

September 3, 1971

Time

September 9 - 7:00 p.m. - 10:00 p.m.  
September 10 - 9:00 a.m. - 5:00 p.m.  
September 11 - 9:00 a.m. - 4:00 p.m.

Place

State Bar Building  
1230 West Third Street  
Los Angeles 90017

REVISED

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Los Angeles

September 9-11, 1971

SEPTEMBER 9

1. Minutes of July 15-17 Meeting (sent 7/30/71) (suggested corrections sent 7/31/71)
2. Study 39.30 - Attachment, Garnishment, Execution

Employees' Earnings Protection Law

Memorandum 71-58 (sent 8/12/71)  
Tentative Recommendation (attached to Memorandum)  
First Supplement to Memorandum 71-58 (sent 8/31/71)  
Second Supplement to Memorandum 71-58 (sent 8/31/71)

Recent Developments

Memorandum 71-66 (sent 8/31/71)  
Third Supplement to Memorandum 71-58 (enclosed)

SEPTEMBER 10-11

Condemnation--The Right to Take

3. Study 36.20(1) - Condemnation (Disposition of CCP §§ 1238-1238.1)  
Memorandum 71-54 (sent 7/21/71)
4. Study 36.24 - Condemnation (More Necessary Public Use)  
Memorandum 71-50 (sent 7/21/71)
5. Study 36.24 - Condemnation (Consistent Use)  
Memorandum 71-51 (sent 7/21/71)
6. Study 36.65 - Condemnation (Disposition of CCP §§ 1240-1241)  
Memorandum 71-52 (sent 7/21/71)

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7. Study 36.20(1) - Condemnation (Disposition of CCP §§ 1264.1-1264.6, 1264.8, 1264.9)

Memorandum 71-53 (sent 7/21/71)

8. Study 36.65 - Condemnation (Airports)

Memorandum 71-45 (sent 7/21/71)  
Background Study (attached to Memorandum)  
Memorandum 71-59 (sent 9/2/71)  
First Supplement to Memorandum 71-59 (enclosed)

9. Study 36.41 - Condemnation (Protective Condemnation)

Memorandum 71-60 (sent 8/12/71)  
Comprehensive Statute (revised edition--blue binder; sent 8/12/71)

10. Study 36.43 - Condemnation (Open Space)

Memorandum 71-61 (sent 8/12/71)

11. Study 36.65 - Condemnation (Nonprofit Hospitals)

Memorandum 71-62 (sent 8/26/71)

Condemnation--Compensation

12. Study 36.50 - Condemnation (Philosophy of Compensation)

Memorandum 71-36 (sent 7/21/71)

13. Study 36.50 - Condemnation (The Larger Parcel)

Memorandum 71-63 (sent 8/26/71)  
Background Study (attached to Memorandum)

14. Study 36.50 - Condemnation (Compensation in Case of Partial Take)

Memorandum 71-64 (Sent 8/26/71)

Condemnation--Administration

15. Study 36 - Condemnation

Memorandum 71-65 (sent 8/12/71)

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Administrative Matters

16. Proposed Budget for 1972-73 Fiscal Year

Memorandum 71-55 (sent 8/12/71)

17. Annual Report for 1971 Calendar Year

Memorandum 71-56 (sent 8/27/71)

First Supplement to Memorandum 71-56 (sent 8/27/71)

Pleading

18. Study 71 - Pleading (Compulsory Joinder of Causes)

Memorandum 71-57 (sent 8/31/71)

Tentative Recommendation (attached to Memorandum)

First Supplement to Memorandum 71-57 (enclosed)

MINUTES OF MEETING  
of  
CALIFORNIA LAW REVISION COMMISSION

SEPTEMBER 9, 10, AND 11, 1971

Los Angeles

A meeting of the California Law Revision Commission was held in Los Angeles on September 9, 10, and 11, 1971.

Present: Thomas E. Stanton, Jr., Chairman  
John D. Miller, Vice Chairman  
Noble K. Gregory  
John N. McLaurin

Absent: Alfred H. Song, Member of Senate  
Carlos J. Moorhead, Member of Assembly  
G. Bruce Gourley  
Marc W. Sandstrom  
George H. Murphy, ex officio

Messrs. John H. DeMouilly, Jack I. Horton, E. Craig Smay, and Nathaniel Sterling, members of the Commission's staff also were present. On September 9 and 10, Gideon Kanner--Commission consultant on condemnation law and procedure--was present; on September 9, Professors Riesenfeld and Warren--Commission consultants on attachment, garnishment, and execution--also were present.

The following observers were present for the portions of the meeting indicated:

Thursday, September 9

John D. Bessey, Sacramento Attorney  
Emil A. Markovitz, Creditor's Service, Sacramento  
Richard A. Weiss, Los Angeles Attorney  
Glen Woodmansee, Orange County Legal Aid Society, Anaheim

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Friday, September 10

Michael M. Berger, Los Angeles Attorney  
Edward J. Connor, Jr., State Department of Public Works, Sacramento  
Norval Fairman, State Department of Public Works, San Francisco  
Lloyd Hinkelman, Office of Attorney General, Sacramento  
James Markle, State Department of Water Resources, Sacramento  
Terry C. Smith, Los Angeles County Counsel  
Charles E. Spencer, State Department of Public Works, Los Angeles

Saturday, September 11

John D. Bessey, Sacramento Attorney  
Richard A. Weiss, Los Angeles Attorney

ADMINISTRATIVE MATTERS

Correction and Approval of Minutes of July 15-17, 1971, Meeting

The following corrections were made in the Minutes for the July 15-17, 1971, meeting and the Minutes as so corrected were approved:

(1) Page 5. Under the heading, Sections 1268.08 and 1270.05, the third line should read:

reaffirmed. Sections 1268.08 and 1270.05, with Comments, were approved as set

(2) Page 7. In the text of the proposed statute, the third line of subdivision (a) should read:

domain may exercise the power ~~to- eminent~~ to acquire incidental property

(3) Page 9. The following sentence should be added to the first paragraph:

Commissioner McLaurin opposed extension of the power of eminent domain to cities and counties for open space acquisition.

Schedule for Future Meetings

The following schedule for future meetins was adopted:

SCHEDULE FOR FUTURE MEETINGS

<u>Date</u>	<u>Time</u>	<u>Place</u>
October 8	9:30 a.m. - 5:00 p.m.	State Bar Building
October 9	9:00 a.m. - 3:00 p.m.	601 McAllister Street San Francisco, CA 94102
November 4 (evening)	7:00 p.m. - 10:00 p.m.	Stanford Law School
November 5	9:00 a.m. - 5:00 p.m.	Stanford University
November 6	9:00 a.m. - 11:00 a.m.	Stanford, CA 94305
December 9 (evening)	7:00 p.m. - 10:00 p.m.	State Bar Building
December 10	9:00 a.m. - 5:00 p.m.	601 McAllister Street
December 11	9:00 a.m. - 1:00 p.m.	San Francisco, CA 94102

Note: The Executive Secretary was given discretion to cancel the meeting formerly scheduled for the evening of October 7 and the above schedule reflects the fact that he has canceled the meeting on the evening of October 7.

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Budget

The Commission considered Memorandum 71-55. The Executive Secretary called to the Commission's attention the letter from the Governor, dated August 13, 1971, calling upon all state agencies to exercise restraint in budget requests.

The Commission discussed the budget revision proposed for the 1971-72 Fiscal Year and the Proposed Budget for 1972-73 recommended by the Executive Secretary. Concern was generally expressed that the amount available for research during 1971-72 and proposed for 1972-73 was clearly inadequate. After considerable discussion, the proposed budget for 1971-72 and 1972-73 as set out in Memorandum 71-55 was approved, subject to minor revisions to be made by the Commission's accounting officer when staff benefits are computed and the State Controller's schedule for "authorized positions" is received. The Executive Secretary indicated that the amounts provided for various categories of operating expenses under the revised 1971-72 and proposed 1972-73 budgets probably would prove inadequate and will have to be supplemented using funds allocated in the budget for research contracts.

Annual Report--Goals and Priorities

The Commission considered Memorandum 71-56 and discussed the goals and priorities of the Commission during the next few years. The decisions made will be reflected in the Annual Report to the 1972 Legislature.

Recommendations to 1972 Legislature. The Commission determined that it would submit two recommendations to the 1972 Legislature. One of these is the Employees' Earnings Protection Law, and this recommendation should be available in printed form early in January 1972. The second recommendation

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will be one designed to deal with the problems created by Randone v. Appellate Dept. (decided August 26, 1971), holding California prejudgment attachment procedure unconstitutional. During the coming months the Commission will be working on this recommendation with a view to submitting something that can be enacted at the 1972 session.

Priorities. The Commission determined that the field of prejudgment attachment should be given the top priority during the coming months so that a recommendation can be submitted in 1972. In addition, work on an overall revision of the law relating to attachment, garnishment, and exemptions from execution will continue during the coming years, but this overall revision will not be conducted as a crash program.

The Commission also determined that the study of condemnation law and procedure should be given a top priority. The goal is to have a recommendation for a comprehensive statute ready for submission to the 1975 Legislature. A preprinted bill should be ready for printing in December 1973 if possible. The recommendation should be available in printed form in August 1974. During 1974, special subcommittees of the Senate and Assembly Judiciary Committee could review the preprinted bill so that it could be enacted at the 1975 session.

Work on other topics on the Commission's agenda will be deferred. Other topics may be presented for Commission consideration if they can be worked into the meeting schedule without significantly slowing down the work on the condemnation study.

The Van Alstyne study on inverse condemnation (now in preparation) will be given priority when completed.

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New topics. The Commission considered whether it will request authority from the 1972 Legislature to study new topics. The Commission determined to request that the scope of the custody study be expanded to permit revision of other aspects of bodies of statute law that will be substantially revised in carrying out the consultant's recommendations. Exhibit II (attached to Memorandum 71-56) was approved for inclusion in the Annual Report.

The Commission determined not to request that study of any new topics be authorized. This decision was made after discussion of suggestions that the Commission might study the following new topics:

1. Class actions. (The Commission was advised that this topic will be given active interim study by the Legislature.)
2. Form pleadings.
3. Uncontested dissolution proceedings.
4. Meaning of "permanent minutes" under Code of Civil Procedure Section 66 and Rule on Appeal (2)(b)(2).
5. Whether conservatee's personal jewelry, clothing, furs, and the like must be inventoried (Letter from Allan L. Leonard, Los Angeles lawyer, handed out at the meeting).
6. Interest in certain circumstances under inheritance tax law (Letter from Allan L. Leonard, Los Angeles lawyer, handed out at meeting).
7. The Model Land Development Code which soon will be promulgated by the American Law Institute (See First Supplement to Memorandum 71-56).

The Executive Secretary was directed to send the letters referred to in items 5 and 6 to the State Bar Committee on the Uniform Probate Code.

With respect to item 7, it was suggested that the Executive Secretary advise Professor Hagman that the Commission has neither the time nor the resources to take on a substantial new topic at this time.

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STUDY 36 - CONDEMNATION

The Commission considered Memorandum 71-65 relating to the relationship between the Commission and the State Bar Committee on Governmental Liability and Condemnation and to the relationship between the Commission and the newly-formed judges' committee in Los Angeles County to review eminent domain policy.

The Commission determined that it would be most aided in its task of preparing a comprehensive eminent domain statute if the State Bar Committee would review the provisions for the statute as they are tentatively approved by the Commission. The Executive Secretary was directed to prepare a draft of a letter to this effect, along with an indication of the Commission's schedule on eminent domain matters, to be sent by the Commission Chairman to the Chairman of the State Bar Committee.

The Commission further determined that any liaison between it and judges should be through the Judicial Council and the Conference of Judges. The Commission nonetheless directed the Executive Secretary to send a letter to the Los Angeles judges' committee informing it of the Commission's work and inviting it to be placed on the Commission's mailing list. if it is interested.

STUDY 36.20(1) - CONDEMNATION (DISPOSITION OF CCP §§ 1238-1238.6)

The Commission considered Memorandum 71-54 relating to the legislative declaration of public uses and the attached staff draft of repeals and amendments to various provisions. The Commission approved for inclusion in the Comprehensive Statute the repeal of Code of Civil Procedure Sections 1238, 1238.4, 1238.5, and 1238.6, and amendments to Public Utilities Code Section 7526 and Water Code Section 22425. Approval of these provisions was subject to technical and editorial changes and subject to the following revisions in the Comment to Section 1238:

(1) In the preliminary portion of the Comment, there should be an expanded discussion of the cases relating to the constitutionality of condemnation by private persons for private purposes. Throughout the Comment, it should be made clear that private persons are not denied all right to condemn but are granted such right only for particular purposes.

(2) In the preliminary portion of the Comment, there should be an expanded discussion of the right of publicly-owned utilities to condemn the property of privately-owned utilities.

(3) In the portion of the Comment to subdivision 4 discussing the authority to condemn for warehouses, there should be some indication of the holding in Los Angeles v. Koyer, 48 Cal. App. 720, 192 P. 301 (1920). In addition, there should be a clear indication of the effect of the Commission's recommendation upon that holding.

(4) In the portion of the Comment to subdivision 18 discussing the authority to condemn for protective purposes, there should be some indication of the effect of the repeal of the 300-foot limitation that was formerly found in the subdivision

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STUDY 36.20(1) - CONDEMNATION (DISPOSITION OF CCP §§ 1264.1-1264.6,  
1264.8, 1264.9)

The Commission considered Memorandum 71-53, proposing the repeal of Code of Civil Procedure Sections 1264.1-1264.9, with the exception of 1264.7, relating to condemnation of toll road and toll bridge franchises. The Commission determined to repeal Sections 1264.1-1264.6 and 1264.8-1264.9, with Comments as set out in Exhibit III to the memorandum.

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STUDY 36.24 - CONDEMNATION (MORE NECESSARY PUBLIC USE)

The Commission considered Memorandum 71-50 relating to the right to take for a "more necessary" public use. The Commission determined to recodify Code of Civil Procedure Sections 1241.7 and 1241.9 (preservation of parks, preserves, open space, and historical sites) as Eminent Domain Code Sections 453.5 and 454.5 and as subdivision (b) of Streets and Highways Code Section 103.5, in the manner of Exhibit III to Memorandum 71-50.

The Commission further determined to repeal Code of Civil Procedure Section 1245.4 (condemnation by a municipal corporation of land marked as a "square"). In connection with this repeal, the Commission directed the staff to draft a Comment for the repealed provision along the lines indicated in Exhibit IV to Memorandum 71-50. Also, the Commission directed the staff to draft a general saving provision for the Comprehensive Statute that makes clear that the repeal of the eminent domain provisions of the Code of Civil Procedure does not affect any title acquired thereunder.

STUDY 36.24 - CONDEMNATION (COMPATIBLE USES)

The Commission considered Memorandum 71-51 relating to the right to take for a "compatible use." The Commission approved the definition of "property appropriated to a public use" as set out in Exhibit I to Memorandum 71-51 for inclusion in the Comprehensive Statute. In addition, the Commission revised Section 471 to read substantially as follows:

§ 471. Taking for compatible use

471. (a). Notwithstanding Chapter 8 of Division 4, the authority to acquire property by eminent domain includes authority to exercise the power of eminent domain to acquire property appropriated to a public use if the proposed use would not unreasonably interfere with or impair the continuance of the existing use or such future use as may reasonably be anticipated for the purpose for which the property is already appropriated.

(b) The complaint in a proceeding to acquire property under authority of this section, and the resolution of necessity if required, shall refer specifically to this section.

(c) A defendant may object to an acquisition under authority of this section in the manner provided by Chapter of Division 8. At the hearing of the objection, the defendant has the burden of proving that his property is already appropriated to a public use. The plaintiff has the burden of proving that its proposed use will comply with subdivision (a).

(d) If in a hearing pursuant to subdivision (c) the court determines that the plaintiff is authorized to condemn the property under this section, it shall fix the terms and conditions upon which the property may be taken and the manner and extent of its use by each of the parties.

The Commission also directed the staff to make conforming and clarifying changes in the Comment to Section 471.

STUDY 36.41 - CONDEMNATION (PROTECTIVE CONDEMNATION)

The Commission considered Memorandum 71-60 and the tentatively approved draft of Eminent Domain Code Section 304 in the Comprehensive Statute, relating to the power to condemn property for incidental purposes. The Commission revised the section and Comment to read as follows:

§304. Right to acquire property for incidental purposes

304. (a) Except to the extent limited by statute, any person authorized to acquire property for a particular purpose by eminent domain may exercise the power of eminent domain to acquire property necessary to carry out and make effective the principal purpose involved, including but not limited to property to be used for the protection or preservation of the attractiveness, safety, and usefulness of the public work or improvement.

(b) Subject to any applicable procedures governing the disposition of property, a person that has acquired property under subdivision (a) may sell, lease, exchange, or otherwise dispose of such property or an interest therein subject to such reservations or restrictions as are necessary to protect or preserve the attractiveness, safety, and usefulness of the public work or improvement.

Comment. Subdivision (a) of Section 304 codifies the rule that, absent any express limitation imposed by the Legislature, the power to condemn property for a particular purpose includes the power to condemn property necessary to carry out and make effective the principal purpose involved. See City of Santa Barbara v. Cloer, 216 Cal. App.2d 127, 30 Cal. Rptr. 734 (1963). See also University of So. Cal. v. Robbins, 1 Cal. App.2d 523, 37 P.2d 163 (1934). Cf. Flood Control & Water Conservation Dist. v. Hughes, 201 Cal. App.2d 197, 20 Cal. Rptr. 252 (1962).

Section 304 permits a condemnor to protect the attractiveness, safety, or usefulness of a public work or improvement from deleterious conditions or uses by condemning a fee or any lesser interest necessary for protective purposes. See Section 101 (defining "property" to include the fee or any lesser right or interest). A taking for this purpose is a "public use." E.g., People v. Iagiss, 223 Cal. App.2d 23, 35 Cal. Rptr. 554 (1963); Flood Control & Water Conservation Dist. v. Hughes, *supra*. See also United States v. Bowman, 367 F.2d 768, 770 (1966). See Capron, Excess Condemnation in California--A Further Expansion of the Right to Take, 20 Hastings L.J. 571, 589-591 (1969).

Section 304 is an extremely flexible grant of condemnation authority. Where it is necessary to protect a public work or improvement from detrimental uses in adjoining property, the condemnor has the option either

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(1) to acquire an easement-like interest in the adjoining property which will preclude the detrimental use or (2) to acquire the fee or some other interest and then lease, sell, exchange, or otherwise dispose of it to some other public entity or a private person subject to carefully specified permitted uses.

If a condemnor has the power of eminent domain to condemn property for a particular improvement, Section 304 is sufficient authority to condemn such additional property as is necessary to preserve or protect the attractiveness, safety, and usefulness of the improvement. No additional statutory authority is required, and some of the former specific grants of protective condemnation authority have been repealed as unnecessary. E.g., former Code of Civil Procedure Section 1238(13)(trees along highways). Nevertheless, not all such specific authorizations have been repealed. E.g., Sts. & Hwys. Code § 104(f)(trees along highways), (g)(highway drainage), (h)(maintenance of unobstructed view along highway). Except to the extent that these specific authorizations contain restrictions on protective condemnation for particular types of projects (see Govt. Code §§ 7000-7001), they do not limit the general protective condemnation authority granted by Section 304.

In the case of a public entity, the resolution of necessity is conclusive on the necessity of taking the property or interest therein for protective purposes. See Section . However, the resolution does not preclude the condemnee from raising the question whether the condemnor actually intends to use the property for protective purposes. If the property is claimed to be needed for protective purposes but not actually going to be used for that purpose, the taking can be defeated on that ground. See Section and Comment thereto. See People v. Lagiss, 223 Cal. App.2d 23, 33-44, 35 Cal. Rptr. 554, (1963).

Section 304 is derived from and supersedes former Government Code Sections 190-196, Streets and Highways Code Section 104.3, and Water Code Section 256.

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STUDY 36.43 - CONDEMNATION (OPEN SPACE)

The Commission considered Memorandum 71-61 relating to open space acquisition. The Commission approved for incorporation in the Comprehensive Statute Government Code Sections 6950, 6952, 6953, 6955, and 6956 with Comments as set out in Exhibit I to the memorandum with the following changes:

(1) A provision should be added to specify that the resolution of necessity is not conclusive in open space acquisitions.

(2) Substitution of equivalent property should be made a prerequisite to disposal of open space property rather than allowing one year for substitution.

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STUDY 36.65 - CONDEMNATION (THE RIGHT TO TAKE--DISPOSITION ON  
CCP §§ 1240-1421)

The Commission considered Memorandum 71-52, proposing the repeal of Code of Civil Procedure Sections 1240 and 1241. The Commission determined to repeal both those sections, with Comments as set out in Exhibit I to the memorandum. In addition, the Commission noted that the repeal of subdivision (8) of Section 1240 was in anticipation of an appropriate replacement provision in the procedural portion of the Comprehensive Statute.

The Commission also approved the adoption of Public Resources Code Section 7994 with Comment as set out in Exhibit I to the memorandum. Although this section continues an existing portion of subdivision (2) of Section 1240, exempting certain sections of public land from condemnation, the Commission made its approval subject to reconsideration upon receipt of further information regarding this provision.

STUDY 36.65 - CONDEMNATION (AIRPORTS)

The Commission considered Memoranda 71-45 and 71-59, the First Supplement to Memorandum 71-59, and the tentative recommendations attached thereto. The following actions were taken.

Memorandum 71-45

Code of Civil Procedure

Section 1238(20)(repealed). Approved.

Section 1239.2 (repealed). Approved.

Section 1239.4 (repealed). Approved subject to adding to the Comment thereof an explanation that deletion of the reference to reservation of an "irrevocable free license" to the former owner will not qualify the right of condemnors to take less-than-fee interests for the purpose of removing hazards.

Government Code

Section 50485.13 (repealed). Approved subject to future deletion from the Comment of reference to the policy of Section 50485.2 to require police power regulation in lieu of condemnation where possible. The Commission requested that a memorandum be submitted regarding amendment of the policy of Section 50485.2.

Public Utilities Code

Section 21633 (amended). Approved.

Section 21634 (repealed). Approved.

Section 21635 (repealed). Approved.

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Section 21653 (added). The section was approved subject to the following amendments: (1) the words "private structures, railways, highways, mains, pipes, conduits, wires, cables, poles, and all other" were deleted from subdivision (a); (2) the words "by contract or otherwise" and "by condemnation if necessary" were deleted from subdivision (a), and the staff was directed to determine whether it would be necessary or appropriate to replace the deleted words with the standard phrase "by purchase, gift, devise, lease, condemnation, or otherwise."

Memorandum 71-59, First Supplement to Memorandum 71-59

Public Utilities Code

Section 21652 (added). The Commission determined that the taking of "excess" interests in land for the purpose of providing areas for the infliction of overflight disturbance should be permitted only in the cases described by Eminent Domain Code Section 421 (excess condemnation). The staff was directed to redraft subdivisions (a)(2) and (3) of proposed Section 21652 accordingly. The remainder of the section was approved subject to determination by the staff whether the words "by purchase, gift, devise, lease, condemnation, or otherwise" should be deleted from subdivision (a).

STUDY 36.65 - CONDEMNATION (NONPROFIT HOSPITALS)

The Commission considered Memorandum 71-62 and attached tentative recommendations. The following actions were taken.

HEALTH AND SAFETY CODE

Section 438.4 (amended). Approved.

Section 1427 (added). The section was approved subject to the following changes:

(1) The words "both of the following requirements are met:" were added at the end of subdivision (b).

(2) The words "of this code" were deleted from subdivision (b)(1).

(3) The form of subdivision (b)(1) was inverted so that the subdivision will read:

(1) A final and favorable decision concerning the project for which property is sought to be condemned has been made by a voluntary area health planning agency approved pursuant to Section 437.7, or the consumer members of such a voluntary area health planning agency acting as an appeals body, or the Health Planning Council.

(4) The first four lines of subdivision (c) were amended to read:

(c) The certificate of the Director of the State Department of Public Health pursuant to subdivision (b) shall certify and shall establish a presumption that:

(5) Subdivision (e) as proposed was deleted.

(6) The proposed Comment was amended to add an explanation that the proposed definition of "nonprofit hospital" replaces former limitations to hospitals engaged in scientific research or education, and to add an explanation that the requisite review of state and local agencies under the section will be supplemented by judicial review in any condemnation proceeding brought under the section.

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STUDY 39.10 - ATTACHMENT, GARNISHMENT, EXECUTION GENERALLY

The Commission considered Memorandum 71-66, the Third Supplement to Memorandum 71-58, and the oral reports of its consultants, Professors Riesenfeld and Warren, relating to recent developments in the attachment area. The Commission determined that a high priority should be given to the preparation of a recommendation providing attachment procedures which satisfy the constitutional standards announced in Sniadach and its progeny.

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STUDY 39.30 - ATTACHMENT, GARNISHMENT, EXECUTION (EMPLOYEES'  
EARNINGS PROTECTION LAW)

The Commission considered Memorandum 71-58, the Tentative Recommendation attached thereto, and the First and Second Supplements to Memorandum 71-58.

The following decisions were made pursuant to section-by-section analysis of the statutory portion of the recommendation:

Civil Code

Section 4701. The staff was directed to revise the Comment to include a cross-reference to the Employees' Earnings Protection Law relating to the applicability of this provision to public as well as private employers.

The staff was further directed to consider what revisions are necessary to ensure that service of any support order (under either this section or Section 723.30) does not furnish a basis for discharge from employment.

Code of Civil Procedure

Section 682. The Commission approved the addition of an amendment to paragraph (1) of this section in substantially the following form:

1. If it be against the property of the judgment debtor, it must require such officer to satisfy the judgment, with interest, out of the personal property of such debtor, or if it is against the earnings of such debtor, ~~only one-half of such earnings of the judgment debtor received for his personal services rendered at any time within 30 days next preceding such levy shall be subject thereto,~~ out of the earnings subject to execution under subdivision (e) of Section 690.5-1/2 and subdivision (c) of Section 690.6, and if sufficient personal property cannot be found, then out of his real property; . . . .

The Comment to this section should make clear that only those earnings that are subject to execution may be levied upon and that most earnings must be levied upon under the Employees' Earnings Protection Law.

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Section 688. The phrase "liable to execution" was changed to "subject to execution."

Sections 690.5-1/2 and 690.6. A note should be added to the Comments to these sections indicating that the attachment procedures have been severely limited by recent cases but exemptions from attachment are provided so that these exemptions may be retained if and when attachment procedures are devised by the Legislature which satisfy constitutional requirements.

Sections 690.7 and 690.7-1/2. The basic amount to be exempt from attachment should be changed to five hundred dollars. The caveat to Section 690.7 must be revised to reflect the Randone decision and it should be noted there that the attachment exemption is provided simply in anticipation of legislation providing constitutional attachment procedures. The second sentence in subdivision (a) of both sections was revised to read:

For the purposes of this section, a husband and wife shall be treated as one individual except (1) after the rendition of a judgment decreeing their legal separation; or (2) if they are living separate and apart, after the rendition of an interlocutory judgment of dissolution of their marriage.

A subdivision should be added to both sections providing substantially as follows:

( ) The exemptions provided by this section are exclusive. A debtor may claim no greater amount as exempt by showing that such amount was derived from his earnings or any other source.

The Comment should make clear that this subdivision precludes the debtor from tracing funds into his account from exempt sources but does not affect the rights of third-party claimants.

Section 723.22. The word "calendar" was deleted from the second line. The staff was directed to explain in the Comment that "day" means calendar day, not working day.

Section 723.23. The second sentence of the first full paragraph in the Comment on page 68 was deleted.

Section 723.25. The staff was directed to insert in the Comment to this section a cross-reference to the requirements concerning the employer's return. Subdivision (b) was revised to read:

(b) Notwithstanding subdivision (a), an employer is not required to pay over an amount withheld until the accumulated amount that has been withheld and not paid over equals or exceeds ten dollars (\$10), unless it appears that no additional money will be withheld from the employee's earnings pursuant to the particular earnings withholding order.

Section 723.30. Paragraph (4) of subdivision (b) was revised to read:

(4) An employer shall withhold earnings of an employee pursuant to both a withholding order for support and another earnings withholding order simultaneously. The amount to be withheld under the withholding order for support shall be deducted first from the earnings of the employee; the amount to be withheld pursuant to the other withholding order shall then be computed based on the earnings remaining after this deduction.

The staff was directed to expand the explanation in the Comment to Section 723.50 regarding the effects of the various combinations of withholding orders. The staff was further directed to determine: (1) To what extent, if any, attorney's fees may be recovered under a support order; (2) what revisions are necessary to ensure that service of a support order never serves as a basis for discharge from employment.

Section 723.51. The following sentence was added following the first sentence in this section:

This standard recognizes that the exemption provided by Section 723.50 should be adequate except in rare and unusual cases.

Section 723.101. Subdivision (b) was revised as follows:

(b) Notwithstanding Section 1032.6, a judgment creditor is not entitled to the costs of service under this chapter which exceed the cost of service by certified mail with return receipt requested.

Section 723.102. This entire section was revised to read:

723.102. A judgment creditor may apply for the issuance of an earnings withholding order by filing with the clerk of the court which entered the judgment pursuant to which the earnings withholding order is sought an application in the form prescribed by the Judicial Council.

Section 723.103. The leadline to this section was revised to read:

"Notice to judgment debtor."

Section 723.105. The clause "at any time" was deleted from the first line of subdivision (a).

Subdivision (e) was revised to provide substantially as follows:

(e) Except as provided in Section 723.106, if the earnings withholding order is terminated by the court, unless the court otherwise orders or unless there is a material change of circumstances since the time of the last prior hearing on the earnings withholding order, the judgment creditor may not apply for another earnings withholding order directed to the same employer with respect to the same judgment debtor for a period of 125 days following the date of issuance of the earnings withholding order.

Section 723.123. The second sentence of this section was revised to read:

In addition to other matters required by the Judicial Council, where the judgment debtor claims the exemption provided by Section 723.51, his application for a hearing shall indicate how much he believes should be withheld from his earnings each pay period by his employer pursuant to the earnings withholding order.

Section 723.162. Subdivision (b) was deleted and subdivision (a) was revised as follows:

(a) The fee for filing an application for an earnings withholding order under Section 723.102 is two dollars (\$2).

The staff was directed to make any changes in the remaining sections and preliminary portions of the tentative recommendation necessary to conform these parts to the sections revised above. Subject to these revisions, the Commission authorized the staff to have initial proofs of the recommendation prepared by the printer.

Minutes  
September 9, 10, and 11, 1971

STUDY 71 - PLEADING (COMPULSORY JOINDER OF CAUSES)

The Commission considered Memorandum 71-57 and the First Supplement to Memorandum 71-57.

It was noted that some of the letters contained suggestions or expressed concern as to particular aspects of the tentative recommendation. The Commission concluded that the various suggestions should be studied when the staff has time to prepare background material on the problems raised. Noting that prejudgment attachment and the recommendations to the 1972 Legislature will require all of the Commission's time, the staff was directed to try to work the matter of compulsory joinder of causes into the agenda sometime during 1972 if possible.



RONALD REAGAN  
GOVERNOR

# State of California

GOVERNOR'S OFFICE  
SACRAMENTO 95814

August 13, 1971

TO ALL AGENCY SECRETARIES  
AND DEPARTMENT HEADS:

Although the ink is scarcely dry on the 1971-72 Budget, it is already time to consider preparation of the 1972-73 Budget.

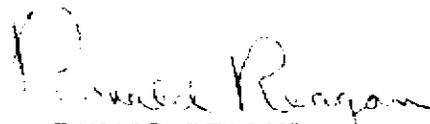
We have completed a difficult twelve months. Government at every level is under increasing pressure from those who would expand services, enlarge benefits and increase the scope of public services. At the same time, the overburdened taxpayer is rightly protesting the increasing share of his income which is going to support government.

This Administration came to Sacramento dedicated to reducing the spiraling costs of government. We felt then, and we continue to feel, that government should do only those things for citizens which they cannot do for themselves.

The successful achievement of our objectives will require continuing vigilance. We cannot afford to rest on the accomplishments of the past four and a half years. Pressures for increased spending mount with each austerity budget, with each veto. As the clamor for increased spending rises, so does the need for firmness and dedication in resisting the pleas.

As you consider your budget for 1972-73, I call upon each of you to exercise restraint. Budgets grow through the addition of a myriad of spending proposals, no one of which may seem out of line, but which in the aggregate cost the taxpayer hundreds of millions of dollars. Together we have accomplished much. There still remains much to do. I have frequently expressed my pride and my confidence in the team of dedicated individuals who came to Sacramento with me. As we face together the very difficult budgetary problems ahead, I am increasingly proud that this Administration will be able to hold the line and provide for citizens clear proof that government need not become larger and more costly year by year.

Sincerely,

  
RONALD REAGAN  
Governor

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