

MINUTES OF MEETING  
of  
CALIFORNIA LAW REVISION COMMISSION  
SEPTEMBER 7 AND 8, 1978  
San Francisco

A meeting of the California Law Revision Commission was held in San Francisco on September 7 and 8, 1978.

Law Revision Commission

Present: Howard R. Williams, Chairman  
Beatrice P. Lawson, V. Chairman  
Judith Ashmann  
John D. Miller  
Thomas E. Stanton, Jr.  
Laurence N. Walker  
Absent: George Deukmejian, Senate Member  
Alister McAlister, Assembly Member  
Jean C. Love  
Bion H. Gregory, Ex Officio

Staff Members Present

John H. DeMouilly  
Nathaniel Sterling  
Robert J. Murphy III

Consultant Present

Garrett H. Elmore, Guardianship-Conservatorship

Members of State Bar Subcommittee

Present: David Lee  
Absent: Arne S. Lindgren, Chairman  
Hon. Arthur K. Marshall  
Ann E. Stodden  
William S. Johnstone, Jr.  
Matthew S. Rae, Jr.

Other Invited Participants Present

W. Allen Bidwell, L.A. County Counsel's Office, September 7 and 8  
G. Sinclair Price, Vice President & Regional Trust Counsel,  
United California Bank, September 7 and 8  
Edward J. Wise, California Land Title Ass'n, September 8

ADMINISTRATIVE MATTERS

Minutes of August Meeting

The Minutes of the August 3-4, 1978, Commission Meeting were approved with the following corrections:

On page 2, in the last sentence of the third paragraph on the page, the word "memorandum" was substituted for "letter."

On page 7, in the first sentence under Section 2253, the words "at the hearing" were added following "proposed conservatee."

On page 13, before "§ 2616. Examination concerning assets of estate," the following was inserted:

§ 2610. Filing inventory and appraisal

Subdivision (b) was split into two subdivisions to read in substance as follows and former subdivision (c) was renumbered as subdivision (d):

(b) The guardian or conservator shall take and subscribe an oath that the inventory contains a true statement of all the estate of the ward or conservatee of which the guardian or conservator has possession or knowledge. The oath shall be endorsed upon or annexed to the inventory.

(c) The property described in the inventory shall be appraised in the manner provided for the inventory and appraisal of estates of decedents. The guardian or conservator may appraise the assets which an executor or administrator could appraise under Section 605.

In subdivision (c), to be renumbered as subdivision (d), paragraph (2) was revised to read:

(2) The property described in the inventory shall be appraised by the conservator and not by an inheritance tax referee.

New subdivision (b) set out above is drawn from Probate Code Section 604.

On page 22, the reference to "Section 2631" in the second sentence of the Comment to Section 2631 was changed to "Section 2632."

On page 27, third line, the letter "e" standing alone was deleted.

Schedule for Future Meetings

The Commission adopted the following schedule for future meetings:

**October**

October 6 - 10:00 a.m. - 5:00 p.m. San Francisco  
October 7 - 9:00 a.m. - 4:00 p.m.

**November**

November 2 - 7:00 p.m. - 10:00 p.m. San Francisco  
November 3 - 9:00 a.m. - 5:00 p.m.

**December**

December 7 - 7:00 p.m. - 10:00 p.m. Los Angeles  
December 8 - 9:00 a.m. - 5:00 p.m.

**January 1979**

January 11 - 7:00 p.m. - 10:00 p.m. San Francisco  
January 12 - 9:00 a.m. - 5:00 p.m.  
January 13 - 9:00 a.m. - 3:00 p.m.

**February**

February 8 - 7:00 p.m. - 10:00 p.m. Los Angeles  
February 9 - 9:00 a.m. - 5:00 p.m.

March

March	1 - 7:00 p.m. - 10:00 p.m.	San Francisco
March	2 - 9:00 a.m. - 5:00 p.m.	
March	3 - 9:00 a.m. - 3:00 p.m.	

1979-80 Budget

The Commission considered Memorandum 78-51. The following actions were taken:

(1) The Commission agreed to the \$305,674 allotted as a planning estimate by the Department of Finance for 1979-80.

(2) The Commission authorized the Executive Secretary to:

(a) Eliminate one Word Processing Technician position (leaving a Senior Word Processing Technician position and a Word Processing Technician position) on a permanent basis with the express understanding with the Department of Finance that the Commission will not request that the position be reestablished in the future;

(b) Reduce Mr. Murphy's position from a full-time position to a 3/4 time position during 1978-79; and

(c) Purchase a Xerox 2400 with the resulting salary savings.

(3) In the Salary and Wages Detail sheet (last sheet attached to the Memorandum), the line "Commission Member" was changed to "Commission Members (7)."

1978 Legislative Program

The Executive Secretary made the following report on the 1978 Legislative program:

ENACTED

SB 1395 (Chapter 150) - Parol evidence rule

SB 1425 (Chapter 151) - Duties of court commissioners under the Attachment Law

SB 1426 (Chapter 228) - Raises salary of commissioners appointed by Governor from \$20 to \$50 per day

AB 2230 (Chapter 286) - Review of resolution of necessity

AB 2281 (Chapter 266) - Powers of appointment

AB 2282 (Chapter 294) - Evidence of value of property

AB 2631 (Chapter 273) - Attachment (unlawful detainer and other matters)

ACR 85 (Resolution Chapter 65) - Authorizes study of five new topics

ACR 89 (Resolution Chapter 49) - Authorizes continued study of previously authorized topics

SENT TO GOVERNOR

AB 2517 - Psychotherapist-patient privilege

AB 393 - Wage Garnishment

DEAD

AB 2146 - Authorizes recommendations to correct defects in or to supplement legislation enacted upon Commission recommendation

STUDY F-30.300 - GUARDIANSHIP-CONSERVATORSHIP REVISION

Effect of Appointment of Conservator or Determination of Incompetence

The Commission considered Memorandum 78-56 and the attached draft statute and study relating to the legal capacity of a person for whom a conservator has been appointed. The Commission adopted the basic approach of dealing only with problems of the capacity of the conservatee to affect the conservatee's estate in the present recommendation. The staff was instructed to raise the question of a more general study of the rights and powers of incompetent persons and minors at a later meeting when priorities and suggestions for other new topics are being considered. The Commission made the following determinations with respect to the draft statute:

§ 1832. Effect of conservatorship on capacity of conservatee. The Commission adopted the principle of this section that, upon appointment of a conservator, the conservatee retains limited power to affect the conservatorship estate. The section was revised to read:

Except as otherwise provided in this article, upon appointment of a conservator of the estate, the capacity of the conservatee to bind or obligate the estate or affect property over which the conservatee has a power or in which the conservatee has an expectant interest is limited to transactions that are such as a reasonably prudent person might enter into.

The staff should consider adding a definition of "estate" that includes powers and expectant interests. A sentence should be added to the effect that nothing in the section is deemed to limit the powers and duties of the conservator under the conservatorship statute. The Comment should note the duty of the conservator to manage and control the conservatee's estate, including the duty to take possession of, marshal, and inventory the conservatee's assets, and Section 2401 (duty to manage estate using ordinary care and diligence) should be amended accordingly to impose on the conservator the duty of management "and control." The Comment to Section 1832 should also note that a person seeking to execute or enforce a transaction under Section 1832 will normally have to come to the conservator in the first instance for a determination whether the transaction is one within the capacity of the conservatee, and

the conservator, conservatee, or third person may obtain a court determination and instructions to the conservator if necessary in a particular case. The Comment should also note that the section is not intended to repeal by implication any other specific statute expressly giving a power to the conservator.

A new provision should also be added to the effect that an order or authority provided under the article does not affect any statutory limitations on the transaction, such as statutes of fraud, etc. The court should, however, be permitted to ratify a transaction if it appears that it satisfies all requirements imposed by law.

§ 1833. Court order affecting capacity of conservatee. Subdivision (a) was revised to read:

The court may by order modify the capacity a conservatee would otherwise have under Section 1832 by broadening or restricting the power of the conservatee to enter into such transactions or types of transactions as may be appropriate in the circumstances of the particular conservatee and estate.

The Comment should note that the court order might limit the conservatee to transactions of specified types, or other than specified types, or not exceeding specified amounts, with examples. The Comment should also note that the court may authorize broadened powers of the conservatee, for example to permit a conservatee who has a religious background to tithe, without further review or subject to the limitations of Section 1832.

§ 1834. Conservatee adjudged to be seriously incapacitated. The word "particular" should be inserted before "purpose" in subdivision (c). The first sentence of the second paragraph of the Comment should be revised to read, "Adjudging a conservatee to be seriously incapacitated under Section 1834 affects only the conservatorship estate."

§ 1835. Rights not affected by limitations of this article. This section should immediately follow Section 1831, which provides a very broad definition of "transaction."

§ 1836. Good faith purchaser or encumbrancer of real property. The reference to "good faith purchaser or encumbrancer for a valuable consideration" should be reviewed by the staff with the objective of making sure that it conforms with the recording statutes. The statute should be clear that, if property is located in more than one county,

recording in a county is constructive notice only as to the portion of the property located in that county.

§ 1837. Capacity to give informed consent to medical treatment. The statute should be clear that it applies only to the situation where the conservatee is totally lacking capacity to give informed consent to medical treatment of any form whatsoever.

§ 1838. Capacity to vote. This section should be included only if Assembly Bill 372 is enacted.

§ 1840. Duration of order affecting capacity of conservatee. The Comment to this section should include a cross-reference to the provision that a court order broadening the powers of a conservatee does not determine the capacity of a conservatee as of a subsequent time.

§ 1842. Procedure on petition for order affecting capacity of conservatee. This section should be split into smaller sections.

#### Special Procedure for Authorization of Medical Treatment

The Commission considered Memorandum 78-57 and the attached draft of statutory provisions and explanatory text relating to special procedures for authorizing medical treatment. The Commission approved the material, with the following revisions:

§ 3203. Who may file petition. Subdivision (d) should be revised to permit a petition by "a person acting on behalf of" the medical facility. The patient's physician should also be authorized to file a petition.

§ 3204. Contents of petition. The word "reasonable" was deleted from subdivision (f). A comparable change should be made in Section 2357(c), from which this section is derived.

§ 3208. Order authorizing treatment. The words "all of" were deleted from the phrase "all of the evidence" in subdivision (a). A comparable change should be made in Section 2357(h), from which this section is derived. A provision should be added to subdivision (b) to the effect that, until revoked, the order is authority upon which the attending physician or medical facility may rely.

#### Community and Homestead Property

The Commission considered Memorandum 78-58 and the attached draft of statutory provisions relating to management or disposition of community and homestead property where a spouse lacks legal capacity. The Commission made the following determinations:

§ 3002. Community property. The reference to quasi-community property should be deleted.

§ 3010. Homestead. The Comment should include more explanatory material concerning the married person's separate homestead.

§ 3012. Separate property. This section should be deleted.

§ 3023. Determination of validity of homestead or character of property. The staff should review this section to ascertain whether there is an overlap with the general provisions of the guardianship-conservatorship statute. Language should be added drawn from Probate Code Section 851.5 to the effect that, if it is not appropriate for the matter to be determined in the Probate Court, it must be resolved in a civil action.

§ 3050. Spouse having legal capacity; spouse lacking legal capacity. This section was deleted.

§ 3051. Community property. Subdivision (a) was revised to state that the capacity of one spouse to manage and control community property is not affected by the incapacity or alleged incapacity of the other spouse or by appointment of a conservator for the other spouse. If a conservator is appointed, the competent spouse has the exclusive right of management and control, and the community property does not become part of the conservatee's estate. However, where the competent spouse is conservator, the competent spouse has a fiduciary duty similar to that imposed on the husband prior to enactment of equal management and control. The conservator of the person or estate (or other interested person) may bring an action on behalf of the conservatee (or incompetent spouse) to enforce the competent spouse's fiduciary duty (or duty of good faith) by seeking appropriate relief, if the conservator (other interested person) has knowledge or reason to believe the conservatee's (or incompetent spouse's) rights in the community property are being or have been prejudiced. For this purpose, the conservator has the duty to keep reasonably informed.

The staff should investigate Probate Code Section 202(b) relating to written consent to management of community property in the decedent's estate to see whether those provisions relating to a writing filed in the proceeding are appropriate for inclusion here.

§ 3052. Separate property owned by one spouse subject to homestead. The staff should investigate the omission of provisions relating

to management of homestead property owned by a competent spouse to determine whether such provisions should be continued from existing law.

§ 3055. Effect on consent of death or subsequent lack of legal capacity. The references to "guardianship estate" in the Comment should be converted to references to "conservatorship estate."

§ 3071. Substitution for joinder or consent. Subdivision (b) should come at the end of this section. The provisions on capacity of the conservatee should make clear that they do not excuse compliance with this section in the case of community or homestead property.

§ 3122. Petition for court order authorizing transaction. This section should be redrafted to make more clear what allegations are required in the petition.

§ 3142. Rights of spouse. The phrase "adverse to the spouse" was replaced by the phrase "of lack of legal capacity" in subdivision (a)(1). The references to Director of Mental Health, public guardian, etc. in subdivision (a)(2) were deleted.

§ 3143. Right to jury trial. This section was deleted.

§ 3146. Restoration to legal capacity. This section should be replaced by a provision that the determination of lack of capacity is only for purposes of the particular action.

§ 3154. Further proceedings if transaction not consummated. The staff should review this section to make sure that there is adequate notice to all concerned parties.

Civil Code § 5128. The Commission discussed, but did not resolve, the issue of whether the standard "sufficient legal capacity to manage and control community property" is adequate.

Minutes

September 7 and 8, 1978

STUDY E-36.56 - EMINENT DOMAIN (AD VALOREM TAXES)

The Commission considered Memorandum 78-54 and the attached recommendation relating to ad valorem property taxes on property taken by eminent domain. The Commission approved the technical changes to the recommendation as set out in the memorandum and, as so revised, approved the recommendation for printing and presentation to the Legislature.

STUDY K-63.100 - EVIDENCE OF MARKET VALUE

The Commission considered Memorandum 78-52 presenting a staff draft of a recommendation relating to application of Evidence Code property valuation rules in noncondemnation cases. The Commission approved the basic concept of extending the Evidence Code valuation provisions to noncondemnation cases. The draft of the recommendation should be revised as follows:

Preliminary part. The explanatory portion of the recommendation should indicate the history of the evidence of market value provisions, and the fact that they were adopted prior to enactment of the Evidence Code, and were subsequently simply incorporated in the Evidence Code. The explanatory portion should make clear that the Commission's basic recommendation is that the valuation rules in all cases should be the same. On page 8, the discussion of default judgments should be expanded to state the reasons for excepting default judgments from the general rule that value must be within the range of opinion testimony, illustrated by facts in *City Bank of San Diego v. Ramage*, 266 Cal. App.2d 570, 72 Cal. Rptr. 273 (1968).

The argumentative language in the recommendation should be toned down, specifically:

On page 6, the quotation from *Foreman & Clark v. Fallon*, 3 Cal.3d 875, 479 P.2d 362, 92 Cal. Rptr. 162 (1971), should be deleted.

On page 14, the discussion of *County of Los Angeles v. Faus*, 48 Cal.2d 672, 312 P.2d 680 (1957), should indicate that the court was not called upon to determine the admissibility of comparable sales in non-condemnation cases.

On page 16, the statement that Section 816 has crystallized an extensive body of case law relating to comparable sales should have supporting authority.

On page 17, the statement that *Pao Ch'en Lee v. Gregorioux*, 50 Cal.2d 502, 326 P.2d 135 (1958), has not been followed should be qualified by the comment that it has not been followed in the appellate courts.

On page 23, the reference to "scant" case law should be deleted.

Evidence Code § 813. Subdivision (d), relating to values outside the range of opinion testimony in a default case, should be replaced by more appropriate wording.

APPROVED AS SUBMITTED \_\_\_\_\_

APPROVED AS CORRECTED \_\_\_\_\_ (for corrections, see Minutes of next meeting)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Executive Secretary