

MINUTES OF MEETING

of

CALIFORNIA LAW REVISION COMMISSION

NOVEMBER 30, 1979

LOS ANGELES

A meeting of the California Law Revision Commission was held in Los Angeles on November 30, 1979.

Law Revision Commission

Present: Beatrice P. Lawson, Chairperson
Judith Meisels Ashmann
Ernest M. Hiroshige
Jean C. Love
Warren M. Stanton

Absent: Omer L. Rains, Senate Member
Alister McAlister, Assembly Member
George Y. Chinn
Bion M. Gregory, Ex Officio

Staff Members Present

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

Consultant Present

Stefan A. Riesenfeld, Creditors' Remedies

Other Persons Present

Andrew D. Amerson, Deputy Attorney General, Los Angeles
Michael S. Barber, Office of District Attorney, and California
District Attorney's Ass'n, Sacramento
Robert Barton, Dep't of Social Services, Chief--Child Support, Sacramento
Manuel Jose Covarrubias, Channel Counties Legal Services Ass'n, Oxnard
D. Guy Frick, Deputy District Attorney, Ventura
Robert Klotz, Orange County Legal Aid Society, Santa Ana
Edward S. Mizrahi, Office of L.A. County District Attorney, Commerce
Earl Osadchey, L.A. County Head Deputy District Attorney, Child
Support, Commerce
Rene A. Paquin, Office of Orange County District Attorney, Santa Ana
Richard Rothschild, Western Center on Law and Poverty, Los Angeles
Ann Stodden, L.A. County Probate Commissioner, Member of Probate,
Estate Planning & Trust Section of State Bar, Los Angeles
Billy L. Trueblood, San Bernardino Deputy Dist. Attorney, San Bernardino
Albert L. Wells, Deputy Dist. Attorney, San Diego
H. Neal Wells, Exec. Comm., Probate, Estate Planning & Trust Section of
State Bar, Los Angeles

ADMINISTRATIVE MATTERS

MINUTES OF OCTOBER MEETING

The Minutes of the October 26, 1979, Meeting as submitted by the staff were approved after the following changes were made:

(1) On page 1, under "Other Persons Present," change "Amander" to "Amandes."

(2) On page 2, the meeting schedule should be revised to conform to the policy stated in the revision made on page 6 of the Minutes.

(3) On page 6, delete the last 8 lines, and insert:

A meeting scheduled for the equivalent of one day is scheduled on Friday from 10:00 a.m. to 5:00 p.m.

A meeting scheduled for one and one-half days is scheduled as follows:

Friday - 10:00 a.m. - 5:00 p.m.

Saturday - 9:00 a.m. - 12:00 noon

(4) On page 16, under "Parking Covenants and Utility Easements", change "uniformally" to "uniformly."

MEETING SCHEDULE

The following schedule for future meetings was adopted:

January 1980

January 18 (Friday) - 10:00 a.m. - 5:00 p.m. San Francisco
Airport

February 1980

February 15 (Friday) - 10:00 a.m. - 5:00 p.m. San Francisco

March 1980

March 14 (Friday) - 10:00 a.m. - 5:00 p.m. Los Angeles

April 1980

April 11 (Friday) - 10:00 a.m. - 5:00 p.m. San Francisco

May 1980

May 16 (Friday) - 10:00 a.m. - 5:00 p.m. San Francisco

June 1980

June 13 (Friday) - 10:00 a.m. - 5:00 p.m. Los Angeles

June 14 (Saturday) - 9:00 a.m. - 12:00 noon

July 1980

July 18 (Friday) - 10:00 a.m. - 5:00 p.m. San Francisco

July 19 (Saturday) - 9:00 a.m. - 12:00 noon

August 1980

No meeting

CONTRACT WITH PROFESSOR RIESENFELD

The Commission determined to increase by an additional \$750 the amount available for payment of travel expenses of Professor Riensenfeld under the contract providing for his attendance at Commission meetings and legislative hearings on the creditors' remedies study. The Executive Secretary was directed to execute, on behalf of the Commission, the necessary document to increase the travel expenses by \$750.00. This will enable Professor Riensenfeld to continue to be present when the creditors' remedies study is being considered.

STUDY D-300 - ENFORCEMENT OF JUDGMENTS (PROVISIONS
OF GENERAL APPLICATION)

The Commission considered Memorandum 79-51 and the attached staff draft of provisions of general application to enforcement of judgments and also the First Supplement to Memorandum 79-51. The Commission approved the draft subject to the following decisions:

§ 683.010. Judgment enforceable upon entry; automatic 10-day stay for money judgment unless court otherwise orders. The Commission agreed with the staff recommendation against the suggestion that the enforcement of money judgments be stayed for 10 days unless otherwise ordered by the court. Money judgments, like other judgments, should be enforceable upon entry unless the court affirmatively grants a stay of enforcement.

§ 683.020. Twenty-year period for enforcement of judgment. Judgments should be enforceable for 10 years unless within the 10-year period the enforceability of the judgment is extended. The number of possible extensions should not be limited. The staff is to draft a statute for Commission consideration that would provide for renewal of a judgment by filing an appropriate paper with the court clerk; notice should be given the judgment debtor so that any possible defenses to renewal can be raised. This procedure should be analogous to the procedure for obtaining a California judgment on the basis of a judgment of another state under Code of Civil Procedure Section 1710.010 et seq. If a judgment is renewed, the judgment lien should also be renewed upon the recording of an appropriate paper. The staff should also develop a

procedure for extending a judgment lien on property that has been transferred subject to the lien.

Registration of support judgment in new county. In order to avoid the need to bring an action on a support judgment in a county other than the county where the judgment is entered to provide a basis for issuance of a contempt order, the staff was instructed to develop a simple procedure for transferring such cases from county to county.

STUDY D-300 - ENFORCEMENT OF JUDGMENTS (EXEMPTIONS)

The Commission considered Memorandum 79-67 and the attached staff revision of the exemption provisions. The Commission directed the staff to include in the preliminary portion of the recommendation a discussion of the differing amounts of deposit account exemptions and an indication of the political reasons for not going for a single uniform deposit account exemption. The provisions relating to retirement funds should preserve existing law as to public retirement funds and should write in the federal limitations as to private retirement funds. As so revised, the exemption provisions should be incorporated in the comprehensive statute and sent to the debtor-creditor relations committee of the State Bar for comment.

STUDY D-300 - ENFORCEMENT OF JUDGMENTS
(HOMESTEAD EXEMPTION)

The Commission considered Memorandum 79-64 and the attached staff revision of the dwelling exemption provisions. The Commission directed the staff to review the draft to make certain that the \$7,500 proceeds exemption is not subject to junior liens, whether voluntary or involuntary. The draft should be revised to delete the 90 percent of fair market value minimum bid limitation; the judgment debtor is adequately protected by the four-month delay in sale during which the debtor may negotiate a voluntary sale. The draft should also be revised to make clear that the court need not value the judgment debtor's equity in the dwelling--the court should only be required to determine that it appears likely that the judgment debtor's equity exceeds \$100,000, and the bids will determine whether in fact the equity exceeds \$100,000. As so

revised, the dwelling exemption provisions should be incorporated in the comprehensive statute and sent to the debtor-creditor relations committee of the State Bar for comment.

STUDY D-300 - ENFORCEMENT OF JUDGMENTS
(SATISFACTION AND DISCHARGE OF JUDGMENTS)

The Commission considered Memorandum 79-40 and the attached staff draft of Division 5 (commencing with Section 724.010) pertaining to satisfaction and discharge of judgments. The staff noted that these provisions may need further consideration if Assembly Bill 1466 (currently pending in the Senate) is passed. The Commission approved the draft statute with the following changes:

§ 724.120. Contents of partial satisfaction of judgment. The staff should examine the Los Angeles County municipal court form for acknowledgment of partial satisfactions to see if any revisions of this section are advisable.

§ 724.310. Court order for entry of record of discharge of judgment under Bankruptcy Act. This section should be deleted. The Bankruptcy Act provides adequate remedies to guard against enforcement of a discharged judgment.

STUDY D-315 - ENFORCEMENT OF OBLIGATIONS AFTER DEATH

The Commission considered Memorandum 79-61, the original staff draft of a recommendation which was attached to the memorandum, and the Revised Staff Draft which was distributed separately after the memorandum was prepared.

The Commission determined that the provision relating to joint tenancy property should be deleted from the recommendation. The matter of joint tenancy should be considered in connection with the liability of community property to claims of creditors. In addition, the staff is to prepare a new recommendation which more adequately discusses the considerations involved in the joint tenancy problem. The draft legislation recommended by the Law Reform Commission of British Columbia also needs to be studied carefully in connection with the joint tenancy problem.

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The Commission approved the Revised Staff Draft for printing and submission to the 1980 session with one change. The draft should be revised to make clear that, in the case of an attachment, the surviving member or members of the decedent's family can claim, after the death of the decedent, the exemption for property necessary for the support of the members of the decedent's family supported in whole or in part by the decedent. The other exemptions provided under Section 487.020 also could be claimed.

STUDY D-320 - ENFORCEMENT OF CLAIMS AND JUDGMENTS
AGAINST PUBLIC ENTITIES

The Commission considered Memorandum 79-59, the revised recommendation which was attached to the memorandum, and a letter from the State Bar of California (attached to these Minutes) reporting the reaction of the State Bar Committee on Administration of Justice to the tentative recommendation.

The revised recommendation was approved for printing after the following additional section was added to the proposed legislation:

Gov't Code § 906 (added). Interest on allowed claims

906. Unless the public entity and the claimant otherwise agree in writing:

- (a) Interest on a claim allowed in full or in part accrues at the rate provided for judgments until the claim is paid.
- (b) Interest on a claim allowed in full commences to accrue 30 days after the claim is allowed.
- (c) Interest on a claim allowed in part commences to accrue 30 days after the claimant accepts in writing the amount allowed in full settlement of the claim.

Comment. Section 906 is added to provide rules governing when interest is payable on claims allowed in whole or in part. Section 906 recognizes that a public entity may allow a claim in whole or in part. See Sections 912.6 (local public entity), 965 (state).

STUDY D-501 - CONFESSION OF JUDGMENT IN SUPPORT
AND PATERNITY CASES

The Commission considered Memorandum 79-58 and the Revised Staff Draft (November 29, 1979).

The Revised Staff Draft was approved for printing and submission to the 1980 legislative session after the following changes are made:

Welfare & Institutions Code § 11476.1 (amended)

The following changes were made in this section:

(1) The last sentence of subdivision (a) was revised to read:

If both parents of the child agree to the entry of a judgment under this section providing for periodic child support payments, the judgment may include provisions granting child custody and provisions granting child visitation rights to the noncustodial parent.

(2) The second sentence of paragraphs (3) and (4) of subdivision (b) was deleted.

(3) Subdivision (g) was revised to read:

(g) For the purposes of this section, in making a determination of the noncustodial parent's reasonable ability to pay, the court shall consider any relevant circumstances set out in Section 246 of the Civil Code.

(4) Subdivision (h) was revised to read in substance:

(h) After arrest and before plea or trial, or after conviction or plea of guilty under Section 270 of the Penal Code, if the defendant appears before the court in which the criminal action is pending and the requirements of paragraph (1) or (2) of subdivision (b) are satisfied, the court may suspend proceedings or sentence in the criminal action, but this does not limit the later institution of a civil or criminal action or limit the use of any other procedures available to enforce such judgment. If a criminal action has been commenced and is pending under Section 270 of the Penal Code, the procedure provided by this section may be used only if the requirements of this subdivision are satisfied.

Welfare & Institutions Code § 11476.2 (added)

"STOP AND THINK." was substituted for "STOP." at the end of the form.

Welfare & Institutions Code § 11476.3 (added)

"STOP AND THINK." was substituted for "STOP." at the end of the form.

STUDY K-300 - EVIDENCE (PSYCHOTHERAPIST-PATIENT PRIVILEGE)

The Commission considered Memorandum 79-63 and the attached Revised Recommendation relating to the psychotherapist-patient privilege. The Commission approved the revised recommendation for printing and submission to the 1980 legislative session.

STUDY L-300 - PROBATE HOMESTEAD

The Commission considered Memorandum 79-60 and the attached draft of the tentative recommendation relating to the probate homestead. The Commission reviewed the comments received on the tentative recommendation and determined to make the changes suggested in Memorandum 79-60, with the exceptions noted below. As so revised the draft was approved to print as a final recommendation and to be submitted to the Legislature.

Probate Code § 661. Subdivision (c)(1), which provided that the court might not select a probate homestead out of property the recipient received by testate or intestate succession from the decedent, was deleted. The provision applied only to a limited number of cases and caused more confusion than any benefit it provided.

Probate Code § 663. The staff was directed to investigate the problem of enforceability of liens that arose prior to transfer of the dwelling to the decedent and to insert appropriate language to cure the problem of such liens being enforceable against the homestead recipient on the death of the decedent.

Probate Code § 664. The suitability of the property for use as a dwelling should be made a requirement for setting apart a homestead rather than a factor the court takes into account in making its selection.

Probate Code § 665. This section, which gives the court continuing jurisdiction to modify or terminate the probate homestead and to transfer the homestead to another property, was deleted. The court should have authority to modify or terminate the homestead only until the final decree of distribution of the estate. Reference should be made elsewhere in the statute to the Legal Estates Principal and Income Law.

APPROVED AS SUBMITTED _____

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

Date

Chairperson

Executive Secretary

THE STATE BAR OF CALIFORNIA

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555 FRANKLIN STREET
SAN FRANCISCO 94102
TELEPHONE 561-8200
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November 16, 1979

Executive Director
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State Bar Court

Secretary
MARY G. WAILES

California Law Revision Commission
Stanford Law School
Stanford, California 94305

Attention: Mr. John De Moully, Executive Director

Gentlemen:

Reference is made to your tentative recommendation relating to Enforcement of Claims and Judgments Against Public Entities.

The report was forwarded to the Committee on Administration of Justice for comments. Please note, however, that our comments have not yet been submitted to the Board of Governors for its approval, because of your desire to have a response by mid-November.

In general, CAJ found the recommendations in the report to be satisfactory.

Whatever enforcement period is approved in your proposed new overall statute on enforcement of judgments, it is suggested that the same period should likewise apply against public entities.

With respect to your proposal to eliminate execution, there was some sentiment that local public entities engaged in non-public activities should not be exempt from execution. One member opposed elimination of execution procedures

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regardless of whether the local governmental entity was engaged in traditional public activities or in non-public activities.

One member said that there is no harm in having execution available for use against public entities even though it is not often used.

Another member thought that the proposal to eliminate execution procedures may have been motivated by an attempt to eliminate disputes as to what property is exempt from execution, that this is not wise, and that the execution procedures should be retained.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Monroe Baer".

Monroe Baer
Staff Attorney

MB:rt