

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION

MAY 11, 1979

SAN FRANCISCO

A meeting of the California Law Revision Commission was held in San Francisco on May 11, 1979.

Law Revision Commission

Present:	Howard R. Williams, Chairperson	George Y. Chinn
	Beatrice P. Lawson, V. Chairperson	Ernest M. Hiroshige
	Judith Meisels Ashmann	Jean C. Love
Absent:	Omer L. Rains, Senate Member	Bion M. Gregory, <u>Ex Officio</u>
	Alister McAlister, Assembly Member	

Staff Members Present

John H. DeMouilly	Robert J. Murphy III
Nathaniel Sterling	Stan G. Ulrich

Consultant Present

Stephan A. Riesenfeld, Creditors' Remedies

Other Persons Present

Leigh Lutz, Sole Proprietor, San Francisco-Los Angeles-Cupertino

ADMINISTRATIVE MATTERS

Minutes of March Meeting

The Minutes of the March 30 and 31, 1979, Meeting were approved with the following change:

On page 1, the word "Chairman" was changed to "Chairperson" in the two places in which it occurred.

Meeting Schedule

The following schedule for future meetings was adopted:

June--No Meeting

July

July 26 - 7:00 p.m. - 10:00 p.m. San Francisco
July 27 - 9:00 a.m. - 5:00 p.m.
July 28 - 9:00 a.m. - 12:00 noon

(We will consider the staff and other comments on the tentative recommendation on enforcement of judgments at this meeting. If it appears that three days will not be required for the meeting, July 28 is subject to cancellation.)

August--No Meeting

September

September 13 - 7:00 p.m. - 10:00 p.m. Los Angeles
September 14 - 9:00 a.m. - 4:30 p.m.

(We hope to approve the recommendation on enforcement of judgments for printing at this meeting. The State Bar convention is in Los Angeles commencing September 15.)

October

October 26 - 10:00 a.m. - 5:00 p.m. San Francisco
October 27 - 9:00 a.m. - 12:00 noon

November

November 30 - 10:00 a.m. - 5:00 p.m. Los Angeles
December 1 - 9:00 a.m. - 12:00 noon

Legislative Program

The Executive Secretary made the following report on the 1979 legislative program:

ADOPTED OR ENACTED

Res. Ch. 19 (ACR 8--Continues authority to study existing topics, authorizes dropping of one topic, authorizes study of two new topics)

Ch. 31 (AB 135--Ad valorem taxes when property taken for public use)

SENT TO GOVERNOR

AB 11 (Wage garnishment procedure)

PASSED FIRST HOUSE

AB 212 (Probate Code construction)

Hearing by Senate Judiciary Committee requested for June 12.

Minutes
May 11, 1979

AB 617 (Effect on attachment of bankruptcy or assignment for benefit of creditors)

Hearing by Senate Judiciary Committee requested for June 12.

AB 714 (Confessions of judgment)

Hearing by Senate Judiciary Committee requested for June 12.

APPROVED BY POLICY COMMITTEE IN FIRST HOUSE

AB 261 (Guardianship-conservatorship revision)

To be set for hearing by Assembly Ways and Means Committee.

AB 167 (Conforming revisions to guardianship-conservatorship revision)

Sent to Assembly floor for vote.

TO BE SET FOR HEARING IN FIRST HOUSE NEXT YEAR

AB 1676 (Quiet title)

This is a "spot bill."

DEAD

AB 145 (Undertaking for costs)

APPROVAL OF CONTRACTS

The Commission considered Memorandum 79-20 and took the following actions.

Contract with Professor Riesenfeld

The Commission approved, and directed the Executive Secretary to execute on behalf of the Commission, a contract with Professor Stefan A. Riesenfeld to provide for reimbursement of his travel expenses in attending Commission meetings or legislative hearings, the total amount of such expenses not to exceed \$500, in connection with providing expert advice on the subject of creditors' remedies. The reimbursement is to be on a scale commensurate with that provided in the Rules and Regulations of the State Board of Control for the reimbursement of travel expenses of members of boards and commissions appointed by the Governor. The term of the contract ends on June 30, 1981.

Contract with Professor Carol S. Bruch

The Commission approved, and directed the Executive Secretary to execute on behalf of the Commission, a contract with Professor Carol S. Bruch of the University of California at Davis Law School to prepare a study on all aspects of community property (other than those covered by the study covering rights of creditors against community property). The compensation for the study is to be \$7,000, with an additional amount not in excess of \$500 to cover travel expenses. The first portion of the study is due by September 15, 1980. The contract should follow the standard form of Law Revision Commission research study contracts.

Contract with Garrett H. Elmore

If money in research contract category is available for that purpose, the Commission approved, and directed the Executive Secretary to execute on behalf of the Commission, a contract with Garrett H. Elmore to prepare a background study on the law dealing with involuntary dismissal for lack of prosecution. The compensation for the study is to be \$2,500, with an additional amount not in excess of \$300 for travel expenses. The study is due on June 1, 1980. The contract should follow the standard form of Law Revision Commission research contracts.

STUDY D-300 - ENFORCEMENT OF JUDGMENTS

The Commission considered Memorandum 79-27 and the staff draft of transitional provisions for the Enforcement of Judgments Law. Professor Riesenfeld noted a possible problem in extending the duration of a judgment lien from 10 to 20 years where there is a junior lienholder to the judgment lien expecting the judgment lien to terminate at the end of 10 years. The draft of transitional provisions was approved for distribution for comment to the persons who have received the draft of the tentative recommendation relating to enforcement of judgments.

STUDY D-310 - HOMESTEADS

The Commission considered Memorandum 79-9 relating to the probate homestead and related matters. The Commission felt that the ability of a spouse to protect the family dwelling against the claims of creditors should be preserved by providing in the Enforcement of Judgments Law for a nondebtor spouse to claim the dwelling exemption. The Commission was also concerned about the possibility of a spouse who owns a separate property dwelling taking action to exclude the nonowning spouse and minor children from the dwelling by transfer and ejectment. The staff should investigate this problem to ascertain possible solutions, such as temporary homestead, court order prevailing over prior transferees or affecting the right to get possession, or limitation on the ability to dispose of a dwelling, with particular emphasis on protection of minor children.

The Commission also discussed the nature of the probate homestead and determined to propose revisions to permit the homestead to be given for a limited period only, and not in fee. The probate homestead should not be limited to the dwelling of the survivors at time of death of the decedent. The staff should prepare a draft of a tentative recommendation along these lines for Commission review; this would be distributed for comment as a separate project apart from the enforcement of judgments study.

STUDY D-400 - ASSIGNMENT FOR BENEFIT OF CREDITORS

The Commission considered Memorandum 79-22 and the attached draft of a tentative recommendation relating to assignments for the benefit of creditors. The Commission heard the comments of Mr. Leigh Lutz, who handles many assignments as an assignee. The Commission approved the tentative recommendation as drafted for distribution for comment.

STUDY D-500 - CONFESSION OF JUDGMENT PROCEDURES

The Commission considered Memorandum 79-25 relating to Assembly Bill No. 714--confessions of judgment. The Executive Secretary noted that, notwithstanding the comments the Commission has received concerning possible amendments to the bill, Assemblywoman Waters is unwilling to make any amendments that may jeopardize passage of the bill. The Commission may wish to submit a supplementary bill next session.

STUDY F-100 - GUARDIANSHIP-CONSERVATORSHIP REVISION

The Commission considered Memorandum 79-23 relating to the confidentiality of the court investigator's report. The staff observed that it had contacted a number of people interested in this matter and could find no support for the staff's proposals in the memorandum. These people generally felt that it was important for persons involved in the case to know the contents of the court investigator's report. The Commission determined to revise Section 1826 as follows:

§ 1826. Information to proposed conservatee by court investigator; investigation and report

1826. If the petition alleges that the proposed conservatee is not willing to attend the hearing, or upon receipt of an affidavit or certificate attesting to the medical inability of the proposed conservatee to attend the hearing, the court investigator shall do all of the following:

* * * * *

(k) Mail, at least five days before the hearing, a copy of the report referred to in subdivision (j) to all of the following:

(1) The attorney, if any, for the petitioner.

(2) The attorney, if any, for the proposed conservatee.

(3) Such other persons as the court orders.

STUDY H-500 - QUIET TITLE ACTIONS

The Commission considered Memorandum 79-11 and the attached staff draft of a tentative recommendation to provide an in rem quiet title decree. The Commission approved the tentative recommendation for distribution for comment.

Minutes
May 11, 1979

STUDY H-700 - ABANDONMENT AND VACATION OF
PUBLIC STREETS AND HIGHWAYS

The Commission considered Memorandum 79-24 and the attached staff draft of a tentative recommendation to provide a uniform procedure for vacation of public streets, highways, and service easements. The Commission approved the tentative recommendation for distribution for comment.

STUDY K-100 - EVIDENCE OF MARKET VALUE

The Commission considered Memorandum 79-21 and the attached draft of the recommendation relating to evidence of market value. The staff noted that this matter was on the agenda in order to permit the appraisers to make a presentation to the Commission, but that the appraisers generally support the recommendation as it has been revised. The word "Chairman" in the letter of transmittal was changed to "Chairperson."

APPROVED AS SUBMITTED _____

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

Date

Chairperson

Executive Secretary