

A G E N D A

for Meeting of

CALIFORNIA LAW REVISION COMMISSION

Coronado

October 8-9-10, 1958

1. Minutes September, 1958 meeting (Enclosed herewith).
2. Report on Department of Finance Budget hearing.
3. Report on Staff personnel developments.
4. Consideration Revised 1959 Report (To be sent later).
5. Study No. 34(L) - Uniform Rules of Evidence (Material sent to you on September 25; Chadbourn Memorandum enclosed herewith).
6. Study No. 37(L) - Claims Statute (Any material received from Professor Van Alstyne will be sent later).
7. Study No. 32 - Arbitration (Research Consultant's report enclosed herewith).
8. Study No. 6 - C.C.P. § 660 (See Memorandum No. 1, enclosed herewith).
9. Study No. 22 - Cut-off Date, Motion New Trial (See Memo. No. 2, enclosed herewith).
10. Study No. 25 - Probate Code § 259 et seq. (See Memo. No. 3, enclosed herewith).
11. Study No. 33 - Survival of Tort Actions (See Memo. No. 4, to be sent later).
12. Study No. 16 - Planning (See Memo. No. 8 for the SEPTEMBER meeting sent to you prior to that meeting. Additional material will be sent later).
13. Study No. 20 - Guardians for Nonresidents. (See Memo. No. 10 for the SEPTEMBER meeting, sent to you prior to that meeting).
14. Study No. 21 - Confirmation Judicial Sales. (See Memo. No. 6 for the JUNE meeting sent to you prior to that meeting).
15. Study No. 44 - Suit in Common Name. (See Memo. No. 5 for the JUNE meeting, sent to you prior to that meeting).

MINUTES OF MEETING

of

October 8, 9 and 10, 1958

CORONADO

Pursuant to the call of the Chairman, there was a regular meeting of the Law Revision Commission on October 8, 9 and 10, 1958, at Coronado.

PRESENT: Mr. Thomas E. Stanton, Jr., Chairman
Honorable James A. Cobey
Honorable Clark L. Bradley
Honorable Roy A. Gustafson
Mr. Charles H. Matthews
Mr. Ralph N. Kleps, ex officio

ABSENT: Mr. John D. Babbage, Vice Chairman
Mr. Bert W. Levit
Mr. Stanford C. Shaw
Professor Samuel D. Thurman

Mr. John R. McDonough, Jr., the Executive Secretary, and Miss Louisa R. Lindow, Assistant Executive Secretary, were also present.

Professor James H. Chadbourn of the School of Law, University of California at Los Angeles, the research consultant for Study No. 34(L), was present during a part of the meeting on October 8, 1958.

Professor Arvo Van Alstyne of the School of Law, University of California at Los Angeles, the research consultant for Study No. 37(L), was present during a part of the meeting on October 9, 1958.

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Mr. Sam Kagel, the research consultant for Study No. 32, was present during a part of the meeting on October 9, 1958.

Members of the State Bar Committee To Consider the Uniform Rules of Evidence were present on October 8 (See Section I of Minutes, infra).

I. JOINT MEETING OF LAW REVISION COMMISSION AND STATE BAR COMMITTEE
TO CONSIDER THE UNIFORM RULES OF EVIDENCE

The Commission held a joint meeting Wednesday, October 8, 1958, with the State Bar Committee To Consider the Uniform Rules of Evidence (hereinafter referred to as State Bar Committee) to discuss the various Rules and subdivisions thereof of the Uniform Rules relating to hearsay upon which the Commission and the State Bar Committee were not as yet in agreement. At the joint meeting the members of the Commission and State Bar Committee considered the memorandum prepared by the Executive Secretary dated September 23, 1958 relating to matters for discussion at the joint meeting and the Summary of Action taken by the Law Revision Commission and the State Bar Committee dated September 24, 1958. (A copy of each of these items is attached hereto.)

The following members of the State Bar Committee To Consider the Uniform Rules of Evidence were present at part or all of the joint meeting:

Joseph A. Ball
Stanley A. Barker
Benjamin C. Duniway
Carlos R. Freitas
J. E. Simpson

Otto M. Kaus
H. Pitts Mack
Robert H. Patton
Herman S. Selvin
John B. Bates

Not present:

Lawrence C. Baker
Morse Erskine, Sr.
William J. Hayes

Ingemar E. Hoberg
Stuart L. Kadison

The Commission and State Bar Committee first discussed the following Subdivisions of Rule 63 on which both groups were theretofore in agreement in principle but not in complete agreement as to form:

1. Subdivision (2) of Rule 63: After discussion, the State Bar Committee concurred in the Commission's action of 7/19/58.

2. Subdivision (3) of Rule 63: After discussion, the State Bar Committee concurred in the Commission's action of 7/19/58.

3. Subdivision (7) of Rule 63: After discussion, the State Bar Committee concurred in the Commission's action of 9/6/58.

4. Subdivision (9) of Rule 63: After discussion, the Commission and the State Bar Committee agreed to approve Subdivision (9) in the following form:

(9) Vicarious Admissions. As against a party, a statement which would be admissible if made by the declarant at the hearing if

(a) the statement concerned a matter within the scope of an agency or employment of the declarant for the party and was made before the termination of such relationship, or

(b) the statement is that of a co-conspirator of the party and (1) the statement was made prior to the termination of the conspiracy and in furtherance of the common object thereof, and (2) the statement is offered after

proof by independent evidence of the conspiracy and that declarant and the party were both parties to the conspiracy at the time the statement was made, or (c) in a civil action, one of the issues between the party and the proponent of the evidence of the statement is a legal liability of the declarant, and the statement tends to establish that liability;

5. Subdivision (13) of Rule 63: After discussion, the Commission and the State Bar Committee agreed to approve Subdivision (13) in the following form:

(13) Business Records. A writing offered as a record of an act, condition or event if the custodian or other qualified witness testifies to its identity and the mode of its preparation and if the judge finds that it was made in the regular course of business; at or near the time of the act, condition or event, and that the sources of information, method and time of preparation were such as to indicate its trustworthiness.

The Commission's action was taken on a motion made by Senator Cobey and seconded by Mr. Matthews that the Commission approve Subdivision (13) of Rule 63 as revised. The motion carried:

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Aye: Bradley, Cobey, Gustafson, Matthews, Stanton

No : None

Not Present: Babbage, Levit, Shaw, Thurman

6. Subdivision (14) of Rule 63: After discussion, the Commission and the State Bar Committee approved Subdivision (14) in the following form:

(14) Absence of Business Record.
Evidence of the absence from the records of a business of a record of an asserted act, event or condition, to prove the non-occurrence of the act or event, or the non-existence of the condition, if the judge finds that it was the regular course of that business to make records of all such acts, events or conditions at the time thereof or within a reasonable time thereafter, and to preserve them, and that the records of the business were prepared from such sources of information and by such methods as to indicate their trustworthiness;

N.B. The Commission stated that in its explanatory notes to Subdivision (14) it would report that it has omitted mention of a "memorandum" because the definition of "writing" in Subdivision (13) of Rule 1 is so broad as to make "memorandum" surplusage in Subdivision (14) of Rule 63.

The Commission's action was taken on a motion made and seconded that the Commission approve Subdivision (14) of Rule 63 as proposed.

The motion carried:

Aye: Bradley, Cobey, Gustafson, Matthews, Stanton

No : None

Not Present: Babbage, Levit, Shaw, Thurman

7. Subdivision (24) of Rule 63: After discussion, the State Bar Committee concurred in the Commission's action of 7/19/58.

8. Subdivision (29) of Rule 63: After discussion, the State Bar Committee concurred in the Commission's action of 7/19/58.

Note: It was agreed that the period after "matter" should be eliminated.

The Commission and the State Bar Committee then discussed the following Subdivisions of Rule 63 on which there had theretofore been some disagreement in principle between the two groups:

1. Subdivision (1) of Rule 63: After discussion, a proposal was made that Subdivision (1) be approved in the following form:

(1) Previous Statements of Witnesses at the Hearing. When a person is a witness at the hearing, a statement made by him, though not made at the hearing, is admissible to prove the truth of the matter stated, provided the statement would have been admissible if made by him while testifying and provided further

(a) the statement is inconsistent with his testimony at the hearing and is offered in compliance with Rule 22, or

(b) the statement is offered after

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evidence of a prior inconsistent statement or of a recent fabrication by the witness has been received and the statement is one made before the alleged inconsistent statement or fabrication and is consistent with his testimony at the hearing, or

- (c) the statement concerns a matter as to which the witness has no present recollection and is a writing which was made (1) by the witness himself or under his direction or (2) by some other person for the purpose of recording the witness's statement at the time it was made or (3) at a time when the facts recorded in the writing actually occurred or at such other time when the facts recorded in the writing were fresh in the witness's memory.

The State Bar Committee approved Subdivision (1) in this form. A motion that the Commission approve it was made by Mr. Matthews and seconded by Mr. Gustafson but failed to carry.

Aye: Gustafson, Matthews, Stanton

No : None

Not Present: Babbage, Bradley, Cobey, Levit, Shaw, Thurman

2. Subdivision (4) of Rule 63: After discussion, the Commission by unanimous vote reaffirmed its intention, as presently advised, to recommend that Subdivision (4) be enacted in the following form:

- (4) Spontaneous Statements. A statement (a) which the judge finds was made while the declarant was perceiving the event or condition which the statement narrates, describes or explains, or (b) which the judge finds purports to state what the declarant perceived relating to an event or condition which the statement narrates, describes or explains, and was made spontaneously while the declarant was under the stress of a nervous excitement caused by such perception.

The State Bar Committee concurred with the action of the Commission except that it would insert prior to "A statement" the words "If the declarant is unavailable as a witness or testifies that he does not recall the event or condition involved."

3. Subdivision (6) of Rule 63: After a discussion of the proposed substitute for Subdivision (6) of Rule 63 approved by the Commission 9/6/58, the Southern Section of the State Bar Committee agreed to concur therein. However, because of insufficient representation of the Northern Section it was agreed to defer final action of the State Bar Committee on Subdivision (6).

4. Subdivision (10) of Rule 63: After discussion, all present agreed that Subdivision (10) should be approved in the following form:

- (10) Declarations Against Interest.
If the declarant is not a party to the action and is unavailable as a witness, and if the judge

finds that the declarant had sufficient knowledge of the subject, a statement which the judge finds was at the time of the statement so far contrary to the declarant's pecuniary or proprietary interest or so far subjected him to civil or criminal liability or so far rendered invalid a claim by him against another or created such risk of making him an object of hatred, ridicule or social disapproval in the community that a reasonable man in his position would not have made the statement unless he believed it to be true.

A motion made by Senator Cobey and seconded by Mr. Matthews that the Commission approve the insertion of "Except as against the accused in a criminal proceeding" at the beginning of Subdivision (10), did not carry:

Aye: Bradley, Cobey, Matthews, Stanton

No : Gustafson

Not Present: Babbage, Levit, Shaw, Thurman

Inasmuch as the Northern Section of the State Bar Committee was not sufficiently represented, the action taken with respect to Subdivision (10) is not to be deemed the final action of the State Bar Committee.

5. Subdivision (20) of Rule 63: After discussion, the Commission decided to adhere to its action of 9/6/58. The

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members of the State Bar Committee present declined to concur, taking the position that while a judgment of previous conviction is relevant and has some probative value it is too prejudicial to admit as an exception to the hearsay rule. The State Bar Committee suggested that if the Commission does recommend Subdivision (20) of Rule 63, it should be revised to make it clear that a judgment admitted thereunder is not conclusive but merely evidence; it was suggested that this might be done by inserting "as tending" before "to prove."

II. ADMINISTRATIVE MATTERS

A. Correction and Approval of Minutes of September

5-6 Meeting: The Committee considered the minutes of the September 5 and 6 meeting. (A copy of which is attached hereto.) During the discussion of the portion of the minutes relating to Study No. 58(L) (Codification of Grand Jury Law) Subparagraph (3) was, at the suggestion of Mr. Kleps, revised to read: "There should be a separate article in the Penal Code which will apply in each county in which a jury commissioner is appointed pursuant to Section 204a of the Code of Civil Procedure and in each county in which the secretary of the judges of the superior court performs the duties of jury commissioner pursuant to Section 69893 of the Government Code."

The minutes of the September 5-6, 1958 meeting were then unanimously approved as corrected.

B. Staff Personnel Developments: The Commission considered a proposed draft letter relating to the position of the Executive Secretary which Dean Spaeth proposes to send to the deans of about 36 law schools. The Commission also considered a memorandum relating to the position which is to be sent with the letter. During the course of the discussion the question arose whether the letter and enclosure should be sent to other groups (e.g., members of the National Legislative Conference). It was agreed that the Executive Secretary should discuss this question with Mr. Kleps.

It was also agreed that the clause "at the outset" should be deleted from the second paragraph of the draft letter and that the phrase "Because he works on his own without direct and continuous supervision from the Commission," should be deleted from the last paragraph of the memorandum.

The Executive Secretary then reported that the State Personnel Board had approved the Commission's request to establish a position of Assistant Executive Secretary at the Grade 4 level. After the matter of filling the position was discussed the following matters were agreed upon:

1. Dean Spaeth's letter relating to the Executive Secretary should not include reference to the second position available on the Commission staff.
2. The Executive Secretary should ascertain whether the Commission can make an interim appointment.

3. The Commission should not confine its search for the right person for this position to state civil service employees in the offices of the Legislative Counsel and the Attorney General. Rather, inquiries should be made as to the existence of interested and qualified people in such other places as government offices (e. g., offices of district attorneys and county counsels), law clerkships, private practice and the law teaching profession.

C. Budget for Fiscal Year 1959-60: The Executive

Secretary reported that the Chairman and he attended a Department of Finance budget hearing on September 17, 1958 and that the Commission's budget was approved as submitted, with the deletion of \$5,000. for research services because of the Commission's decision^{NOT} to seek authority for additional studies from the 1959 Session of the Legislature.

D. Senate Interim Judiciary Committee: The Commission considered the Status Report of Studies Heretofore Authorized by the Legislature which contains a list of studies which are presently scheduled for the Commission's 1959 legislative program. ✓ (A copy of which is attached hereto.) After the matter was discussed it was agreed that the Executive Secretary should be authorized to inform the Counsel of the Senate Interim Judiciary Committee of the studies which the Commission intends to present to the Legislature in 1959.

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E. Printing Program: The Executive Secretary reported that the printing program is at a standstill pending receipt of reports from the State Bar relating to various recommendations and studies submitted to it for its views. After the matter was discussed it was agreed that the Commission should proceed to print these recommendations and studies without waiting to hear from the State Bar and that all studies completed prior to the 1959 Session should be sent to the printer immediately.

F. Attendance of Members of the Bar at Commission

Meeting: From 3 to 5 p.m. October 10, 1958, in response to the Commission's invitation, several members of the California Bar attended the meeting and submitted suggestions for law revision for the Commission's consideration. These suggestions will be written up and placed on the agenda for future consideration by the Commission.

G. 1959 Report of the Law Revision Commission: The Commission considered Memorandum No. 5 and the revised draft of the 1959 Report of the Law Revision Commission. ✓ (A copy of each of these items is attached hereto.)

A motion was made by Senator Cobey, seconded by Mr. Bradley and unanimously adopted that the Appendix, consisting of the Commission's governing statute, be deleted from the 1959 Report and be included in the Commission's second bound volume.

It was agreed that the proposed paraphrasing of Government Code Sections 10330 and 10335 in Part I of the 1959 Report should be retained.

It was also agreed that Parts I, II, and III of the 1959 Report were satisfactory.

The Commission then considered Part IV. After the matter was discussed a motion was made by Senator Cobey, seconded by Mr. Bradley and unanimously adopted to approve Alternative B which consists of three lists of the Commission's studies in progress.

It was agreed that various sections and lists in Part IV, Alternative B, should be relettered and renumbered to achieve alternative lettering and numbering of succeeding subparts and that "carryover" studies should be included in their appropriate lists, with a cross reference to their description and legislative history in earlier reports.

After the matter was discussed it was agreed that supplementary reports on those studies which are to be reintroduced at a second legislative session should be included in the Commission's reports. It was also agreed that these supplementary reports should contain a statement of why the bill failed to pass at the earlier session but that express references to "Members of the Legislature" should be avoided.

The Commission then considered whether its annual reports should include reports on studies discontinued for various reasons. After the matter was discussed a motion was made by Mr. Bradley, seconded by Mr. Gustafson and unanimously adopted that this should be done.

The Commission then considered whether a concurrent resolution requesting authorization to continue the studies in progress should be introduced in the 1959 Session in view of the fact that the Commission is not going to request authority to undertake additional studies. After the matter was discussed a motion was made by Mr. Bradley, seconded by Mr. Matthews and unanimously adopted that such a resolution should be introduced and that Part XI should be retained in the 1959 Report.

The Commission then considered the contents of Parts VI to X. After the matter was discussed the following changes were agreed upon:

1. Part VI - Suspension of the Absolute Power of Alienation: It was agreed that specific reference to

"Members of the Legislature" in the discussion of the reasons for the failure of A. B. 249 to pass should be deleted and more general statements substituted.

2. Part VII - Appointment of Administrator in Quiet Title Action: It was agreed that in the second paragraph "The consensus of opinion was" should be substituted for "It appeared to be the view of all concerned."

It was also agreed that the word "felt" and the phrase "among informed persons" should be deleted from the last paragraph and that the word "Accordingly" should be inserted before "The Commission" in the last sentence of the last paragraph.

3. Part VIII - Effective Date of an Order Ruling on a Motion for a New Trial: It was agreed that no change should be made in the statement relating to the Governor's action.

It was also agreed that statement of the reasons for the change in the Commission's recommendation should be expanded.

4. Part IX - Codification of Laws Relating to Narcotics: This was approved without change. It was agreed that the Chairman should write to Mr. Crawford and tell him that the report is about to be sent to the printer.

5. Part X - Codification of Laws Relating to Grand Juries: It was agreed that the Staff should redraft the reference to the Legislative Counsel's participation and that the report should state that the bill presented by the Commission will

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make an improvement in the present law through its codification.

A motion was made by Senator Cobey, seconded by Mr. Bradley and unanimously adopted to authorize the Chairman and the Executive Secretary to put the 1959 Report in final form and send it to the State Printer.

III. CURRENT STUDIES

A. Study No. 20 - Guardians for Nonresidents: The Commission considered Memorandum No. 10 and the draft Recommendation of the Law Revision Commission and legislation designed to effectuate the Commission's Recommendation prepared by the Staff. (A copy of each of these items is attached hereto.) After the matter was discussed the following action was taken:

1. A motion was made and seconded to retain Chapter 10 in the Probate Code as recommended by the Staff. The motion carried:

Aye: Bradley, Cobey, Gustafson, Matthews, Stanton

No : None

Not Present: Babbage, Levit, Shaw, Thurman

2. A motion was made by Mr. Matthews and seconded by Mr. Gustafson to delete from Section 1570 of the Probate Code its substantive provisions relating to appointment procedure and to substitute therefor a cross reference to Section 1461 of the Probate Code. The motion carried:

Aye: Bradley, Cobey, Gustafson, Matthews, Stanton

No : None

Not Present: Babbage, Levit, Shaw, Thurman

3. A motion was made by Senator Cobey and seconded by Mr. Gustafson to approve revised Section 1461 of the Probate

Code as prepared by the Staff. (The draft incorporated for the most part changes previously discussed and agreed upon by the Commission.) The motion carried:

Aye: Bradley, Cobey, Gustafson, Matthews, Stanton

No : None

Not Present: Babbage, Levit, Shaw, Thurman

It was agreed that the phrase "unless the time be shortened" in Section 1461 should be revised to read "unless the time is shortened."

4. A motion was made by Senator Cobey and seconded by Mr. Gustafson to approve the draft Recommendation and to authorize the Executive Secretary to send this Recommendation and Study to the State Bar for its views, and to the State Printer. The motion carried:

Aye: Bradley, Cobey, Gustafson, Matthews, Stanton

No : None

Not Present: Babbage, Levit, Shaw, Thurman

B. Study No. 22 - Cut-off Date, Motion for New

Trial: The Commission considered (1) the draft Recommendation of the Law Revision Commission relating to Cut-off Date - Motion for New Trial and (2) Memorandum No. 2 which reports the views of the Northern Section of the Committee on Administration of Justice thereon. (A copy of each of these items is attached hereto.)

After the matter was discussed it was agreed that "adverse party" in both Section 659 and Section 663a of the Code of Civil Procedure should be changed to "any party."

After the matter was discussed a motion was made, seconded and adopted to approve the following revision to Section 953d of the Code of Civil Procedure:

953d. Any notice of entry of judgment required by the provisions of Sections 659 or 663a of this code, must be given in writing, unless written notice thereof be waived in writing or by oral stipulation made in open court and entered in the minutes.

It was agreed that the Commission's Recommendation should contain a paragraph acknowledging that the matter of amending C.C.P. § 953d had been called to its attention by the State Bar.

C. Study No. 25 - Probate Code Sections 259 et seq. - Nonresident Alien Heirs: The Commission considered October meeting Memorandum No. 3 which reports comments and suggestions of the Northern Section of the Committee on Administration of Justice on the Commission's Recommendation relating to Probate Code Section 259 et seq. - Nonresident Alien Heirs; a copy of the C.A.J. staff Memorandum on this matter dated September 8, 1958; a copy of the minutes of the meeting of the Northern Section held on September 11, 1958; and the Recommendation of the Law Revision Commission. (A copy of each of these items is attached hereto.)

The Commission first considered whether a severability clause should be added to the bill as proposed by the C.A.J. . After the matter was discussed a motion was made by Senator Cobey and seconded by Mr. Gustafson that a standard severability clause be included in the bill but not made a section of the Probate Code. The motion carried:

Aye: Bradley, Cobey, Gustafson, Matthews, Stanton

No : None

Not Present: Babbage, Levit, Shaw, Thurman

The Commission then considered whether the bill should specify the effective date of its provisions. In this connection the constitutionality of retroactive application of the repeal of Probate Code Sections 259-259.2 and of Article 4.5 was considered.

After the matter was discussed it was proposed that the following provision be added to the bill:

The provisions of this Act shall not apply to estates of decedents dying prior to its effective date. Nothing herein shall be construed to limit the power of a court to make appropriate orders in estates pending at said effective date, to protect and safeguard the interests of heirs, legatees, devisees and beneficiaries of testamentary trusts who are entitled to inherit or take under the laws of this State as they existed prior to the effective date of this Act.

A motion was made by Mr. Bradley and seconded by Mr. Matthews to include substantially this section in the bill.

The motion carried:

Aye: Bradley, Cobey, Gustafson, Matthews, Stanton

No : None

Not Present: Babbage, Levit, Shaw, Thurman

The Commission then considered whether Section 1026 of the Probate Code should be revised as suggested by the C.A.J. After the matter was discussed a motion was made by Mr. Gustafson and seconded by Senator Cobey to recommend that Section 1026 of the Probate Code be revised by adding the following proviso thereto:

"provided, if an order impounding such alien's property is made pursuant to Section 1045, the provisions of Article 4.5, Chapter 16, Division 3, (commencing at Section 1044) and not of this section, shall be applicable."

The motion carried:

Aye: Bradley, Cobey, Gustafson, Matthews,
Stanton

No : None

Not Present: Babbage, Levit, Shaw, Thurman

The Commission then considered whether Section 1044 of the Probate Code should state that it is presumed that a nonresident alien will have the substantial benefit etc. of his inheritance if his country is not on the Secretary of the Treasury's list, as proposed by C.A.J. After the matter was discussed, a motion was made by Senator Cobey, seconded by Mr. Gustafson and unanimously adopted not to recommend the enactment of such a presumption in Section 1044 of the Probate Code.

The Commission then considered whether Section 1045 of the Probate Code should be amended to authorize the executor or administrator to petition the court to make an impounding order. After the matter was discussed a motion was made by Mr. Gustafson and seconded by Senator Cobey to approve the insertion of the words "the executor or administrator, of" before "any party in interest" in Section 1045 of the Probate Code. The motion carried:

Aye: Bradley, Cobey, Gustafson, Matthews,
Stanton

No : None

Not Present : Babbage, Levit, Shaw, Thurman

The Commission then considered what provision should be made for impoundment when the will of the decedent creates future as well as present interests in all or part of his estate. After the matter was discussed at length it was agreed that the Staff should submit several draft provisions on the matter for the Commission's consideration.

It was agreed that the Staff should draft whatever provision may be necessary to authorize and provide procedures for such sales as may be necessary to convert a nonresident alien's interest into cash prior to impounding it.

The Commission then considered whether Sections 1046.5, 1047 and 1048 should be revised to provide that the rights conferred by them are subject to the rights claimed in any pending petition filed pursuant to a Section giving a prior right. After the matter was discussed a motion was made by Mr. Gustafson, seconded by Mr. Matthews and unanimously adopted approving this proposal and directing the Staff to draft provisions as are necessary to effectuate it.

The Commission then considered the question raised by the C.A.J., whether the escheat provided for in Section 1048 is a permanent escheat or an escheat which vests the interest in the State subject to divestment. After the matter was discussed it was agreed that the Commission intends permanent escheat and that Section 1048 should contain a provision authorizing the Attorney General to file a motion in the

impoundment proceeding to have the property escheated to the State. Accordingly, a motion was made by Mr. Gustafson, seconded by Mr. Matthews and unanimously adopted directing the Staff to draft a provision defining the type of escheat intended in Section 1048 and providing that the Attorney General may make the motion on behalf of the State to have the property vest in the State.

The Commission then considered the questions raised by the Committee on the Administration of Justice concerning Section 1049 which relates to the payment of attorney's fees. After the matter was discussed a motion was made by Senator Cobey, seconded by Mr. Gustafson and unanimously adopted not to revise Section 1049.

It was agreed that the Executive Secretary should inform the Northern Section of the C.A.J. of the Commission's decision not to revise Section 1049 and should advise the Section that the Commission will give careful consideration to any specific revision thereof which the Committee might wish to propose.

The Commission then considered whether the date of determination as to whether a person is a disqualified nonresident alien within the meaning of this act should be as of the date of the order as provided in Section 1050 or as of the date of the hearing as proposed by the C.A.J. After the matter was discussed a motion was made by Senator Cobey, seconded by Mr. Gustafson and unanimously adopted not to revise Section 1050 in this respect

but to delete therefrom "by the facts existing" as proposed by the C.A.J.

The Commission then considered whether it should accept the C.A.J. suggestion that Section 1050.5 should not provide that a copy of the petition must accompany each required notice, except in the case of a notice sent to the Attorney General. After the matter was discussed a motion was made, seconded and unanimously adopted that Section 1050.5 be revised to read:

1050.5. Any petition filed pursuant to the provisions of this article shall be verified. A copy of the petition shall be mailed in the manner specified in Article 1 of Chapter 22 of Division 3 (commencing at Section 1200) of this code to the Attorney General, and notice of the filing of the petition shall be mailed to all persons to whom notice is required to be mailed by Section 1200 of this code, and to such other persons, if any, as the court may direct. Notice of the time and place of hearing of the petition shall be given to the same persons in the form and manner specified in Article 1 of Chapter 22 of Division 3 (commencing at Section 1200) of this code.

The Commission then considered the C.A.J. proposal that Section 1050.5 should be revised to require, in all cases, that notice be given by mail to the heirs, devisees and legatees of the decedent in the same manner as upon petition for probate of a will. After the matter was discussed a motion was made by Mr. Gustafson, seconded by Mr. Matthews and unanimously adopted to approve the proposal in principle. It was agreed that the Staff should submit a revision of Section 1050.5 embodying this principle.

D. Study No. 32 - Arbitration: The Commission considered the research study prepared by Mr. Sam Kagel and its Appendix A (Excerpt from Comparison and Analysis of the Uniform Arbitration Act and California Arbitration Statute Prepared by Mr. Kagel); and "Kagel Draft with Suggested Revisions" prepared by the Executive Secretary. ✓ (A copy of each of these items is attached hereto.)

The Commission first considered the proposed amendment of C.C.P. Section 1280. After the matter was discussed the following action was taken:

1. Section 1280(a): A motion was made, seconded and unanimously adopted that the Commission approve Section 1280(a) in the following form:

An agreement to settle by arbitration any existing controversy or any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract.

2. Section 1280(b): A motion was made by Mr. Gustafson, seconded by Mr. Matthews and unanimously adopted that the Commission approve Section 1280(b) in the following form:

"Agreement" as used in this title includes oral and written agreements to arbitrate and includes collective bargaining agreements.

3. Section 1280(c): A motion was made by Mr. Bradley, seconded by Mr. Gustafson and unanimously adopted that the Commission approve Section 1280(c) in the following form:

"Controversy" as used in this title means any claim by one of the parties or any question arising between the parties, whether such question is one of law or of fact.

4. Section 1280(d): A motion was made by Mr. Bradley, seconded by Mr. Gustafson and unanimously adopted that the Commission approve Section 1280(d) in the following form:

Unless otherwise therein provided, agreements providing for valuations, appraisals and other similar proceedings are subject to this title.

The Commission then discussed whether Subsection (e) of Section 1280 should be retained in the form proposed. It was agreed that since oral agreements to arbitrate are made enforceable by Subsection (b), all that needs be said is that an arbitration award is enforceable only as provided in the statute and not by a common-law type action on the award. Accordingly it was agreed that Section 1280(e) should be redrafted to so provide.

It was agreed that Mr. Kagel would do the following prior to the November meeting:

1. Prepare a memorandum relating to the law of other States on the specific enforceability of appraisal agreements.

2. Prepare a memorandum making a comparative analysis of the Uniform Arbitration Act and his proposed revision of the California Arbitration Act.
3. Confer with the Executive Secretary concerning possible revisions in his proposed statutes.

After Mr. Kagel had left, the Commission discussed whether it would be possible for the Commission to complete this study and have a recommendation to present to the 1959 Session of the Legislature. It was agreed that a recommendation on this matter should be deferred until 1961 if possible and that, to this end, the Chairman and Executive Secretary should contact Mr. Martin Dinkelspiel to find out if the Commission on Uniform State Laws would consider deferring its presentation of the Uniform Arbitration Act until 1961.

E. Study No. 37(L) - Claims Statutes: The Commission considered October meeting Memorandum No. 6 dated October 3, 1958; Second Progress Report on Drafting of Proposed General Claims Statute submitted by Professor Van Alstyne (hereinafter referred to as Second Progress Report); the Proposed General Claims Statute as of July 22, 1958 and a document entitled "Appendix" which contained Chapter 4 of Division 3 of Title 3 of the Government Code, the present general county claims statute. (A copy of each of these items is attached hereto.)

The Commission first considered several proposed changes recommended by Professor Van Alstyne in the Second Progress Report to be made to various sections set forth in the Proposed General Claims Statute as of July 22, 1958. After the matter was discussed the following was agreed upon:

1. Sections 604 and 610: After the discussion of the ambiguity which arises between the present proposed Sections 604 and 610, it was agreed that Professor Van Alstyne should redraft these two sections to incorporate the following:

(a) A provision which sets out in detail the time in which the governing body can act on a claim. It was agreed that the governing body should be able to act more than once on a claim within the first 80 days after it is filed but that its jurisdiction to act on a claim should terminate after the 80th day.

(b) A provision stating that nothing in the foregoing provision should disable the governing body to compromise after the 80th day a lawsuit filed by the claimant.

(c) A provision as to when a lawsuit against a public entity covered by the claims statute is premature. It was agreed that the statute should provide in substance that an action on a claim may be filed any time after the governing body acts on the claim or, if the board does not act within the 80 day period, then any time thereafter.

In the course of this discussion it was also agreed that the general claims statute should contain a section specifying how claims shall be disposed of. In substance, it should provide that (1) if the claim is a proper charge against the county it shall be allowed in full (2) if the claim is not a proper charge it shall be denied (cf. Government Code § 29713) and (3) if the claim is good in part and bad in part it shall be allowed in part and rejected in part (cf. § 610 in new general claims statute). Professor Van Alstyne agreed to draft such a provision for the Commission's consideration.

2. Section 605: It was agreed that Professor Van Alstyne's proposed redraft Section 605 should be accepted with the following modifications:

(a) Subdivision (c) should be revised to read: "c. The date, place and other circumstances of the occurrence or transactions which gave rise to the claim asserted."

(b) Subdivision (d) should be revised to read: "d. The general description of the indebtedness, obligation, injury, damage or loss incurred so far as they may be known at the time of the presentation of the claim."

During the discussion of the latter portion of Subdivision (d) and Subdivision (e) relating to the amount claimed so far as it may be known at the time of the presentation of the claim, two questions were raised (1) whether there should be provision for filing an amended claim subsequent to filing the original claim, and (2) whether there should be a provision to clarify the claimant's position as to whether after the governing body grants the claim in whole may the claimant reject the allowance and bring an action for a larger amount than was stated in his claim filed pursuant to Section 605 (d) and (e).

It was agreed that the general claims statute should provide in substance (1) that no suit may be filed on a claim which is allowed in whole or that portion allowed in part, and (2) that after rejection in whole or part the amount claimed pursuant to Section 605 (d) and (e) shall not be a limitation on the amount which may be recovered if an action is brought.

It was agreed that there should not be a provision relating to whether an amended claim may be filed. It was agreed that this is presently permitted and would doubtless continue to be permitted.

3. Section 606: It was agreed that all but the last sentence of Professor Van Alstyne's proposed revised Section 606 should be accepted except that "substantially" should be placed after rather than before "comply."

After discussion of the proposed last sentence it was agreed that it should not be a part of this section and that Professor Van Alstyne should draft a separate section which will provide in substance that lack of substantial compliance with Section 605 precludes suit against a public entity if the governing body gives notice of the defects pursuant to Section 606 but that failure to amend the claim after such notice is given will not preclude suit if the claim as filed complies substantially with Section 605.

4. Section 607: It was agreed that Professor Van Alstyne's proposed revision of Section 607 should be accepted with the last sentence revised to read:

For the purpose of computing the time limit prescribed by this section, the date of accrual of a cause of action to which a claim relates is the date upon which the cause of action would be deemed to have accrued within the meaning of the statute of limitations which would be applicable thereto if the claim were being asserted against a defendant other than a public entity.

5. Section 608: It was agreed that Professor Van Alstyne should redraft the proposed new Section 608 to provide in substance that discretionary relief may be granted:

(a) where during the time allowed for presentation no claim was presented and during all of such time the claimant was less than sixteen years of age.

(b) where during the time allowed for presentation no claim was presented and during all of such time the claimant was physically or mentally incapacitated and by reason of such incapacity failed to present a claim within the time allowed.

(c) where during the time allowed for presentation no claim was presented and the claimant died during such time.

It was agreed that no discretionary relief should be available to the claimant who was civilly dead or had his civil rights suspended by sentence of a criminal court or who failed to present the claim because of mistake, inadvertence, surprise or excusable neglect.

The Commission then discussed Professor Van Alstyne's recommendations relating to revision of the general county claims statute (Government Code, Title 3, Division 3, Chapter 4) (hereinafter Chapter 4). The Commission accepted his general proposal to repeal all provisions of the statute relating to presentation of

claims and to provide for claims by public employees for wages, etc. and for claims in connection with public assistance by authorizing the Board of Supervisors to provide for these by rule and to make it unnecessary for the State or another public entity making a claim against a public entity to make a formal claim.

Then the Commission took the following action with respect to Professor Van Alstyne's proposals respecting the various sections in Article 1 of Chapter 4:

1. It agreed that Sections 29700-29705, 29707, 29711, 29713-29716 and 29720 be repealed.

2. It was agreed that the following sections should be retained, with or without amendment (see below), renumbered as shown:

<u>Present No.</u>	<u>New No.</u>
29706	29702
29708	29703
29709	29704
29710	29705
29712	29707
29717	29708
29718	29709
29719	29710
29721	29711

3. The following action was taken on the new Sections of Article 1 of Chapter 4 proposed by Professor Van Alstyne:

(a) Section 29701: It was agreed that Professor Van Alstyne should delete the phrase "not inconsistent with state law" and substitute therefor a statement that this section does not apply to cases where other statutes or

regulations prescribing claims filing procedures are specifically applicable. Otherwise, Section 29701 was approved.

(b) Section 29702 and 29703 were approved.

(c) Section 29704: It was agreed that the last sentence should be revised to read: "The clerk shall attest the claim with his signature and, when the claim has been countersigned by the chairman, shall transmit it to the auditor." Otherwise Section 29704 was approved.

(d) Section 29705: It was agreed that the auditor should not be required to deliver the claim to the claimant and that "it together with" should be deleted. It was also agreed that a sentence should be added specifying procedure in the case of a partial allowance. Otherwise Section 29705 was approved.

(e) Section 29706: It was agreed that proposed Section 29706 should be deleted subject to reinsertion if it is later found to be necessary.

(f) Section 29707: It was agreed that Professor Van Alstyne should make Section 29707 two separate sections. One section should apply to the various internal procedures and forms the board may adopt for cases where claims are filed pursuant to contract or ordinance and the other section should apply to the internal procedures the board may adopt for claims filed pursuant to the general claims statute and other statutes.

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- (g) Section 29708 was approved.
- (h) Section 29709: Approved, with insertion of a comma after "official duty."
- (i) Section 29710 was approved.
- (j) Section 29711: It was agreed that Section 29711 should read:

"No fee or charge shall be made or collected by an officer for verifying or filing any claim against the county."

The Commission then considered Professor Van Alstyne's recommendation relating to Article 2 of Chapter 4. It was agreed that Professor Van Alstyne should give further thought to whether any provisions of this article should be revised to avoid possible conflict with the new general claims statute.

It was agreed that if no substantial revision is made to the various sections in Article 2 the recommendation of the Commission should contain a comment to the effect that these sections have been found not to be inconsistent with the general claims statute. The Commission gave preliminary consideration to several sections in Article 2 and took the following action:

- (a) Section 29745: It was agreed that the clause "and such rejection shall have the same effect as rejection by the board of supervisors" should be added at the end of this section.
- (b) Section 29748: It was agreed that Professor Van

Alstyne should consider whether reference to "filing" should be deleted from this section to avoid a possible conflict with the general claims statute.

The Commission then considered the recommendations made by Professor Van Alstyne with respect to Sections 53052 and 53053 of the Government Code (Public Liability Act of 1923). After the matter was discussed it was agreed (1) to approve his proposed revision of Section 53052 and (2) to repeal Section 53053.

The Commission then considered how the miscellaneous statutes relating to claims against the counties (e.g., Section 439.56 of the Agricultural Code relating to claims for livestock killed by dogs) should be handled. It was agreed that Professor Van Alstyne should give this problem further consideration and submit a recommendation.

The Commission then considered whether it should recommend that the statutes governing claims which are expressly excluded from the general claims statute be revised so that the procedure is consistent with the procedures prescribed in the general claims statute. It was agreed that no such recommendation should be made.

F. Study No. 58(L) - Codification of Grand Jury Law:

The Executive Secretary reported that pursuant to the direction of the Commission three copies of the Legislative Counsel's draft of the bill to recodify grand jury law were being distributed to each district attorney of the State under cover of a letter inviting the district attorney's comments, criticisms and suggestions and asking him to distribute the other two copies of the proposed codification to the judge of the Superior Court in his county who would, in his opinion, have the greatest interest in the matter and to the jury commissioner in his county.

The Executive Secretary then reported that there is a deficiency of \$250.00 under the contract with the Legislative Counsel's office for the work done on the codification of laws relating to grand juries. After the matter was discussed a motion was made by Senator Cobey, seconded by Mr. Matthews and unanimously approved to authorize the Executive Secretary to modify the contract with the Legislative Counsel to cover the \$250.00 deficiency.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary

September 23, 1958

STATUS REPORT OF STUDIES
HERETOFORE AUTHORIZED BY LEGISLATURE

I. Completed studies. (Included is year presented to
Legislature and final disposition.)

Study No.

- | | |
|-------|--|
| 2 | Judicial Notice of the Law of Foreign Countries (1957 - passed). |
| 3 | Dead Man Statute (1957 - failed to pass). |
| 4 | Choice of Law Governing Survival of Actions (1957 - recommendation no legislation). |
| 5 | Rights of Surviving Spouse in Property Acquired by Decedent While Domiciled Elsewhere (1957 - passed). |
| 7 | Retention of Venue for Convenience of Witnesses (1957 - failed to pass). |
| 8 | Marital "For and Against" Testimonial Privilege (1957 - failed to pass). |
| 9 | Elimination Obsolete Provisions - Penal Code §§ 1377-78 (1957 - passed). |
| 10 | Maximum Period of Confinement in County Jail (1957 - passed). |
| 13 | Bringing New Parties Into Civil Actions (1957 - passed). |
| 14 | Administrator in Quiet Title Action (Commission determined further study not warranted). |
| 15 | Application for Attorney's Fees, etc., in Domestic Relations Actions (1957 - passed). |
| 17(L) | Inheritance and Gift Tax (1956 - requested report submitted). |
| 18(L) | Fish and Game Code (1957 - passed). |

II. Studies presently scheduled for the Commission's 1959 legislative program. (Included also is date of legislative authorization.)

Study No.

- | | |
|-------|---|
| 1 | Suspension of Absolute Power of Alienation (1955). |
| 6 | Effective Date of Order Ruling on Motion for New Trial (1955). |
| 11 | Corp. Code §§ 2201, 3901 -- Sale of Assets (1955). |
| 16 | Planning Procedure Where No Planning Commission (1955). |
| 19 | Penal and Vehicle Code Overlap (1956). |
| 20 | Guardians for Nonresidents (1956). |
| 21 | Confirmation Partition Sales (1956). |
| 22 | Cut-off Date, Motion New Trial (1956). |
| 24 | Mortgages Future Advances (1956). |
| 25 | Probate Code § 259 -- Right Nonresident Aliens to Inherit (1956). |
| 31 | Doctrine Worthier Title (1956). |
| 32 | Arbitration (1956). |
| 37(L) | Claims Statute (1956). |
| 44 | Suit in Common Name (1957). |
| 56(L) | Narcotics Law (1957). |
| 58(L) | Codification of Grand Jury Law (1957). |

III. Studies in progress which are not presently scheduled for the Commission's 1959 legislative program. (Included also is date of legislative authorization.)

Study No.

- | | |
|----|--|
| 12 | Taking Instructions to Jury Room (1957 - withdrawn for further study). |
|----|--|

Study No.

- 23 Rescission of Contracts (1956).
- 26 Escheat - What Law Governs (1956).
- 27 Putative Spouse (1956).
- 28 (Consolidated with Study No. 36)
Condemnation (1956).
- 29 Post-Conviction Sanity Hearings (1956).
- 30 Custody Jurisdiction (1956).
- 33 Survival of Tort Actions (1956).
- 34(L) Uniform Rules of Evidence (1956).
- 35(L) Habeas Corpus (1956).
- 36(L) Condemnation (1956).
- 38 Inter Vivos Rights - § 201.5 Property (1957).
- 39 Attachment, Garnishment, etc. (1957).
- 40 Notice of Alibi (1957).
- 41 Small Claims Court Law (1957).
- 42 Rights of a Good Faith Improver (1957).
- 43 Separate Trial Issue Insanity (1957).
- 45 Mutuality re Specific Performance (1957).
- 46 Arson (1957).
- 47 Civil Code § 1698 (Contract in Writing)
(1957).
- 48 Juvenile Court Proceedings (1957).
- 49 Rights of Unlicensed Contractor (1957).
- 50 Rights of Lessor Upon Abandonment by
Lessee (1957).
- 51 Right of Wife to Sue for Support After
Ex Parte Divorce (1957).
- 52(L) Sovereign Immunity (1957).

Study No.

- 53(L). Whether Personal Injury Damages Should Be Separate Property (Deferred by Commission) (1957).
- 54(L) Use Term "Ward Juvenile Court" (1957).
- 55(L) Power to Deny New Trial on Condition Damages Be Increased (1957).
- 57(L) Law Relating to Bail (1957).
- 59 Service of Process by Publication (1958).
- 60 Representation Relating to Credit of Third Person (C.C.P. § 1974) (1958).
- 61 Election of Remedies Where Different Defendants (1958).

October 3, 1958

KAGEL DRAFT WITH SUGGESTED REVISIONS

(All sections in Code of Civil Procedure)

1280(a) An agreement to settle by arbitration any existing controversy or any controversy thereafter arising between the parties shall be is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract.

(b) "Agreement" as used in this title includes an oral and written agreements to arbitrate and includes a collective bargaining agreements .

(c) "Controversy" as used in this title means any claim by one of the parties to the agreement against the other or any question arising between the parties, whether such question is one of law or of fact.

(d) Unless otherwise therein provided, agreements providing for valuations, appraisals and other similar proceedings are subject to this title.

(e) Common law arbitration is abolished.

1282.(a) On motion petition of a party made pursuant to Section 11 1290 hereof alleging the existence and breach of an agreement to arbitrate, the court shall order arbitration if it finds that such an agreement exists and has been breached, unless the ~~adverse party~~ proves it finds that the right to arbitrate has been waived by the

moving party.

(b) The only issues that may be raised on a motion petition to compel arbitration are whether there exists an enforceable agreement to arbitrate, whether the agreement has been breached and whether the moving petitioner party has waived arbitration.

(c) When a civil action involves an issue ~~in-an-agreement providing-for-arbitration~~ alleged to be referable to arbitration, a party may, within the time provided to answer following the service on him of the complaint pleading in which the issue is raised, move that the court stay such action insofar as such issue is involved. The court shall grant a stay if an order compelling arbitration ~~or a-motion-therefor~~ has been made prior to the motion for a stay. If a petition for an order compelling arbitration is pending, the court shall not act upon the motion to stay until the petition has been acted upon.

1283(a) An arbitrator selected jointly by the parties, or by the court when the parties jointly are unable to do so, is a neutral-arbitrator. An arbitrator selected by a party, or the court, to represent a party on a board of arbitrators is a party-arbitrator. "Arbitrator," as used in this title, shall-mean "~~arbitrators~~"-if-there-is-more-than-one-arbitrator-and-shall refer both to neutral-arbitrators and party-arbitrators.

(b) If, in the an agreement to arbitrate, provision be made for a method of naming or appointing an arbitrator, such method shall be followed. If no method be provided therein, or if a method be provided and for any reason there is no arbitrator willing and able to ~~attend-or-fulfill-his-duties,-then~~ act, upon ~~motion~~ the petition filed pursuant to Section 1290 by either party to the controversy agreement, the court shall appoint an arbitrator who shall act under the said agreement with the same force and effect as if he had been specifically named therein. Unless otherwise provided in the agreement, the arbitration shall be by a single arbitrator.

(c) When a court has been requested to appointing a neutral-arbitrator the court shall nominate 5 five or more persons from lists of qualified ~~arbitrators~~ persons supplied by any of the parties, ~~or~~ by recognized governmental agencies, or by private impartial associations concerned with arbitration. The parties shall within 5 five days of receipt of such list from the court jointly select a single person by agreement or lot from such list, who shall thus be designated as the court-appointed arbitrator. If the parties ~~or-a-party~~ fails ~~to-act~~ to select an arbitrator within the second 5 five day period, the court shall appoint the arbitrator from ~~among-the-nominees~~ its list.

1284. ~~Unless-otherwise-provided-in-the-agreement,~~ When there is more than one arbitrator, the powers of the arbitrators may be

exercised by a majority of them, unless otherwise provided in the agreement, if reasonable notice of all proceedings required to carry out their duties has been given to all arbitrators.

1285.(a) Unless otherwise provided by in the agreement:

(1) The neutral-arbitrator shall appoint a time and place for the hearing and ~~unless otherwise mutually agreed by the parties he shall~~ cause ~~notification to the parties~~ notice thereof to be served on the parties personally or by registered mail not less than ~~ten~~ 10 days before the hearing. Appearance at the hearing waives such notice. The arbitrator may adjourn the hearing from time to time as necessary, and, on request of a party and for good cause shown or upon his own motion may postpone the hearing to a time not later than the date fixed by the agreement for making the award or, with the consent of the parties, to a later date.

(2) The parties are entitled to be heard, to present evidence and to cross-examine witnesses appearing at the hearing. Rules of evidence and rules of judicial procedure need not be observed so long as the hearing is fairly conducted.

(3) The A ~~neutral-arbitrators shall~~ may not obtain information, advice, or other data, from outside the presence of the parties without disclosing ~~such~~ his intention to do so to all parties to the arbitration and obtaining their consent thereto, except that an arbitrator may take judicial notice of ~~such subjects as are permitted by law~~ matters of which a court may take such notice.

[Does this
fit
under
"unless"
clause]

(4) A party has the right to be represented by an attorney at any proceeding under this title, and a waiver thereof is ineffective.

(5) If an order directing arbitration has been made pursuant to Section 1282(a), the arbitrator may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear.

(6) Each party shall pay one-half of the arbitrator's total expenses and fees, together with other expenses deemed necessary by the neutral-arbitrator, not including counsel and witness fees, incurred in the conduct of the arbitration. Costs of the application petition and the proceedings subsequent thereto taken to confirm, vacate, modify or correct an award, and the proceedings pursuant thereto, shall be awarded by the court pursuant to Section 1032 of the Code of Civil Procedure this code.

(b)

(1) A neutral-arbitrator shall have the power to may administer oaths.

(2) The neutral-arbitrator shall issue subpoenas and subpoenas duces tecum at the request of any party, or upon his own determination motion, in accordance with the provisions of Section 1985 of the Code of Civil Procedure this code.

(3) All witnesses appearing pursuant to subpoena shall receive fees, mileage, and expenses in the same amount and under the same circumstances as prescribed by law for witnesses in civil actions in a Superior Court. Fees, mileage and expenses shall be

paid by the party at whose request the witness is subpoenaed.

(4) On application of a party ~~and-for-use-as-evidence but-not-for-discovery~~, a neutral-arbitrator may issue subpoenas for attendance at a deposition of a witness who cannot be subpoenaed to, or is unable to attend the hearing, for use as evidence but not for discovery. ~~to-be-taken~~ The deposition may be taken in the manner and upon the terms designated by the neutral-arbitrator.. ~~of-a-witness who-cannot-be-subpoenaed-to, or-is-unable-to-attend-the-hearing.~~ The provisions of this Code relating to depositions are, insofar as consistent herewith, applicable to this subsection.

(5) [No change in this subsection]

1286. (a) The award shall be in writing and signed by the arbitrators concurring therein. ~~It shall include-a-determination-of-all the-issues-submitted-to-gate~~ what issues were decided by the arbitrator. The arbitrator shall deliver a copy to each party personally or by registered mail, or as provided in the agreement.

(b) [No change here except to add "reasonable" after "such" in the first sentence]

(c) On application of a party made within ~~ten~~ 10 days after delivery of the award to the applicant, the arbitrator may modify or correct the award upon the grounds set forth in paragraphs (1) and (3) of subsection (a) of Section 1289. Written notice of the application shall be given to ~~the-opposing-party~~ all other parties, stating that ~~he~~ they must serve ~~his~~ their objections thereto, if any, within ~~ten~~ 10 days from the service of such notice. No such modification or correction may be made more than ~~twenty-five~~ 25 days after delivery of the award

to the applicant.

1287. At any time within ~~three-months~~ 90 days after the award is made ~~delivered to a party~~ by any party to the arbitration may ~~make a motion to~~ petition the court for an order confirming or vacating the award. The court shall grant such an ~~order confirming or vacating the award~~ petition unless ~~within the time limits herein after imposed, grounds are urged for modifying or correcting the award~~ a timely petition to vacate, modify or correct the award has been filed or is thereafter filed before the award is confirmed. In such cases if such petition has been filed, the court shall proceed as provided in the next two sections.

1288. (a) ~~In either of the following cases the must make an order vacating the award, upon the motion of any party to the arbitration.~~
Upon petition of a party the court shall vacate the award if it finds:
Upon petition of a party the court shall vacate the award if it finds:

- (1) Where That the award was procured by corruption, fraud or undue means;
- (2) Where ~~there~~ That the arbitrator was ~~corruption-~~
in the arbitrator.
- (3) Where That the arbitrator was guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or in engaging in other similar misconduct contrary to the provisions of Section 1285, which would substantially prejudice the rights of a

the petitioning parties;

(4) Where That the arbitrator exceeded his powers, or so imperfectly executed them that a mutual, final and definite award, upon the subject matter submitted, was not made.

(b) A motion petition filed under this section must be filed within ninety days after the award is delivered to the petitioner, provided that if the petition alleges predicated-upon corruption, fraud, or undue means, shall-be-made it may be filed within 3-months 90 days after such grounds are known or should have been known.

(c) Where an award is vacated:

(1) The court may, in its discretion, direct a rehearing before a new arbitrator. ~~if-the-vacation-was-on-grounds set-forth-in-paragraphs-(a),-(b)-or-(c),-or-in-the-discretion-of the-court-and~~

(2) With the consent of the parties the court may, in its discretion, direct a rehearing before the arbitrator who made the award in a case where

(a) the ground set forth in paragraph (4) of subsection (a) of this Section was the ground for vacation. A new arbitrator shall be appointed as provided in Section 1283. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

(d) If the motion to vacate the award is denied and no motion to modify or correct the award is pending, the court shall

confirm the award.

1289. (a) Upon motion petition of any party to the arbitration, made within 30 days after delivery of a copy of the award to the moving-party petitioner, the court shall modify or correct the award:

(1) Where there was an evident miscalculation of figures, or an evident mistake in the description of any person, thing or property, referred to in the award;

(2) Where the arbitrator has awarded upon a matter not submitted to him, and the award may be corrected without affecting the merits of the decision upon the matters submitted;

(3) Where the award is imperfect in a matter of form, not affecting the merits of the controversy.

(b) If the motion petition is granted, the court shall modify and correct the award, so as to effect its intent and shall confirm the award as so modified and corrected. ~~Otherwise~~ If the motion is denied, the court shall confirm the award as made.

1290. (a) "Court" as used in this title shall mean the following superior court: in-the-county-(including-a-city-and-county)-wherein-venue-lies-as-follows:

(1) A motion petition for an order that the parties proceed to arbitration, ~~as-provided-in-~~ made pursuant to Section 1282 (a), or a motion petition for the appointment of an arbitrator, ~~as-provided-in~~ made pursuant to Section 1283, shall-be-made-to-the- court may be filed in the county ~~of-this-state~~ wherein either any party resides or has a place of business or where the agreement

is to be performed, or, if ~~neither~~ no party has a residence or place of business in this State and the place of performance is not specified in the agreement, ~~to the court of~~ in any county in this State.

(2) A motion for a stay of an action, ~~as provided~~ in made pursuant to Section 1282(c), shall be made to the court ~~of the county~~ wherein the action is pending;

(3) Any motion or petition made after the commencement of the arbitration proceedings shall be made ~~to the court of~~ in the county wherein the arbitration is being, or has been, held.

(b) Written notice of the hearing of any motion or petition authorized by this title ~~to the court~~ shall be served upon the adverse party or other parties to the arbitration agreement ~~ex his~~ their attorneys five 10 days prior to the date set for the hearing.

(c) The party ~~moving~~ petitioning for an order confirming, vacating, modifying or correcting an award shall attach to such ~~motion~~ petition ~~copies~~ a copy of each of the following: the agreement to arbitrate, the name of the arbitrator, each ~~v~~ ritten extension of the time, if any, within which to make the award, and the award.

(d) Any ~~motion-made-to-the-court~~ petition filed under the authority of this title shall be heard in a summary way in the manner provided by law for the making and hearing of motions, except as otherwise herein expressly provided.