

October 28, 1971

Time

November 4 - 7:00 p.m. - 10:00 p.m.
November 5 - 9:00 a.m. - 5:00 p.m.
November 6 - 9:00 a.m. - 11:00 a.m.

Place

Stanford Law School
Lang Faculty Room
Stanford, CA 94305

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Stanford

November 4-6, 1971

NOVEMBER 4

1. Minutes of October 8-9 Meeting (sent 10/15/71)
2. 1971 Legislative Program

Memorandum 71-83 (enclosed)

3. Study 39 - Attachment, Garnishment, Execution

1971 Enactments and Effect on Commission's 1972 Legislative Program

Memorandum 71-84 (enclosed)

Employees' Earnings Protection Law

Memorandum 71-77 (sent 10/21/71)
Recommendation (attached to Memorandum)

4. Administrative Matters

Annual Report

Memorandum 71-75 and attached draft of Annual Report (sent 10/21/71)

Handbook of Commission Procedures

Memorandum 71-74 and attached draft of Handbook (sent 10/21/71)

Election of Commission Officers

Memorandum 71-82 (sent 10/21/71)

Report on Status of Background Studies Being Prepared by Consultants

Memorandum 71-76 (enclosed)

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NOVEMBER 5 AND 6

Continuation of Agenda item 3 if not completed on November 4

5. Study 36.80 - Condemnation (Procedural Problems Generally)

Memorandum 71-78 (sent 10/27/71)
Draft of Statute (attached to Memorandum)

Memorandum 71-79 (sent 10/21/71)
Consultant's Background Study (attached to Memorandum)

6. Study 36.35 - Condemnation (Immediate Possession)

Memorandum 71-80 (sent 10/21/71)

Continuation of Agenda item 4 if not completed on November 4

MINUTES OF MEETING

of

CALIFORNIA LAW REVISION COMMISSION

NOVEMBER 4 AND 5, 1971

Stanford

A meeting of the California Law Revision Commission was held at Stanford Law School on November 4 and 5, 1971. (The meeting was also scheduled to be held on November 6, but the meeting on that date was canceled because of lack of a quorum.)

Present: Thomas E. Stanton, Jr., Chairman
John D. Miller, Vice Chairman
Noble K. Gregory
Marc W. Sandstrom

Absent: Alfred H. Song, Member of Senate
Carlos J. Moorhead, Member of Assembly
G. Bruce Gourley
John N. McLaurin
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 November 4, ~~Professor Riesenfeld--Commission consultant on attachment, garnishment, and execution--~~was present. On November 5, Gideon Kanner and Norman E. Matteoni--~~Commission consultants on condemnation law and procedure--~~were present.

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

Thursday, November 4

John D. Bessey, Attorney for CAC, Sacramento
James M. Conners, Attorney for Board of Trade, San Francisco
William H. Davis, Marshal, Walnut Creek-Danville Judicial District
Nick Dreher, Stanford Law School
A. J. Krem, School of Law, Boalt Hall, Berkeley

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Thursday, November 4 continued

Barbara J. Levy, National Business Factors, San Francisco
Emil A. Markovitz, Creditor's Service, Los Angeles
Myrle E. Munoz, Marshal, Sacramento County
David L. Price, State Bar of California, Sacramento
Charlotte Shaber, National Business Factors, San Francisco
Perry H. Taft, Association of California Insurance Companies, Sacramento
Eric Wright, Santa Clara Law School

Friday, November 5

Lloyd Hinkelman, Office of Attorney General, Sacramento
James Markle, State Department of Water Resources, Sacramento
John M. Morrison, Office of Attorney General, Sacramento
Terry C. Smith, Los Angeles County Counsel
Charles E. Spencer, State Department of Public Works, Los Angeles

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ADMINISTRATIVE MATTERS

Correction and Approval of Minutes of October 8-9, 1971

The Minutes of October 8-9, 1971, meeting were approved after the following corrections were made:

On page 8, last line: correct spelling of "property."

On page 9, revise last paragraph to read:

The Commission directed the staff to draft a provision for consideration at a future meeting to provide that the measure of damages in the case of a partial taking is the difference between (1) the value of the whole property before the taking and (2) the value of the remainder after the taking as affected by the project for which it was taken. This formula in effect would ignore general and special damages as well as general and special benefits and uses a strict market value test.

On page 10, add the following sentence at the end of the page:

Commissioner Miller stated that he believed that the Commission should study the rules on whether the policy should be to compensate owners or to extend zoning to the full extent constitutionally possible.

Page 20. The Comment to Section 723.32 is still in the process of being drafted.

Page 21. The Commission discussed at length the revision of Section 723.101. No change was made in the Minutes, but revisions (discussed infra in these Minutes) are to be made in the recommended legislation to deal with the problem of when service is completed.

Election of Officers

The following officers were elected for two-year terms commencing on December 31, 1971:

Chairman - John D. Miller

Vice Chairman - Marc W. Sandstrom.

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Schedule for Future Meetings

The following is the schedule for future meetings:

December 1971

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 94102

January 1972

January 13 (evening)	7:00 p.m. - 10:00 p.m.	State Bar Building
January 14	9:00 a.m. - 5:00 p.m.	1230 West Third Street
January 15	9:00 a.m. - 1:00 p.m.	Los Angeles 90017

February 1972

February 11	9:30 a.m. - 5:00 p.m.	State Bar Building
February 12	9:00 a.m. - 1:00 p.m.	601 McAllister Street
		San Francisco 94102

March 1972

March 9 (evening)	7:00 p.m. - 10:00 p.m.	State Bar Building
March 10	9:00 a.m. - 5:00 p.m.	1230 West Third Street
March 11	9:00 a.m. - 1:00 p.m.	Los Angeles 90017

Note: The December meeting will be held on December 9 only if necessary.
The January or March 1972 meeting may be held at Long Beach but the meetings will be held on the dates indicated even if the place of a meeting is changed.

1971 Legislative Program

The Commission considered Memorandum 71-83 reporting the status of the 1971 Legislative Program. The amendment to Senate Bill 594 (discharge from employment) was approved.

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Annual Report

The Commission considered Memorandum 71-75 and the attached draft of the Annual Report. The draft was approved for printing with the following revisions:

(1) The inclusion of a list of Commission publications in the back of the Annual Report was approved.

(2) The portion entitled "Personnel of Commission" is to be revised to reflect events occurring prior to December 1, 1971.

(3) The additional amendments to Senate Bill 594 should be noted on page 30.

(4) The references to various provisions of the State and Federal Constitutions should be checked in the discussion on pages 31-34 and consistent references made to such matters as the "doctrine of separation of powers."

(5) On page 31, the report should state that "Seven" rather than "Eight" decisions holding statutes unconstitutional have been found. On page 33, it should be noted that the Commission is studying the procedure involved in Blair v. Pitchess and Randone. On page 34, the discussion of Serrano v. Priest should commence along the following lines: "The Commission also notes that Serrano v. Priest" The second sentence of the paragraph beginning on page 34 was deleted. The opinion in Serrano on rehearing should be considered.

(6) On page 35, the phrase "are unconstitutional" at the end of the last paragraph was deleted and the following substituted: "have been held to be unconstitutional."

A copy of the portion of the Annual Report containing the discussion of the cases holding statutes unconstitutional should be sent to the members of the Commission for their information and any comments they may have.

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Handbook of Practices and Procedures

The first two sentences on page 10 were deleted. The remaining sentence of the first paragraph should be set out as a separate matter in Chapter 5.

The Commission discussed the number of copies of its publications that are printed. No change was made in the policies set out on page 13.

Status of Background Studies Being Prepared by Consultants

The Commission received the background report on the above subject and noted its contents.

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STUDY 36.35 - CONDEMNATION (IMMEDIATE POSSESSION)

The Commission considered Memorandum 71-80 relating to possession of property prior to judgment in eminent domain proceedings. The Commission made the following determinations with regard to the draft statutory provisions attached to the memorandum:

Section 112. Disapproved as drafted. The Commission directed the staff to present another memorandum indicating the uses of the term "record owner" and any reasons for limiting the scope of the term.

Section 1269.01. The first portion of subdivision (a) was revised to read as follows:

(a) At the time of filing the complaint or at any time after filing the complaint and prior to entry of judgment, the plaintiff may apply ex parte to the court for an order for possession under this chapter, and the court shall make an order authorizing the plaintiff to take possession of the property if all of the following conditions are shown:

The word "court's" was deleted from subdivision (b). The staff was instructed to expand the Comment to indicate that the issue of the plaintiff's need for possession prior to judgment is incorporated in Section 1269.02.

Section 1269.02. The Commission directed the staff to redraft Section 1269.02 to incorporate these features:

(1) Any defendant or occupant of the property should be able to seek a stay of an order for possession on grounds of hardship at any time after issuance of the order.

(2) In a hardship hearing, the plaintiff should be required to show that it needs possession at the time specified in the order for possession and that the hardship it would suffer as a result of a stay would not be insignificant.

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(3) The court should have authority to set terms and conditions upon which immediate possession may be taken in the interest of flexibility.

Section 1269.025. The Commission revised Section 1269.025 to read substantially as follows:

1269.025. If the plaintiff has been authorized to take possession of property under Section 1269.01 and the defendant has objected, in the manner provided in Chapter 7 (commencing with Section 2100) of Division 8, to the plaintiff's right to take the property by eminent domain, the court, if it finds there is a reasonable probability the defendant will prevail, shall stay the order for possession until it has ruled on the defendant's objections.

Section 1269.03. This section was approved subject to revisions to clarify the interrelation between subdivisions (a) and (b).

Section 1269.04. This section was approved subject to review of the definition of "record owner" and subject to revising subdivision (c) to conform to the service requirements that would otherwise be applicable under existing law.

Section 1269.08. Subdivision (c) was deleted subject to reconsideration if it later appears that the provision is needed for a good reason. The section was renumbered 1271.01 and placed in a separate Chapter 4--Enforcement of Orders for Possession.

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STUDY 36.80 - CONDEMNATION (PROCEDURAL PROBLEMS GENERALLY)

Draft Statute

The Commission considered a portion of Memorandum 71-78 and the attached draft statute of preliminary procedural provisions for the Eminent Domain Code. The Commission took the following actions with respect to the draft provisions considered:

Division 8. Procedure. The Comment to the procedure division heading was revised to read as follows:

Comment. This division contains rules of practice expressly applicable to eminent domain proceedings. Unless otherwise provided in this division, the general rules of civil practice apply. See Section 201 and Comment thereto.

A conforming change was made in the Comment to Section 201.

Section 2000. The substance of this provision was approved subject to redrafting for clarity and subject to further consideration of the relationship of arbitration in eminent domain proceedings and of the relationship of the Public Utilities Commission to the superior court in eminent domain proceedings.

Section 2001. This section was disapproved. The Comment should be added to the Comment to Section 2000.

Section 2002. This section was disapproved.

Section 2010. Subdivision (a) of this section was approved as drafted and subdivision (b) was revised to read:

(b) When property sought to be taken is situated in more than one county, the plaintiff may commence the proceeding in any one of such counties.

The Comment to subdivision (b) should indicate that any needed relief from the operation of this subdivision may be obtained through change of venue procedures.

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Section 2011. This section was approved as drafted.

Section 2012. This section was approved after the opening proviso was deleted. The Comment should be expanded to indicate the various possible grounds for change of venue.

Section 2013. This section was disapproved; the Comment should be added to the Comment to Section 2012.

Section 2020. This section was approved after "is known as" was substituted for "shall be styled."

Section 2021. This section was disapproved; the Comment is to be added to the Comment to Section 2020.

Section 2022. Subdivision (a) was tentatively approved as drafted, but the remainder of this section was not reviewed.

Second Portion of Background Study

The Commission considered Memorandum 71-79 and the attached second portion of the research study prepared by its consultant, Mr. Matteoni, relating to procedural matters in condemnation from pretrial proceedings up to and including the verdict. With the view toward drafting specific procedural provisions for the comprehensive statute, the Commission made the following general policy decisions:

Discovery

The Commission discussed the special rules applicable to discovery of valuation data in eminent domain proceedings. The Commission determined to permit any county to develop by court rule its own provisions relating to discovery of valuation data and to have those rules supplant the statutory exchange of valuation data system if the Judicial Council finds that they serve the same purpose as the statutory system and are an adequate substitute for it.

The Commission also determined to distribute a questionnaire designed to gather data on the usefulness and effectiveness of the statutory exchange of valuation data system. The questionnaire should also be designed to collect other information relevant to the Commission's eminent domain studies, such as the use and effectiveness of arbitration.

Pretrial Conference

The Commission determined to take no action with respect to pretrial conferences. Any rules in this area are left to the Judicial Council.

Trial Preference

The Commission determined to retain the present statutory trial preference for eminent domain proceedings over all other civil actions. The Commission noted, however, that this determination is subject to modification depending upon what it does with respect to the date of valuation and related problems when it has these problems before it.

Continuance

The Commission determined to draft no special continuance provisions for eminent domain proceedings. As with trial preference, this determination is subject to future modification.

Functions of Court and Jury

The Commission determined to codify present law providing for jury trial on the issue of compensation, unless waived, and for trial by the court of all other issues.

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Burden of Proof Regarding Just Compensation

The Commission determined to abolish the burden of proof on just compensation. The Commission also tentatively determined to retain the present order of presentation of evidence and argument to the jury wherein the defendant presents his evidence first and opens and closes arguments to the jury. A note should be included in the tentative draft that the Commission solicits comments on this order of presentation.

Limitations on Selection and Number of Experts

The Commission discussed the progress of Senate Bill 615 limiting each party in a proceeding to two appraisal experts per parcel. The Commission determined to give further consideration to this proposal if and when it becomes law.

Repeal of Code of Civil Procedure Section 1266.2

The Commission determined to repeal Code of Civil Procedure Section 1266.2 relating to witness fees for court-appointed experts.

Exclusion of Witnesses From Courtroom

The Commission determined that there should be no special rules for eminent domain proceedings relating to exclusion of witnesses from the courtroom while others are under examination.

Verdict

The Commission determined to give further consideration to the form of verdict when it has drafted rules for compensation in eminent domain proceedings.

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STUDY 39.10 - ATTACHMENT, GARNISHMENT, EXECUTION
(ATTACHMENT GENERALLY)

The Commission considered Memorandum 71-84 and the report of the Executive Secretary regarding 1971 legislative activity in the area of attachment and execution generally. The Commission reviewed its decisions to present the Employees' Earnings Protection Law (EEPL) to the 1972 Legislature and to give priority to study of prejudgment attachment in an attempt to provide legislative solutions to the immediate problems in this area. The Commission reaffirmed its decisions to submit the EEPL and legislation relating to prejudgment attachment to the 1972 Legislature.

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

The Commission considered Memorandum 71-77 and the Tentative Recommendation relating to the Employees' Earnings Protection Law. The Commission generally approved the revisions made by the staff to subdivision (b) of Section 723.151 and subdivision (a) of Section 723.155 as set forth in preprint Senate Bill No. 1 and discussed on pages 2 and 3 of the memorandum. The phrase "in order to" was changed to "with the intent to" in subdivision (a) of Section 723.155.

The staff was directed to make the revisions necessary to make clear that (1) mail service must be accomplished by "certified or registered mail"; (2) mail service is deemed complete for purposes of priority between creditors when the mail is either delivered or refused; and (3) a creditor whose mail service has been refused may secure his prior position by court order--if a second creditor has intervened, the subsequent court order should be given effect when served, displacing the second creditor. No suit between the first and second creditor as to amounts paid over by the employer should be permitted nor should recovery from the employer be permitted unless he has acted in bad faith.

The staff was further directed to make conforming changes to the Comments and the preliminary portion of the recommendation. Subject to such changes, the recommendation was approved for printing together with the letter of transmittal to the Governor set out below.

November 1, 1971

To THE HONORABLE RONALD REAGAN
Governor of California and
THE LEGISLATURE OF CALIFORNIA

The California Law Revision Commission was directed by Resolution Chapter 202 of the Statutes of 1957 to study the law relating to attachment, garnishment, and property exempt from execution. This recommendation deals with one aspect of this subject--wage garnishment procedure and certain related matters.

Except for a few relatively minor differences, the proposed legislation set forth in this recommendation is the same as Preprint Senate Bill No. 1 for the 1972 session. The preprinted bill was printed late in October 1971 at the request of the Commission so that the substance of the Commission's recommendations would be available in convenient form for study prior to the 1972 legislative session.

This recommendation does not take into account legislation enacted after November 1, 1971; and, at the time this recommendation went to press, final action had not been taken on a number of bills affecting wage garnishment procedure and related matters. See, e.g., Assembly Bills 513, 1725, 2172, and 3057, introduced at the 1971 regular session. The Commission plans to study any bills enacted after November 1, 1971, and to request that any needed revisions in its proposed legislation be made after it has been introduced at the 1972 session.

The Commission wishes to acknowledge the substantial contribution of its research consultants, Professor William D. Warren, UCLA Law School, who provided the background study that served as the basis for this recommendation, and Professor Stefan A. Riesenfeld, Boalt Hall, University of California at Berkeley. The Commission also is indebted to numerous other persons who contributed to the development of this recommendation by attending Commission meetings or by submitting written comments.

This is the second in a series of recommendations. For the first recommendation, see Recommendation Relating to Attachment, Garnishment, and Exemptions From Execution: Discharge From Employment, 10 Cal. L. Revision Comm'n Reports 0000 (1971). See also Chapter 0000 of the Statutes of 1971.

Respectfully submitted,

THOMAS E. STANTON, JR.
Chairman