, I will not be able to serve as research consultant in connection with your Commission's study of post-conviction sanity hearings. I am sorry I will not be able to do so. I was pleased and complimented by your invitation.

Sincerely,

/s/ Evelle J. Younger

Evelle J. Younger

EJY:MS
Encl.

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Offices of
THE COUNTY COUNSEL
OF LOS ANGELES COUNTY

Suite 1100 Hall of Records
Los Angeles 12, California

July 11, 1956

Honorable Evelle J. Younger
Judge of the Municipal Court
Los Angeles Judicial District
Division 5
7th Floor Hall of Justice
Los Angeles 12, Calif.

Dear Judge Younger:

This is in reply to your letter of July 6, 1956, in which you state that you have been invited to serve as a research consultant to the California Law Revision Commission in connection with the study which the Commission is making on the subject of post-conviction sanity hearings, and that you have been offered a modest compensation for your services in that connection. You ask whether we know of any law which would prevent you from accepting the assignment.

While the contemplated work does not fall within the restriction of Section 68082 of the Government Code, prohibiting judges from practicing law, we are inclined to the belief that if you were to receive compensation for such advice as you may feel free to give to the Commission you would run afoul of Section 18 of Article VI of the Constitution. This section provides, among other things, that judges of the municipal courts shall be ineligible to any other office or public employment than a judicial office or employment during the term for which they shall have been elected or appointed. In construing this section the Supreme Court, in the case of Abbott v. McNutt, 218 Cal. 225, held that judges of the Superior Court of San Mateo County could not sit as members of a qualification board to determine the qualifications of applicants for the position of county executive, which board was created by Section 2, Article 4 of the County Charter. The Supreme Court held to so act would violate the constitutional prohibition.

The California Law Revision Commission is a public body created by the Legislature in 1953, (Chap. 1445, Stats. 1953), to take the place of the former

Honorable Evelle J. Younger

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Code Commissioners. It is therefore a public body, and it would seem that the principle of Abbott v. McNutt, supra, would apply if you accepted employment by that Commission.

Very truly yours,

HAROLD W. KENNEDY
County Counsel

By

Wm. E. Lamoreaux
Assistant County Counsel

WEL:fh

Law Offices

Hill, Farrer & Burrill

COPY

Los Angeles 13, Calif.

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August 3, 1956

Mr. John R. McDonough, Jr.,
Executive Secretary
California Law Revision Commission
School of Law
Stanford, California

Dear Mr. McDonough:

Please excuse this belated reply to your letter of July 19th extending an invitation to the writer to serve as research consultant to the Commission in reference to the study the Commission is making on condemnation law.

We shall be pleased to act as research consultant to the Commission on this subject. We believe that we could cooperate in getting the report out on the time specified.

It is obvious that the problem is most challenging and could be very extended even if limited to the issue set forth in your letter, namely, "to determine whether the law and procedure relating to condemnation should be revised in order to safeguard the property rights of private citizens". If we are chosen to act as research consultant on this matter, we assume that subsequent correspondence or conferences with you or the Commission would tend to clarify the main problems that should be studied and reported on. The writer wishes to express his appreciation for the honor of being considered by the Commission in this connection.

Yours very truly,

/s/ Stanley S. Burrill

STANLEY S. BURRILL
of
HILL, FARRER & BURRILL

SSB:lsg

\$1500⁰⁰

8/8/56

PROPOSED REVISION OF RULES RELATING
TO CONDUCT OF COMMISSION BUSINESS

1. Five voting members of the commission constitute a quorum and must be present before the commission may attend to any business.

2. Robert's Rules of Order govern the conduct of commission meetings except insofar as they conflict with rules adopted by the commission.

3. A roll call vote shall be taken and recorded on every motion to approve for distribution or to adopt a any report or final recommendation of the commission to the Legislature.

4. Five votes are required to approve for distribution or to adopt any final report or recommendation of the commission to the Legislature.

An absent member may be polled ~~in-writing~~ and his vote incorporated in the roll call on such motion ~~to-adopt-a-final-recommendation-to-the-Legislature~~ only if he was present during a previous discussion of the subject matter at a meeting of the commission.