

MINUTES OF MEETING

of

CALIFORNIA LAW REVISION COMMISSION

JULY 22-24, 1982

SAN FRANCISCO

A meeting of the California Law Revision Commission was held in San Francisco on July 22, 23, and 24, 1982.

Law Revision Commission

|          |                                       |                       |
|----------|---------------------------------------|-----------------------|
| Present: | Robert J. Berton, Chairperson         | John B. Emerson       |
|          | Beatrice P. Lawson, Vice Chairperson  | Debra S. Frank        |
|          | (July 22-23)                          | (July 23-24)          |
|          | Roslyn P. Chasan                      | David Rosenberg       |
| Absent:  | James H. Davis                        | Omer L. Rains, Member |
|          | Bion M. Gregory                       | of Senate             |
|          | Alister McAlister, Member of Assembly |                       |

Staff Members Present

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

Consultants Present

Paul E. Basye, Property and Probate Law (July 23)  
Gail B. Bird, Property and Probate Law (July 22-23)  
Garrett H. Elmore, Property Law, Involuntary Dismissal for Lack of Prosecution  
(July 22)

Other Persons Present

George J. Alexander, University of Santa Clara Law School, Santa Clara  
(July 23)  
James D. Devine, State Bar, Estate Planning, Trust and Probate Law Section,  
Monterey (July 23-24)  
William H. Plageman, Jr., State Bar, Estate Planning, Trust and Probate  
Law Section, San Francisco (July 23)  
Diana Richmond, State Bar, Family Law Section, San Francisco (July 22)  
Carol Sanger, University of Santa Clara Law School, Santa Clara (July 23-24)

ADMINISTRATIVE MATTERS

MINUTES OF MAY 1982 MEETING

The Minutes of the May 13-15, 1982, Meeting as submitted by the staff were approved after the following change was made:

Pages 5 and 6 of the Minutes of the May 13-15, 1982, Meeting were corrected to reflect that the California Bankers Association took no position at the meeting. Mr. Rick Schwartz, who spoke only for himself, supported only amendments to AB 707 to delete the article on release of judgment liens on homesteads and did not support the other amendments (which restored protections afforded the judgment debtor under existing law). See the letter from Mr. Schwartz attached to the Minutes of the July 22-24, Meeting.

#### 1982 LEGISLATIVE PROGRAM

The Commission received the following report concerning the 1982 Legislative Program.

##### Enacted

- Ch. 150, Stats. 1982 - Senate Bill 203 (Increases interest rate to 10 percent as recommended by Commission. Also provides for prejudgment interest in personal injury actions.)
- Ch. 182, Stats. 1982 - Assembly Bill 2341 (escheat)
- Ch. 187, Stats. 1982 - Assembly Bill 2331 (holographic wills and oral wills)
- Ch. 269, Stats. 1982 - Assembly Bill 2643 (pay-on-death accounts)
- Ch. 497, Stats. of 1982 - Assembly Bill 798 (conforming revisions to enforcement of judgments bill) (companion bill to Assembly Bill 707)
- Res. Ch. 18, Stats. 1982 - ACR 76 (continues authority to study previously authorized topics)
- Res. Ch. 44, Stats. 1982 - AJR 63 (federal pensions and benefits subject to state marital property law)

##### Passed Second House; Concurrence in Senate Amendments Pending

Assembly Bill 2750 (conforming revisions to bonds and undertakings statute)

##### Approved by Policy Committee in Second House

(These bills will be heard by the Senate Finance Committee in August.)

- Assembly Bill 707 (enforcement of judgments)
- Assembly Bill 2332 (prejudgment attachment)
- Assembly Bill 2416 (marketable title)
- Assembly Bill 2751 (bonds and undertakings law)

##### Dead

Assembly Bill 325 (nonprobate transfers) (This recommendation was effectuated in part by Chapter 269 (AB 2643)--above--which was enacted)



SOUTHERN CALIFORNIA HEADQUARTERS

June 10, 1982

RICK SCHWARTZ  
Senior Counsel

(213) 228-2522

Mr. John H. DeMouilly  
Executive Secretary  
California Law Revision Commission  
4000 Middlefield Road, Room D-2  
Palo Alto, California 94306

RE: Minutes of California Law Revision Commission  
Evening Meeting of May 13th

Dear John:

Thank you for your letter of June 4, and enclosures.

Unfortunately, Page 6 of the minutes of the May 13th evening meeting does not correctly reflect the position of the California Bankers Association, which in fact took no position at that meeting. I announced at the beginning of the meeting that the views expressed were only my views and probably the views of Bank of America and were not necessarily the views of the California Bankers Association. This was because I have not had any communications from any representative of the California Bankers Association in several months on AB 707.

I indicated that I expected the California Bankers Association ("CBA") would support the amendment urged by the California Association of Collectors if it merely deleted the release of judgment liens on homestead provisions which begin on Page 129, Line 25 of AB 707, as amended in the Senate on May 28, 1982, through Line 13, of Page 134, but, that, the CBA would probably oppose the package of amendments proposed by the staff at the California Law Revision Commission meeting of May 13th. Those amendments do much more than merely delete the relief the release of judgment lien provisions and add back undesirable elements of existing law for no logical reason.

John H. DeMouilly  
June 10, 1982  
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I have attempted, on numerous occasions, to contact representatives of the CBA without success and hope to have an opportunity to chat with someone such as R. Blair Reynolds, Senior Legislative Counsel, of the the CBA prior to the hearing before the Senate Judiciary Committee on June 15, at 1:30 p.m. in Sacramento.

I will look forward to receiving the package of amendments referred to in your letter of June 4th.

Very truly yours,



Rick Schwartz  
Senior Counsel

RS:pa

cc: K. V. Larkin  
Executive Vice President #3001

R. Blair Reynolds  
Senior Legislative Counsel  
California Bankers Association  
1127 11th Street, Suite 706  
Sacramento, California 95814

Thomas Montgomery  
Assistant General Counsel #3017

Hal Broaders, Vice President  
Sacramento Representative #3217

Irv Gubman #3017  
Senior Vice President  
and Assistant General Counsel

K. M. Cologne #4017  
R. C. Herr #4017

STUDY F-600 - COMMUNITY PROPERTY

The Commission considered Memorandum 82-68 and the attached staff draft of a tentative recommendation to permit division of the joint tenancy and tenancy in common property at dissolution. The Commission approved the draft to distribute for comment, with instructions to the staff to look into whether "motion" is the proper means to bring the property within the jurisdiction of the court.

STUDY J-600 - DISMISSAL FOR LACK OF PROSECUTION

The Commission considered Memorandum 82-48 and the First Supplement thereto, analyzing the comments received on the tentative recommendation relating to dismissal for lack of prosecution. The Commission made the following determinations with respect to the tentative recommendation:

Dismissal for failure to serve and return summons within three years. The statute on dismissal for failure to serve and return summons should be revised along the lines of Senate Bill 1150, taking a strict approach to the service requirement and limiting the excuse of impossibility, impracticability, or futility, to overrule Hocharian v. Superior Court, 28 Cal.3d 714, 621 P.2d 829, 170 Cal. Rptr. 790 (1981). However, the statute should impose a four-year, as opposed to a three-year, period for service, and the requirement that summons be returned within that period should be eliminated. The service requirement should be mandatory but not jurisdictional, and should recognize exceptions included in the Commission's tentative recommendation--defendant not amenable to process of court, etc. The statute should not refer to causes beyond the plaintiff's control, but the Comment should state that the excuse is to be strictly construed. The rationale for the four-year period is based on the economics of litigation--with trials five years away the parties may conduct settlement negotiations and delay discovery and trial preparation until later in the proceedings. The statute should be revised to conform to Senate Bill 1150 if the bill passes.

Dismissal for failure to bring to trial within five years. The standard for dismissal under the five-year statute should be impossibility, impracticability, or futility (the same standard as under the three-year statute) without reference to "special circumstances that hindered the plaintiff" in bringing the case to trial. The Comment

should point out that unlike the three-year statute, where the standard is strictly construed, the standard under the five-year statute is to be interpreted in light of the general policy favoring trial on the merits. The five-year statute should be tolled during periods for which an excuse exists; the Comment should point out that this overrules cases that allow no tolling if the excuse ended sufficiently early in the five-year period that the plaintiff still had a reasonable opportunity to bring the case to trial. The reason for this change is that the absolute tolling provision eliminates the need for a hearing and increases certainty in determining when the five-year period has run. The statute should define what acts are sufficient to constitute a case being "brought to trial" for purposes of the five-year statute, and the staff should attempt to devise a procedure that is not resource-consuming and that does not waive any rights, such as the right to a jury trial. The procedure would not be the exclusive means of bringing a case to trial, however, and any other act that in fact brings the case to trial, such as impaneling a jury or swearing a witness, will also suffice. The Commission decided not to attempt to draft special provisions to deal with bifurcated trials.

Discretionary dismissal after two years. The provision for discretionary dismissal should be eliminated and replaced by a provision drawn from New York Law permitting the defendant to make a demand on the plaintiff for service and allowing dismissal if the plaintiff fails thereafter to serve. The recommendation should also note the ability of the defendant to make a motion to advance setting for trial.

STUDY L-625 - PROBATE CODE (TENTATIVE RECOMMENDATION  
RELATING TO WILLS AND INTESTATE SUCCESSION)

NUMBERING SYSTEM FOR NEW PROVISIONS OF PROBATE CODE

The Commission considered Memorandum 82-70. There was general agreement that ultimately there should be an entire new Probate Code and that the code should not use a decimal numbering system.

After considerable discussion, the Commission decided not to renumber the entire Probate Code at this time. The cost of reprinting the three volumes of the annotated code in which Division 3 (administration) is now contained and then reprinting those volumes a few years later when that division is revised by Commission recommendation was a major factor in the decision. The cost of printing extensive supplements to

existing probate manuals and textbooks and then a few years later publishing entirely new manuals and textbooks when the revision of Division 3 becomes effective also was a major factor in the decision.

It was decided that the new material contained in the recommendation to the 1983 session should use a decimal numbering system. When the recommendation on Division 3 is submitted, the entire Probate Code should be repealed and a new Probate Code enacted. This decision will result in the least cost and confusion to lawyers, judges, and the Judicial Council. The Commission's recommendation should indicate that the decimal numbering system is temporary.

#### OPERATIVE DATE

The Commission determined that the operative date of the new legislation should be January 1, 1985. However, the staff should consider and recommend to the Commission any provisions of the new statute that should have an earlier operative date. For example, the provisions relating to missing persons might be the subject of a separate recommendation and bill with an operative date of January 1, 1984. Perhaps the disclaimer provisions should have an operative date of January 1, 1984.

#### CONSIDERATION OF COMMENTS OF STATE BAR SECTION

The Commission determined that the printing of the recommendation should be delayed until after the September meeting in order to give the State Bar Section additional time to review the material prepared for the July meeting. The State Bar Section will submit its comments concerning the policy issues presented by the Commission's recommendation at the September meeting and will submit technical, drafting suggestions that do not involve policy issues to the Commission's staff for incorporation into the recommended legislation. The State Bar requested and the staff agreed to send a table showing the staff memos written on the probate recommendation and the subject matter of each.

After the September meeting, the recommendation will be printed as a tentative recommendation which will be distributed to interested persons and organizations for review and comment as soon as it is available in printed form. The recommended legislation will be sent to the Legislative Counsel for preparation in bill form after the September meeting with a goal of introducing the recommended legislation in December 1982.

#### IMPROVING DRAFTING OF UNIFORM PROBATE CODE PROVISIONS

The Commission has no objections to redrafting Uniform Probate Code provisions that are to be included in the recommended legislation, but provisions should be redrafted only when the redrafting would be a clear improvement.

#### NOTICE WHEN ESTATE PROPERTY IS SOLD

The Commission considered Memorandum 82-75 and the attached letter from Professor Benjamin D. Frantz of the McGeorge School of Law concerning Probate Code Section 772. The Commission approved the staff recommendation to forward the letter to the State Bar Estate Planning, Trust and Probate Law Section for their consideration and recommendation of any necessary corrective legislation.

#### PRELIMINARY PROVISIONS AND CONSTRUCTION; WORDS AND PHRASES DEFINED; EFFECT OF DEATH OF MARRIED PERSON ON COMMUNITY AND QUASI-COMMUNITY PROPERTY; SURVIVING SPOUSE'S RIGHT IN CALIFORNIA REAL PROPERTY OF NONDOMICILIARY DECEDENT; REQUIRED PERIOD OF SURVIVAL TO TAKE AS SURVIVOR

The Commission considered the First and Second Supplements to Memorandum 82-70 and the attached portions of the tentative recommendation. The Commission approved these portions of the tentative recommendation. Although the Commission does not plan to repeal the entire Probate Code at this time (see discussion above under heading "Numbering System for New Provisions of Probate Code"), existing Sections 1 through 11 of the Probate Code might be repealed and replaced with proposed new Sections 1 through 15. The staff should consider whether proposed Section 4(b) (uniform construction) makes unnecessary proposed Section 206.030 (uniform construction of Uniform Testamentary Additions to Trusts Act).

#### CONTRACTUAL ARRANGEMENTS RELATING TO RIGHTS AT DEATH

The Commission considered the Fourth Supplement to Memorandum 82-70 and the attached portions of the tentative recommendation concerning contractual arrangements relating to rights at death. The Commission made the following changes to the proposed legislation.

#### § 111.030. Waiver must be in writing

The Commission revised proposed Section 111.030 as follows:

111.030. A waiver agreement shall be reduced to a writing stating the terms of the waiver and shall be signed by ~~each spouse or prospective spouse~~ the party to be charged .

§ 111.040. Amendment; revocation

The Commission revised proposed Section 111.040 as follows:

111.040. ~~(a) Except as provided in subsection (b), a~~ A waiver agreement may not be altered, amended, or revoked except by a subsequent written agreement signed by both of the parties to the waiver agreement.

~~(b) A party may, by a signed writing, alter, amend, or revoke any or all terms or conditions of a waiver agreement otherwise beneficially enforceable by that party or may assume new duties or obligations pursuant to the agreement.~~

§ 111.050. Waiver agreement enforceable as of right

The Commission revised proposed Section 111.050 as follows:

111.050. A waiver that complies with Section 111.030 is enforceable unless the court determines any of the following:

(a) A ~~fair and reasonable~~ full and complete disclosure of the property of the decedent was not provided to the surviving spouse before the execution of the waiver agreement.

(b) The surviving spouse was not represented by independent legal counsel at the time of execution of the waiver agreement.

The Comment to Section 111.050 should make clear that under general legal principles the party executing a waiver agreement must have capacity to contract and not be induced to execute it by fraud or duress.

§ 111.080. Validity of agreements under prior law not affected

The Commission revised proposed Section 111.080 as follows:

111.080. Nothing in this article affects the validity or effect of any agreement or property settlement made prior to ~~June 30~~ December 31, 1984, and the validity and effect of such an agreement or property settlement shall be determined by the law applicable to the agreement or settlement ~~on June 30, 1984~~ prior to the enactment of this article.

§ 111.110. Contracts concerning will or succession

The Commission suggested that the staff consider including a statement in the Comment to Section 111.110 that, although a contract not to revoke a will may be established by a writing signed by the decedent evidencing the contract (subdivision (a)(3)), the existence of a joint or mutual will which does not refer to such a contract is not evidence of the contract.

DISCLAIMER OF TESTAMENTARY AND NONTESTAMENTARY INTERESTS

The Commission considered the Third Supplement to Memorandum 82-70 and the attached part of the tentative recommendation relating to disclaimer of testamentary and nontestamentary interests. The Commission made the following decisions:

§ 112.210. Right to disclaim interest

A statement should be inserted in the Comment to Section 112.210 noting that a disclaimer satisfying the standards of California law may not meet the federal standards, particularly in the case of the rules governing the time of filing disclaimers.

§ 112.250. Time within which disclaimer must be filed

The Comment to Section 112.250 should note that a disclaimer filed within the time permitted by this section may not meet the requirements of I.R.C. Section 2518 necessary to avoid a taxable transfer under federal law.

§ 112.260. Filing of disclaimers

The staff should investigate whether under existing Section 190.4 disclaimers are being filed in superior courts in counties where administration would be proper. The staff should consider replacing the provision for filing disclaimers in the superior court where the decedent's estate is being administered or where administration would be proper with a provision for filing with the Secretary of State.

§ 112.340. Preexisting rights not affected

The question was raised whether this section authorized common law disclaimers that did not comply with the other requirements of the chapter on disclaimers. The reference to disclaimers should be deleted from this section to avoid litigation over whether a disclaimer not meeting the requirements of this chapter is valid under the common law.

**EFFECT OF HOMICIDE**

The Commission considered the Fifth Supplement to Memorandum 82-70 and the attached portion of the tentative recommendation relating to effect of homicide. The Commission approved this portion of the tentative recommendation.

**WILLS GENERALLY**

The Commission considered the Sixth Supplement to Memorandum 82-70 and the attached portion of the tentative recommendation relating to wills generally. The Commission decided that the rules of construction in the tentative recommendation taken from existing California law should be retained. The staff should consider whether the language of

the existing rules of construction should be modernized. The Commission approved this portion of the tentative recommendation with the following changes:

§ 200.010. Who may make a will

The Commission suggested that if the Commission's recommendation concerning emancipated minors is enacted, the Comment to proposed Section 200.010 should indicate that that statute permits an emancipated minor to make a will.

§ 204.090. Scope of disposition to a class; afterborn child

The Commission revised proposed Section 204.090 as follows:

204.090. A testamentary disposition to a class includes every person answering the description at the testator's death; but when the possession is postponed to a future period, it includes also all persons coming within the description before the time to which possession is postponed. ~~A child conceived before but born after a testator's death, or any other period when a disposition to a class vests in right or in possession, takes, if answering to the description of the class.~~

The Comment to this section or the repealed section of existing law from which it is taken (Prob. Code § 123) should note that the deletion of the second sentence is nonsubstantive, since the matter is covered by Sections 100.040 ("child" defined) and 220.080 (posthumous children inherit).

§ 204.320. Construction of will as a whole

The Commission revised proposed Section 204.320 as follows:

204.320. Where the meaning of any part of a will is ambiguous or doubtful, it may be explained by any reference thereto, or recital thereof, in another part of the will. All the parts of a will are to be construed in relation to each other, and so as, if possible, to form one consistent whole; ~~but where several parts are absolutely irreconcilable, the latter must prevail.~~

§ 204.420. Unpaid proceeds of sale, condemnation, or insurance; property obtained as a result of foreclosure

The Commission requested the staff to write a memorandum on the extent to which there is no ademption where specifically devised property disposed of by the testator may be traced into property in the testator's estate. See generally French & Fletcher, A Comparison of the Uniform

Probate Code and California Law With Respect to the Law of Wills, in Comparative Probate Law Studies 384-85 (1976). The memorandum should discuss whether proposed Section 204.420 may change existing law.

#### CALIFORNIA STATUTORY WILL

The Commission considered the Seventh Supplement to Memorandum 82-70 and the attached portion of the tentative recommendation relating to the California statutory will. The Commission had some concern over the provisions for a statutory will with trust. If the State Bar bill to enact the California statutory will which is now pending in the Legislature (AB 2452) becomes law in its present form, the Commission decided to include both the simple statutory will and the statutory will with trust in the Commission's recommended legislation. If the bill is not enacted, the Commission decided to give further consideration to whether the will with trust should be included in the recommended legislation.

#### UNIFORM TESTAMENTARY ADDITIONS TO TRUSTS ACT; LIFE INSURANCE AND OTHER TRUSTS; DEVISE SUBJECT TO UNIFORM GIFTS TO MINORS ACT; FILING NOTICE OF WILL; UNIFORM INTERNATIONAL WILLS ACT

The Commission considered the Eighth Supplement to Memorandum 82-70 and the attached portions of the tentative recommendation. The Commission approved this portion of the tentative recommendation with the following changes:

#### § 206.030. Uniform construction

The staff should consider whether proposed Section 206.030 should be deleted in view of proposed Section 4(b) (uniform construction).

#### §§ 208.010-208.060. Filing notice of will

The Commission requested the staff to draft a section to provide that when the Secretary of State receives a request for information accompanied by a death certificate of the testator's death, the Secretary of State may destroy the record of the testator's will 10 years thereafter.

#### INTESTATE SUCCESSION

The Commission considered the Ninth Supplement to Memorandum 82-70 and the attached portion of the tentative recommendation relating to intestate succession. The Commission approved this portion of the tentative recommendation.

Since proposed Section 220.090(a)(3) provides that a stepparent adoption does not cut off the child's right to inherit from or through the natural parent who gave up the child for adoption, the Commission was of the view that the natural parent should be given notice of this rule at some point in the adoption proceedings. The staff should consider whether proposed Section 220.090(a)(3) might be construed to give the child adopted by a stepparent the right to claim as a pretermitted child against the estate of the natural parent who gave up the child for adoption.

#### FAMILY PROTECTION

The Commission considered the Tenth, Eleventh, and Twelfth Supplements to Memorandum 82-70, Memorandums 82-71 and 82-73, and attached materials, relating to family protection. The Commission approved the portions of the tentative recommendation attached to the Tenth, Eleventh, and Twelfth Supplements, except that it should be made clear in proposed Section 254.140(a)(1) (attached to Eleventh Supplement) or in the Comment to that section that "estate" means the probate estate. The Commission disapproved the proposals contained in Memorandums 82-71 and 82-73.

#### ESCHEAT OF DECEDENT'S PROPERTY

The Commission considered the Thirteenth Supplement to Memorandum 82-70 and the attached portion of the tentative recommendation relating to escheat of decedent's property. The Commission approved this portion of the tentative recommendation.

#### CONFORMING REVISIONS, DIVISION 3 (ADMINISTRATION OF ESTATES)

The Commission considered the Fourteenth Supplement to Memorandum 82-70 and the attached portion of the tentative recommendation making necessary conforming revisions to Division 3 of the Probate Code (Sections 300-1240). The Commission approved this portion of the tentative recommendation, except that the staff should consider whether a sentence should be added to proposed Section 351.5 to say that the contestant of a will has the burden of establishing that the will has been revoked. Cf. UPC § 3-407.

#### ADMINISTRATION OF ESTATES OF MISSING PERSONS

The Commission considered the Sixteenth Supplement to Memorandum 82-70 and the attached portion of the tentative recommendation relating

to administration of estates of missing persons. The Commission approved this portion of the tentative recommendation. The staff should consider whether this portion might be split out from the main part of the recommendation and submitted as a separate recommendation and bill which would not have a deferred operative date (see discussion supra under heading "Operative Date").

#### LIMITED CONSERVATORSHIPS

The Commission considered the Seventeenth Supplement to Memorandum 82-70 which included a letter from attorney David H. Spencer suggesting that a copy of the report prepared by a regional center on a proposed limited conservatorship be furnished to the petitioner or the petitioner's attorney (if there is one) at least five court days before the date set for the hearing on the petition for establishment of the limited conservatorship.

The Commission approved the draft of the amendment to Section 1827.5 of the Probate Code which was attached to the supplement, after "five days" was changed to "10 days" in subdivision (b). This amendment will be included in legislation to be submitted to the 1983 Legislature.

#### CONFORMING REVISIONS IN OTHER CODES

The Commission considered the Fifteenth Supplement to Memorandum 82-70 and the attached portion of the tentative recommendation making necessary conforming revisions in other codes. The Commission approved this portion of the tentative recommendation, except that the Commission decided that Evidence Code Section 667 should be revised in very limited fashion to change from seven to five years the period after which a missing person is presumed dead. The approved revision to Evidence Code 667 should read:

Evidence Code § 667. Presumption of death

667. A person not heard from in ~~seven~~ five years is presumed to be dead.

STUDY L-703 - CONSENT TO HEALTH CARE

The Commission considered Memorandum 82-69 and the attached staff draft of a recommendation relating to appointment of a health care representative. The draft recommendation is to be revised in accordance with the following Commission decisions and presented for approval at the September meeting.

Location of proposed statute. The Commission suggested that the staff consider locating the proposed statute in a different place, it being the consensus that it was inappropriately placed with the durable power of attorney act and other agency matters. It was suggested that the staff consider locating the proposed statute near the Natural Death Act in the Health and Safety Code.

Civil Code § 2430. Definitions. "Person" should be defined to include both adults and emancipated minors, thereby simplifying drafting and permitting emancipated minors to be appointed as health care representatives. The definition of health care should be revised to make clear that a health care decision includes consent to, refusal to consent to, and the withdrawal of consent to health care.

Civil Code § 2431. Appointment of health care representative. Subdivision (b) should be revised to require that the appointment of a health care representative be witnessed by two persons, rather than one. This provision would then be consistent with the two witness requirement for a will and for a directive to physicians under the Natural Death Act (see Health & Safety Code § 7188). This section should also provide that the witnesses are to attest that the appointor appeared to be of sound mind and that the appointor was not under duress in making the appointment. The Comment should be expanded to include more of a discussion of the requirement that the appointor be of sound mind when the appointment is made.

Civil Code § 2432. Authority of health care representative. In this section, or by definition, it should be made clear that the health care representative is empowered to withdraw consent to health care.

Subdivision (c) should be revised substantially as follows:

(c) Unless the appointment provides otherwise, a health care representative who is reasonably available and willing to act has priority over any other person authorized to give consent or refuse to consent to make health care of decisions for the appointor.

Civil Code § 2436. Disqualification of persons to consent to health care. This section should also provide a means of revoking a disqualification of another person to make health care decisions for the person who executes the disqualification. A form for the disqualification should also be provided.

Civil Code § 2441. Form for appointment. The statement in the form relating to special conditions should be expanded and conformed to the governing language in the relevant sections so that the form will be more self-explanatory. The statement of witnesses should also be conformed to decisions made concerning attestation (see the discussion of Civil Code § 2431 above).

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chairperson

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