

0001W
May 10, 1985

Note. Changes may be made in this Agenda. For meeting information, please call John H. DeMouilly (415) 494-1335.

Time

Place

May 16 (Thursday) - 3:00 p.m. - 10:00 p.m.
May 17 (Friday) - 9:00 a.m. - 6:00 p.m.

Room 125, State Capitol
Sacramento

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Sacramento

May 16-17, 1985

1. Minutes of April 18-19 Meeting (sent 5/3/85)
2. Administrative Matters

Legislative Program

Memorandum 85-51 (enclosed)

Memorandum 85-58 (enclosed)

3. Comments of State Bar Section Concerning AB 196

Memorandum 85-56 (sent 5/3/85)

Letter from State Bar Section (attached to Memorandum)

Assembly Bill 196 (as amended) (attached to Memorandum)

First Supplement to Memorandum 85-56 (enclosed)

4. SPECIAL ORDER OF BUSINESS AT 3:30 P.M. ON MAY 16

Study L-1028 - Probate Code (Independent Administration)

Memorandum 85-50 (sent 4/22/85)

Memorandum 85-57 (sent 5/9/85)

First Supplement to Memorandum 85-50 (sent 4/22/85)
Second Supplement to Memorandum 85-50 (sent 4/22/85)
Third Supplement to Memorandum 85-50 (sent 5/3/85)
Fourth Supplement to Memorandum 85-50 (sent 5/9/85)
Letter and attachment from Jerome Sapiro (sent 5/9/85)
Fifth Supplement to Memorandum 85-50 (enclosed)

5. Study L-1031 - Probate Code (Passage of Property to Surviving Spouse Without Administration)

Memorandum 85-47 (sent 4/22/85)
Memorandum 85-57 (sent 5/9/85)
First Supplement to Memorandum 85-47 (sent 5/9/85)

6. Study L-1030 - Probate Code (Collection or Transfer of Small Estate Without Administration)

Memorandum 85-48 (sent 4/22/85)
First Supplement to Memorandum 85-48 (enclosed)

7. Study L-1032 - Probate Code (Small Estate Set-Aside)

Memorandum 85-49 (sent 4/22/85)
Memorandum 85-57 (sent 5/9/85)
First Supplement to Memorandum 85-49 (sent 5/9/85)

8. Study L-1020 - Probate Code (Powers and Duties of Personal Representative)

Memorandum 85-13 (sent 1/9/85; another copy sent 4/22/85)
Draft Statute (attached to Memorandum)
First Supplement to Memorandum 85-13 (sent 2/22/85; another copy sent 4/22/85)
Second Supplement to Memorandum 85-13 (sent 3/13/85; another copy sent 4/22/85)
Third Supplement to Memorandum 85-13 (sent 4/1/85; another copy sent 4/22/85)

9. Study L-640 - Probate Code (Trusts - Spendthrift Trusts)
Memorandum 85-54 (sent 5/3/85)

10. Study L-1025 - Probate Code (Presentation of Claims)
Memorandum 85-34 (sent 2/28/85; another copy sent 4/22/85)
Draft Statute (attached to Memorandum)
Revised First Supplement to Memorandum 85-34 (sent 4/1/85;
another copy sent 4/22/85)

11. Study L-1026 - Probate Code (Payment of Demands)
Memorandum 85-35 (sent 2/22/85; another copy sent 4/22/85)
Draft Statute (attached to Memorandum)
Revised First Supplement to Memorandum 85-35 (sent 4/1/85;
another copy sent 4/22/85)
Memorandum 85-57 (sent 5/9/85)

12. Study L-1027 - Probate Code (Accountings)
Memorandum 85-36 (sent 2/28/85; another copy sent 4/22/85)
Draft Statute (attached to Memorandum)
First Supplement to Memorandum 85-36 (sent 3/8/85; another
copy sent 4/22/85)
Revised Second Supplement to Memorandum 85-36 (sent 4/1/85;
another copy sent 4/22/85)

13. Study L-1050 - Probate Code (Guardianship-Conservatorship)
Memorandum 85-7 (sent 12/8/84; another copy sent 4/22/85)
First Supplement to Memorandum 85-7 (sent 12/26/84; another
copy sent 4/22/85)
Second Supplement to Memorandum 85-7 (sent 1/9/85; another
copy sent 4/22/85)
Third Supplement to Memorandum 85-7 (sent 4/1/85; another
copy sent 4/22/85)

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION
MAY 16-17, 1985
SACRAMENTO

A meeting of the California Law Revision Commission was held in Sacramento on May 16-17, 1985.

Law Revision Commission

Present: Edwin K. Marzec, Chairperson
Arthur K. Marshall
Bion M. Gregory

Roger Arnebergh
Ann E. Stodden

Absent: Barry Keene, Member of Senate
Alister McAlister, Member of Assembly
James H. Davis, Vice Chairperson

John B. Emerson

Staff Members Present

John H. DeMouilly
Robert J. Murphy III

Nathaniel Sterling
Stan G. Ulrich

Consultants Present

Edward C. Halbach, Jr., Property and Probate Law

Other Persons Present

Robert C. Amore, Realtor, San Francisco (May 16)
Martha A. Barszcz, American Association of Retired Persons,
Sacramento (May 16)
Mike Belote, California Association of Realtors, Sacramento
(May 16)
Edward V. Brennan, California Probate Referees, San Diego
Charles Collier, State Bar Estate Planning, Trust and Probate
Law Section, Los Angeles
Bill Davis, Brandenburger & Davis, Sacramento
Nancy E. Ferguson, California Probate Referees, Chico
(May 17)
Dugald Gillies, California Association of Realtors,
Sacramento (May 16)
Dan Grothe, California Probate Referees, Lakeport (May 16)
John Finbarr Hayes, Catholic Priest, Berkeley (May 16)
William Johnson, Probate Examiner, Sacramento (May 16)
Sandra Kass, California Bankers Association, Los Angeles
James Mattesich, Livingston & Mattesich, Sacramento
Valerie J. Merritt, Los Angeles County Bar Association, Los
Angeles

J. S. Moseley, California Probate Referees, Pasadena (May 16)
James Quillinan, State Bar Estate Planning, Trust and
Probate Law Section, Mountain View (May 17)
Jerome Sapiro, Attorney-Member State Bar Estate Planning,
Trust and Probate Law Section, San Francisco (May 16)
Mrs. Jerome Sapiro, visitor, San Francisco (May 16)
Jerome Sapiro, Jr., Lawyers Club of San Francisco, San
Francisco, (May 16)
Michael Smith, California Newspaper Service Bureau, Los
Angeles (May 16)
Kay Trout, California Probate Referees, Pasadena (May 16)
Richard V. Wellman, Law Professor, Sacramento, (May 16)

ADMINISTRATIVE MATTERS

MINUTES OF APRIL 18-19, 1985, MEETING

The Minutes of the April 18-19, 1985, meeting were approved as submitted.

SCHEDULE FOR FUTURE MEETINGS

The Commission changed the time for the June meeting. The following is the schedule for future meetings of the Law Revision Commission.

June

June 27 (Thursday)	1:00 p.m. - 9:00 p.m.	San Francisco
June 28 (Friday)	9:00 a.m. - 5:00 p.m.	

September

September 12 (Thursday)	3:00 p.m. - 10:00 p.m.	State Capitol
September 13 (Friday)	9:00 a.m. - 6:00 p.m.	

October

October 10 (Thursday)	3:00 p.m. - 10:00 p.m.	Orange County
October 11 (Friday)	9:00 a.m. - 6:00 p.m.	

December

December 5 (Thursday)	3:00 p.m. - 10:00 p.m.	State Capitol
December 6 (Friday)	9:00 a.m. - 6:00 p.m.	

AGENDA FOR JUNE MEETING

The Commission decided that it will consider the probate referee system at the June meeting. The Commission decided not to meet on Saturday. The Commission decided to meet from 1:00 p.m. to 9:00 p.m.

on Thursday. The Commission decided not to consider the trust study at the June meeting. The discussion of the probate referee system should be scheduled for consideration from 7:00 p.m. to 9:00 p.m. on Thursday evening. Persons and organizations that might wish to suggest a revision in the existing system should be invited to attend the meeting so that the Commission will be aware of the revisions that interested persons and organizations believe should be made and the probate referees will be provided an opportunity to give their views on any such suggested revisions. It was suggested that the representative of the State Bar Section check to determine whether lunch can be brought in to the meeting, and the State Bar Section representative indicated that arrangements would be made.

LEGISLATIVE PROGRAM GENERALLY

The Commission considered Memorandum 85-51. The Executive Secretary made the following report on the legislative program.

Enacted

ACR 4 - Continues authority to study previously authorized topics
1985 Stats. ch. 41 (Assembly Bill 98) - Creditors' remedies

Pending in Conference Committee

Assembly Bill 97 - Probate notices and other probate matters
(urgency bill)

Pending in Finance Committee in Second House

Assembly Bill 195 - Revision of Law Revision Commission statute

Set for Hearing in Second House (set for hearing on June 4)

Assembly Bill 96 - Property law
Assembly Bill 150 - Family law
Assembly Bill 690 - Uniform Transfers to Minors Act
Assembly Bill 1030 - Mediation privilege

Sent to Floor in First House

Senate Bill 1270 - Powers of attorney

Set for Hearing in Finance Committee in First House (set for hearing on May 29)

Assembly Bill 196 - Probate law

ASSEMBLY BILLS 97 AND 196 (PROBATE LAW)

The Commission considered Memorandum 85-56 (which set forth the comments of the Executive Committee of the State Bar Estate Planning, Trust and Probate Law Section relating to Assembly Bill 196 and a copy of the latest version of Assembly Bill 196) and the First Supplement to Memorandum 85-36 (containing staff recommended amendments to Assembly Bill 196 and Assembly Bill 97).

Amendments to Assembly Bill 196. The Commission approved the following amendments to Assembly Bill 196.

AMENDMENTS TO ASSEMBLY BILL 196
(As amended in Assembly April 24, 1985)

Amendment 1

In line 3 of the title, after "6147," insert:
6152,

Amendment 2

On page 18, line 23, after the period, insert:
A copy of the form prepared by the Judicial Council for objecting to a proposed action shall accompany the advice of proposed action.

Amendment 3

On page 18, line 39, after "paid" insert:
to an agent or broker

Amendment 4

On page 20, between lines 37 and 38, insert:
(e) Any person who objects, as provided in this section, to the proposed action shall receive notice of hearing on any petition for court authorization or confirmation of the proposed action.

Amendment 5

On page 20, strike out line 40, and on page 21, strike out lines 1 to 3, inclusive, and insert:

591.8. (a) Under Sections 591.3 and 591.4 the advice of proposed action shall be in substantially the following form or in such form as may be prescribed by the Judicial Council:

Amendment 6

On page 21, strike out line 18 and insert:
(Name(s))

Amendment 7

On page 21, strike out lines 19 to 22, inclusive

Amendment 8

On page 21, line 31, strike out ", include" and insert:
(1) state

Amendment 9

On page 21, line 34, after the second "paid" insert:
to an agent or broker

Amendment 10

On page 21, line 35, strike out ".]" and insert:
, (2) state the amount of any probate inventory valuation of the property on file with the court, and (3) set out the following statement: "A sale of real property without court supervision means that the sale will not be presented to the court for confirmation at a hearing at which higher bids for the property may be presented and the property sold to the highest bidder."]

Amendment 11

On page 22, line 6, strike out "the" and insert:
any

Amendment 12

On page 22, line 7, strike out "address stated above." and insert:
following address _____
_____.

Amendment 13

On page 22, line 10, strike out "name. You" and insert:
name(s). Alternatively, you

Amendment 14

On page 22, line 14, strike out "objection" and insert:
written objection or the court order

Amendment 15

On page 22, strike out lines 19 to 21, inclusive, and insert:
7. IF YOU DO NOT OBJECT IN WRITING OR OBTAIN A COURT ORDER
PREVENTING THE PROPOSED ACTION, YOU WILL BE TREATED AS IF YOU
CONSENTED TO THE PROPOSED ACTION AND YOU MAY NOT OBJECT

Amendment 16

On page 22, between lines 26 and 27, insert:
(b) The Judicial Council shall prepare a form that a person
may use to object to a proposed action. A person who wishes to object
to a proposed action either may use the Judicial Council form or may
make the objection in any other writing that satisfies the
requirements of this article.

Amendment 17

On page 22, line 29, after "inclusive," insert:
and the applicable fiduciary duties,

Amendment 18

On page 22, strike out lines 36 and 37 and in line 38,
strike out "if any, used for the sale." and insert:
determine. The requirements applicable to court confirmation of sales
of real property, including publication of notice of sale, court
approval of agent's and broker's commissions, and sale at not less
than 90 percent of appraised value, do not apply to sales under
independent administration.

Amendment 19

On page 23, strike out lines 1 to 4, inclusive.

Amendment 20

On page 23, line 5, strike out "(c)" and insert:
(b)

Amendment 21

On page 23, line 6, strike out "the court determines that"
and insert:
is authorized to sell

Amendment 22

On page 23, line 7, strike out "will be sold"

Amendment 23

On page 23, line 9, after "than the" insert:
estimated

Amendment 24

On page 23, line 11, after "the" insert:
estimated

Amendment 25

On page 25, strike out lines 26 to 32, inclusive

Amendment 26

On page 25, line 35, after the period, insert:
A requirement that the initial devisee survive for a specified period
of time after the death of the testator constitutes a contrary
intent. A requirement that the initial devisee survive until a future
time that is related to the probate of the will or administration of
the estate of the testator constitutes a contrary intent.

Amendment 27

On page 25, between lines 35 and 36, insert:

SEC. 17. Section 6152 of the Probate Code is amended to read:

6152. Unless otherwise provided in the will:

(a) Except as provided in subdivision (b), halfbloods, adopted persons, persons born out of wedlock, stepchildren, foster children, and the issue of all such persons when appropriate to the class, are included in terms of class gift or relationship in accordance with the rules for determining relationship and inheritance rights for purposes of intestate succession.

(b) In construing a devise by a testator who is not the natural parent, a person born to the natural parent shall not be considered the child of that parent unless the person lived while a minor as a regular member of the household of the natural parent or of that parent's parent, brother, sister, spouse, or surviving spouse. In construing a devise by a testator who is not the adoptive parent, a person adopted by the adoptive parent shall not be considered the child of that parent unless the person lived while a minor (either before or after the adoption) as a regular member of the household of the adopting parent or of that parent's parent, brother, sister, or surviving spouse.

(c) Subdivision (a) and (b) also apply in determining:

(1) Persons who would be kindred of the testator or kindred of a surviving, deceased, or former spouse of the testator under Section 6147.

(2) Persons to be included as issue of a deceased devisee under Section 6147.

(3) Persons who would be the testator's or other designated person's heirs under Section 6151.

Amendments to Assembly Bill 97. The Commission approved the following amendments to Assembly Bill 97.

AMENDMENTS TO ASSEMBLY BILL NO. 97
(As amended in Senate March 18, 1985)

Amendment 1

In line 2 of the title, strike out "Section" and insert:
Sections 591.9 and

Amendment 2

On page 2, strike out line 1 and insert:

SECTION 1. Section 591.9 is added to the Probate Code, to read:

591.9. (a) Subject to Sections 591.3 to 591.5, inclusive, and the applicable fiduciary duties, an executor or administrator who has been granted authority to administer the estate without court supervision under this article may sell property of the estate either at public auction or private sale, and with or without notice, for such price and upon such terms and conditions as the executor or administrator may determine. The requirements applicable to court confirmation of sales of real property, including publication of notice of sale, court approval of agent's and broker's commissions, and sale at not less than 90 percent of appraised value, do not apply to sales under independent administration. This subdivision applies to any sale made under authority of this article on or after January 1, 1985.

(b) If the executor or administrator is otherwise required to file a bond and is authorized to sell real property of the estate without court supervision under this article, the court, in its discretion, may fix the amount of the bond at not less than the estimated value of the personal property, the estimated proceeds of the real property that will be sold under this article, and the estimated value of the probable annual gross income of all of the property belonging to the estate, or, if the bond is to be given by personal sureties, at not less than twice that amount.

SEC. 2. Section 649.1 of the Probate Code is

Amendment 3

On page 4, line 1, strike out "SEC. 2." and insert:
SEC. 3.

Amendment 4

On page 4, line 24, strike out "SEC. 3." and insert:
SEC. 4.

Amendment 5

On page 4, line 38, strike out "For the purposes of" and
strike out lines 39 and 40

Amendment 6

On page 5, strike out lines 1 to 4, inclusive

Amendment 7

On page 5, line 7, after the period, insert:

A requirement that the initial devisee survive for a specified period
of time after the death of the testator constitutes a contrary
intent. A requirement that the initial devisee survive until a future
time that is related to the probate of the will or administration of
the estate of the testator constitutes a contrary intent.

Amendment 8

On page 5, line 8, strike out "SEC. 4." and insert:
SEC. 5.

Amendment 9

On page 5, line 17, strike out "SEC. 5." and insert:
SEC. 6.

NUMBERING SYSTEM FOR NEW PROBATE CODE

The Commission requested that the staff provide an outline of the
new Probate Code so that the numbering system for the new code will be
understandable. The outline might be accompanied by an explanation of

why the system was adopted. Also why do we go to Section 6000? The Code Commission drafting rules call for leaving areas for expansion.

LANGUAGE TO BE USED IN COMMENTS TO NEW PROBATE CODE

The Comments to the provisions of the new Probate Code should make clear whether a particular provision continues the existing law without change or the changes made in existing law.

If a particular provision continues existing law without substantive changes and merely changes a few words or breaks the provision into subdivisions, the comment should state that the new provision "continues [former section, subdivision, paragraph, sentence, or other provision] without substantive change."

If the particular provision is substantially revised, but the substance of the existing law is continued without change, the comment should state that the new provision "is a restatement of [former section, subdivision, paragraph, sentence, or other provision] without substantive change."

STUDY L-500 - POWERS OF ATTORNEY

The Commission considered Memorandum 85-58 and the attached letter from Harley Spitler containing suggested amendments to Senate Bill 1270 (powers of attorney). The Commission made the following decisions with respect to the matters raised by Mr. Spitler.

Giving of proxy by attorney in fact. The Commission decided not to revise Section 2400.5 of the Civil Code, a section that would be added to existing law by Senate Bill 1270. The primary reason that the Commission declined to make the suggested amendment is that it would make proxies subject to the Corporations Code but not the Financial Code, thus excluding the proxy rules for savings and loan associations. The Comment to Section 2400.5 should be revised as set out in the memorandum.

Evidence of identity of principal. The Commission determined that Section 2511 should not be revised. The section is drawn from the existing provision that governs notaries public (Civil Code Section 1185).

Durable power for health care prepared out of state. The Commission decided that subdivision (c) of Section 2433 of the Civil Code should be revised so that the subdivision applies to a durable power of attorney prepared for execution by a person resident in this state. This revision would not make invalid a power of attorney prepared for use by a person who is a resident of another state at the time the person executes the power of attorney. Whether a power of attorney executed by a resident of another state is valid in this state even though it does not contain a warning statement will be determined by the appropriate conflict of laws rule.

STUDY L-640 - PROBATE CODE (SPENDTHRIFT TRUSTS)

The Commission considered Exhibit 1 attached to Memorandum 85-54 relating to the right of creditors to reach a beneficiary's interest in a trust. The draft of amendments to Code of Civil Procedure Section 709.010 in Exhibit 1 would give the creditor the right to reach the beneficiary's interest if the beneficiary could compel the trustee to make payments to the beneficiary pursuant to an objective standard in the trust or to the extent that the trustee is making payments. Under this proposal, the beneficiary's interest would be exempt to the same extent as earnings, as under existing law. After discussing this draft, the Commission directed the staff to prepare further materials on spendthrift trusts taking into account the various concerns expressed at the meeting. The Commission requested a more explicit description of the effect of the Wage Garnishment Law as it is applied to spendthrift and support trusts under existing Section 709.010. The statute should also provide guidance on the meaning of "periodic payments". The staff should give particular attention to the effect that the draft would have on the exercise of a trustee's

discretion. It was suggested that the statute might protect the amount of payments made for the basic necessities with discretion in the court to determine what is really basic.

The Commission did not finally reject the approach of draft Section 709.010 in Exhibit 1 nor any of the other suggested approaches, but directed the staff to reconsider the alternatives in light of the discussion.

STUDY L-1020 - PROBATE CODE (POWERS AND DUTIES OF EXECUTORS
AND ADMINISTRATORS)

The Commission began consideration of Memorandum 85-13, the attached staff draft of new Probate Code provisions concerning powers and duties of personal representatives, and the First, Second, and Third Supplements to Memorandum 85-13. The Commission made the following decisions:

§ 7158. Proof of giving of notice

When the staff drafts the general notice provisions, the staff should consider whether additional time should be allowed when notice is mailed. Cf. Code Civ. Proc. § 1013; but cf. Prob. Code § 1460.

The Comment to Section 7158 should be revised to say "A declaration under penalty of perjury may be used in lieu of an affidavit required by Section 7158."

§ 7511. Transfer or conveyance of property pursuant to court order

The Commission considered whether subdivision (b) should be modified for a conveyance, lease, or mortgage of real property made under the Independent Administration of Estates Act. Perhaps a certified copy of the order granting independent administration authority should be recorded. The staff should consider whether such a provision should be located in the general powers and duties provisions or in the Independent Administration of Estates Act.

§ 7550. Duty to manage estate using ordinary care and diligence

The standard of care of a personal representative should be the same as for trustees (see proposed Section 720 in the trust recommendation) and for guardians and conservators (see Prob. Code § 2401).

§ 7551. Possession of decedent's estate

Subdivisions (c) and (d) need to be substantially reworked and made consistent with other sections, such as proposed Section 7557. See also Prob. Code § 6500 (possession of family dwelling until 60 days after filing of inventory). There was some sentiment for eliminating subdivision (d) altogether, striking the introductory clause of subdivision (c) ("[b]efore the time to file or present claims has expired"), and replacing the second sentence of subdivision (c) with the following: "The person holding the property shall surrender it to the personal representative on request by the personal representative." In any event, the staff should give further thought to the whole section, and try to improve the drafting. If a reference to "debts, devises, or expenses of administration" is to be kept as in subdivision (b), then "taxes" should be added. The words "already accrued" should be deleted.

The staff should consider whether the personal representative is required to account for property within his or her knowledge, but not in his or her possession.

The Commission considered the pour-up trust problem discussed in the First Supplement to Memorandum 85-13, and decided not to add language to Section 7551 to deal with that problem.

§ 7552. Purchase of estate property by personal representative

The Commission decided to keep paragraph (1) of subdivision (a) (personal representative may purchase estate property if all beneficiaries consent in writing and the court approves it). The introductory clause should be redrafted in the negative (the personal representative may not . . . unless).

§ 7553. Duty to recover property transferred in fraud of creditors

Section 7553 was revised as follows:

7553. The personal representative shall, on application of any creditor of the decedent or the estate, commence and

prosecute to final judgment an action for the recovery of the decedent's property for the benefit of creditors if ~~both of the following conditions exist~~

~~(a) // The~~ the personal representative has insufficient assets to pay creditors and the decedent during lifetime did any of the following:

~~(1)~~ (a) Conveyed any real or personal property, or any right or interest therein, with intent to defraud creditors or to avoid any obligation due another.

~~(2)~~ (b) Conveyed any real or personal property that by law is void as against creditors.

~~(3)~~ (c) Made a gift of any real or personal property in view of death.

The staff should consider the relationship between Section 7553 and the Uniform Fraudulent Conveyance Act (Civil Code §§ 3439-3439.12). The Commission was concerned that subdivision (a) above may be so broad as to allow attack against nonfraudulent conveyances. The staff should consider whether Section 7553 might allow attack against an otherwise valid inter vivos trust. For a case saying that an inter vivos trust may not be set aside unless it is fraudulent as against creditors, see Estate of Heigho, 186 Cal. App.2d 360, 365-66, 9 Cal. Rptr. 196 (1960).

The staff should rework Section 7553 and bring it back to the Commission at a later meeting.

§ 7554. Payment of costs and expenses; sale of property recovered

The Commission decided to include authority for the court to require a creditor to pay attorney's fees, as well as costs of suit. The Commission also decided to include authority for the court to assign property recovered to the creditor, as an alternative to requiring the property to be sold. The second and third sentences of subdivision (b) will have to be redrafted in view of this change.

When Memorandum 85-13 is taken up again at a future meeting, the Commission will begin at Section 7555.

STUDY L-1028 - PROBATE CODE (INDEPENDENT ADMINISTRATION)

Review of new Probate Code provisions relating to independent administration. The Commission deferred until a future meeting consideration of Memorandum 85-50. This memorandum has attached a

draft statute of provisions of the new Probate Code relating to independent administration. The Commission asked the staff to revise the draft statute to reflect the decisions of the Commission made at the May meeting concerning the substance of the independent administration provisions to be supplemented and revised in Assembly Bill 196.

Consideration of suggestion of Jerome Sapiro that real property sales and exchanges and grants of real property options not be permitted under independent administration authority. The Commission considered The First, Second, Third, Fourth, and Fifth Supplements to Memorandum 85-50 and Memorandum 85-57 and the letter and attachment from Jerome Sapiro (sent May 9, 1985). The Commission also considered letters from the following persons which were handed out to the Commissioners at the meeting: Thomas C. Taylor, Jr., Albert J. Forn, Judge R. Bryan Jamar, Mario G. Paolini, Gordon A. Fleury, and Rev. John F. Hayes, O.P. Copies of the letters from Taylor, Foran, and Hayes are attached to these Minutes as Exhibit 1, and the other letters were duplicated in material distributed at the meeting by Mr. Sapiro, which material is attached to these Minutes as Exhibit 2. Also considered by the Commission was a communication dated May 16, 1985 from Mr. Sapiro (attached to the Minutes as Exhibit 2) and a letter containing a petition delivered by Mr. Sapiro (attached to the Minutes as Exhibit 3). Mr. Sapiro also distributed to the members of the Commission copies of California Probate Code Sections 2540, 2590-2593 and Section 363 of Title 11 USCA (Bankruptcy) (1978).

The Executive Secretary briefly described the changes recommended by the Commission in legislation introduced in 1985 to improve the independent administration provisions and to provide additional protections and information to persons interested in the estate.

Mr. Sapiro made an extended presentation to the Commission in support of his view that realty sales, exchanges, and grants of options should be subject to court confirmation, control, and supervision and should not be permitted under independent administration provisions.

Robert C. Amore, a San Francisco realtor, John Finbarr Hayes, a Catholic priest from Berkeley, and Jerome Sapiro, Jr., made statements in support of the view expressed by Mr. Sapiro.

Edward V. Brennan, Kay Trout, and Dan Grothe, appearing on behalf of the California Probate Referees, urged the Commission to eliminate the independent administration option for real property transactions.

Michael Smith, representing the California Newspaper Service Bureau, appeared before the Commission to urge that publication of notice of sale in a newspaper be required for real property transactions.

Charles Collier, appearing on behalf of the Executive Committee of the Estate Planning, Trust and Probate Law Section of the State Bar, opposed the proposition of Mr. Sapiro and urged the Commission to retain the independent administration option for use in appropriate cases. Mr. Collier noted that the State Bar has supported independent administration beginning in 1974 when it first proposed the independent administrations of estates act which did not contain any exception for real property transactions. Although the concept of using independent administration for real property transactions was lost in the legislative process, the State Bar has supported this concept for as long time. A detailed letter from the Executive Committee in support of this position is included in the materials prepared for the meeting.

The staff reported that Melinda Tooch of the Beverly Hills Bar Association called the Commission's office on May 16, 1985, to advise that the Probate Committee of that Association is strongly opposed to the proposals to require court confirmation of all probate real property sales. The Probate Committee is of the view that the law should be preserved as it now exists for independent administration.

Martha A. Barszcz, representing the State Legislative Committee of the American Association of Retired Persons, appeared to urge that the law should be preserved which permits use of independent administration for real property transactions.

Mike Belote, appearing on behalf of the California Association of Realtors, urged the Commission to retain the independent

administration option for real property transactions. The bill was considered twice by the Executive Committee of the Association and the position of the Association has been taken after careful study.

Sandra Kass, appearing for the California Bankers Association, urged the Commission to retain the independent administration option for real property transactions.

Valerie J. Merritt, representing the Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association, reported that the Executive Committee supported the independent administration option for real property transactions.

At the conclusion of the presentations by the various interested persons and organizations, the Commission took the matter under submission to permit members of the Commission to review the written material provided by Mr. Sapiro. Later in the meeting, the Commission again considered the matter and unanimously decided not to recommend that the authority to use independent administration authority for real property transaction be eliminated as proposed by Mr. Sapiro. The Commission further decided that any needed provisions to protect persons interested in the estate should be included in Assembly Bill 196. See the discussion of Assembly Bill 196 in these Minutes.

STUDY L-1030 - PROBATE CODE (COLLECTION OR TRANSFER
OF SMALL ESTATE WITHOUT ADMINISTRATION)

The Commission considered Memorandum 85-48 and the First Supplement to Memorandum 85-48 relating to collection or transfer of small estates without administration. The Commission also considered material prepared by the staff entitled "Other States Having 'Close Relative Requirement'" which was handed out at the meeting and is attached to these Minutes as Exhibit 4.

Close relative requirement. Representatives of the firm of Brandenburger and Davis, Sacramento, a probate research firm, made a presentation to the Commission urging that Section 630 of the Probate Code (which authorizes collection of personal property of decedent who died leaving a small estate) be revised to restrict the relatives who

are authorized to use the affidavit procedure. A letter from Carlton Smith, California State Genealogical Alliance, attached as Exhibit 5 to these Minutes, was handed out at the meeting in support of the position urged by Brandenburger and Davis.

The Executive Secretary briefly outlined the provisions in other states that have an affidavit procedure for collection or transfer of title to personal property in a small estate. The great majority of states do not limit the use of the affidavit procedure to particular relatives; any successor in interest of the decedent is entitled to use the procedure. A representative of the State Bar Estate Planning, Trust and Probate Law Section reported that the Executive Committee has voted to eliminate the existing "close relative requirement" that applies to Section 630. This right to transfer has been amended from time to time to add more categories of relatives and this has resulted in a fairly complex statute and it has now been expanded so that it is practically unlimited as to the successors who can use the affidavit procedure. The Executive Committee believes that the current trend not to limit the successors to designated relatives (but instead to all anyone who takes by will or intestate succession to use the procedure) is a sound one and should be adopted in California.

The California statute is probably the most liberal as far as the size of estates where the affidavit procedure can be used. But it is difficult to compare states because many use the value of property "less liens and encumbrances" (decedent's equity in the property) whereas California uses the gross value of the property, ignoring any liens and encumbrances on the property.

James Mattesich, Sacramento lawyer, representing the firm of Brandenburger and Davis, appeared before the Commission. He stated that the firm has two concerns. The first is the broad scope of relatives that can use the affidavit procedure under existing Section 630. The firm is concerned that as court supervision of probate matters is more and more relaxed, and as the limitations on the amount of the estate where the affidavit procedure can be used are increased, there will be greater and greater risk of misuse of property that should pass to the lawful heirs on death. Current law already allows

a broad class of relatives to use the affidavit process. We now permit nieces and nephews to use the procedure, with the result that cousins on different sides of the decedent's family can use the procedure and often do not know one another. The result could be that lawful heirs may not receive their share of estates. Actual cases demonstrate that research can reveal the existence of unknown heirs. The Brandenburger and Davis firm is aware of one actual case where \$60,000 cash was released in a Colorado case and an heir was later discovered who was entitled to the money and that heir has not been able to fully collect the \$60,000.

It was pointed out that merely having a probate proceeding does not guarantee that the existence of all heirs will be discovered; only those heirs who are known will be given notice. In the case of a small estate, it is less likely that a firm like Brandenburger and Davis will be retained to search for possible additional heirs.

The State Bar representative reported that the existing affidavit procedure is very useful in handling small estates.

The second matter that concerns Brandenburger and Davis is the staff draft that would permit use of the affidavit procedure to clear the title to real property, using the true cash value determined from the assessment roll for property tax purposes. The Executive Committee of the Estate Planning, Trust and Probate Law Section shares this concern. The concern was expressed that real property having a fair market value of as much as \$240,000 might be transferred under the staff proposal using an affidavit procedure. The State Bar representative stated that the Executive Committee believes that an appraisal of real property by a probate referee should be required to transfer title to real property.

The Commission requested more information concerning the Colorado case where it was reported that \$60,000 was wrongfully collected and not returned to the true heir.

The Commission reaffirmed its decision to eliminate the close relative requirement.

Basic scheme of statute. The staff suggested that the basic scheme of the proposed legislation be established as follows:

(1) Use of the affidavit procedure for the collection or transfer of personal property. Under existing law this procedure can be used if the gross value of the real and personal property of the estate is not more than \$60,000 and the gross value of any real property in the estate is not more than \$10,000. The affidavit would have to be accompanied by a probate referee's appraisal of the real property that appraises the fair market value of the real property at not more than \$10,000. Except for the new requirement of a probate referee appraisal, the standard under existing law would be retained.

(2) Order determining succession to property. This is a new procedure. This procedure could be used only if a probate referee appraisal shows that the fair market value of the real and personal property in the decedent's estate does not exceed \$60,000. Under this procedure, the fair market value of the real property could exceed \$10,000, but the fair market value of the entire estate may not exceed \$60,000. This procedure would permit the petitioner to obtain an order determining succession to the property of the decedent's estate, similar to the order obtained when a surviving spouse uses the Probate Code 650 procedure. The person succeeding to the property under the court order would be liable for the debts of the decedent similar to the liability of the surviving spouse who uses the Probate Code Section 650 procedure.

(3) Affidavit procedure for clearing title to real property having a value not exceeding \$10,000. This is a new procedure for transferring title as of record of real property that has a gross value not in excess of \$10,000. The record would be cleared by recording an affidavit accompanied by the appraisal of a probate referee showing that the real property has a fair market value not in excess of \$10,000.

The staff was directed to revise the material prepared for the May meeting to incorporate the scheme outlined above.

STUDY L-1031 - PROBATE CODE (PASSAGE OF PROPERTY TO
SURVIVING SPOUSE WITHOUT ADMINISTRATION)

The Commission considered Memorandum 85-47 and the attached draft statute relating to the passage of property to the surviving spouse without administration and the portion of Memorandum 85-57 setting out the comments of the Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association relating to Memorandum 85-47.

The Commission made the following decisions with reference to the draft statute attached to Memorandum 85-47. Unless otherwise indicated, the provisions of the staff draft were approved.

§ 9502. Election of administration

The Commission discussed the suggestion of the Los Angeles Bar Probate and Trust Section that the time under subdivision (b) of Section 9502 be changed to permit the election to be made at any time prior to the hearing of a petition for distribution. The Commission decided not to change the provision. Change was considered unnecessary because the provision permits the court to allow the election to be made at a later time upon a showing of good cause.

Section 9502 should be revised to permit an election to probate only a part of the surviving spouse's one-half of the community or quasi-community property. It may be desirable, for example, to probate all of a block of stock that is community property but not the surviving spouse's one-half of the other community property. The election to probate only part of the surviving spouse's one half of the community or quasi-community property should not change any right a creditor has to resort to the community or quasi-community property. Section 9542 should be reviewed on the question of liability.

§ 9505. Application of this part

Section 9505 was approved insofar as it makes the provisions of this part applicable to cases where the deceased spouse died on or before the operative date of the code. The Commission deferred consideration of Section 9505 insofar as the section would make some provisions of this part applicable only where the deceased spouse dies on or after the operative date of the new code.

§ 9520. Right of surviving spouse to dispose of real property

See the discussion under Section 9521 below.

§ 9521. Recording notice of interest in property

The Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association noted that Sections 9520 and 9521 continue existing law but questioned the desirability of retaining these sections. The staff suggested that the provisions were included in existing law because community property can be held in the name of one spouse or in joint tenancy. During lifetime, as a practical matter, the joinder of both spouses is required to convey the property, even where it is in the name of only one of the spouses. After death of one spouse, if the property is held only in the name of the surviving spouse or in joint tenancy, Sections 6520 and 6521 would permit the spouse in whose name the property is held or the surviving joint tenant to deal with the property or transfer it or an interest in it to a good faith purchaser, encumbrancer, or lessee who would take the property or interest free of the rights of devisees or creditors of the deceased spouse, even though the property actually may be community property.

The staff should check with the title insurance association to determine the purpose and desirability of these sections. The provisions should be redrafted to make clear the circumstances when the sections apply. The way the sections are written they have an overbroad scope. Perhaps the sections should be limited to cases (1) where the property is held in the name of the surviving spouse only, (2) where the property is held by the deceased spouse and surviving spouse as joint tenants, and (3) where the property is held by the deceased spouse and the surviving spouse as community property.

The staff should consider how the transmutation statute affects Sections 9520 and 9521.

Chapter 3 (§§ 9540-9543) Liability for debts of deceased spouse

If all the property liable for the debt (community and quasi-community property shares of both deceased spouse and surviving spouse) is not probated, the surviving spouse is liable only to the extent of the community and quasi-community property of the surviving spouse that is not included in the administration of the estate.

Subdivision (a) of Section 9541 should be reviewed to determine whether the language is adequate where there is a probate of a portion of the community and quasi-community property that belongs to the surviving spouse.

§ 9550. Collection of salary or other compensation, not exceeding \$5,000, by affidavit

In response to a comment of the Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association, Section 9550 was revised to require a statement in the affidavit that the surviving spouse is entitled to the earnings under the decedent's will or by intestate succession and no one else has a superior right to the property.

The Estate Planning, Trust and Probate Law Section of the State Bar approved this section.

The purpose of the section is to provide funds until the probate proceeding is commenced and a family allowance can be obtained.

The section should be revised so that it is clear that the employer who pays upon reasonable proof of identity is protected against liability if the payment is not actually paid to the surviving spouse.

§9551. Protection of employer from liability

This section should refer to "affidavit or declaration."

§ 9552. Enforcement of payment

This section should have a provision that the court in the action shall award attorneys fees to the surviving spouse if the court finds that the employer acted unreasonably in refusing to pay as required by this chapter.

Transitional provision

The Commission did not determine whether Sections 9550-9554 should apply to cases where the deceased spouse died before the operative date of the new code.

Chapter 5 (commencing with Section 9560). Determination or

Confirmation of Property Passing or Belonging to Surviving Spouse

The staff should make an effort to number these provisions so that the first section of this chapter is numbered 9650--thus recognizing the common practice under existing law of referring to a "Section 650 petition."

§ 9565. Setting petition for hearing

The provision that the petition be set for hearing upon a day "not less than 10 nor more than 30 days after the petition is filed" was deleted.

§ 9566. Notice of hearing

The Commission approved the deletion of the requirement that a copy of the petition be served with the notice.

The general notice of hearing provision was adopted, with the result that the notice of hearing is required to be served at least 10 days (rather than at least 20) days before the hearing.

The provision of the staff draft was not approved that would have required the same notice of hearing to be given when the petition is filed in a pending probate proceeding as is required generally for petitions filed in a pending probate proceeding. Instead notice of the hearing on the petition is to be given to the persons and in the manner prescribed in Article 2 (commencing with Section 7240) of Chapter 2 of Part 2 of Division 7 (petition for probate) whether or not the petition is filed in a pending proceeding.

§ 9567. Court order

The last sentence of subdivision (a) of Section 9567 should be deleted. The staff should investigate the possibility of the court issuing an order to bring a third person before the court so that the court can order the third person to turn over the property. Perhaps a citation should be issued to the third person. The last portion of subdivision (b) also has the same problem.

Subdivision (d) was deleted as unnecessary in view of Section 9570 which makes the inventory and appraisal optional with the petitioner. The comment to Section 9570 should indicate that an inventory and appraisal is not required; it is up to the petitioner to determine whether or not an appraisal and inventory is to be provided.

§ 9568. Effect of court order

This section was approved in the form contained in the draft. Section 6610 should be revised to conform to Section 6568. The Comment to Section 6610 should note that the omission of the reference to fraud or the assumed deceased appearing is omitted as unnecessary and is not a substantive change.

§ 9569. Protection of interests of creditors of business of deceased spouse

The including clause should permit filing of an undertaking and the filing of an inventory and appraisal.

§ 9570. Inventory and appraisal

This section was approved. The Comment to the section should state that it is left to the discretion of the petitioner whether to file an inventory and appraisal. See the discussion under Section 9567. An inventory and appraisal is not required.

§ 9571. Attorney's fee

This section was approved by the Executive Committee of the Estate Planning, Trust and Probate Law Section of the State Bar and the Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association. This section was approved. The word "is" was changed to "shall be." There is no uniform procedure for fixing fees in Section 650 petitions now.

Drafting of Tentative Recommendation for Distribution to Interested Persons for Review and Comment

The staff will prepare a draft of a tentative recommendation for review by the Commission before it is distributed to interested persons for review and comment.

STUDY L-1032 - PROBATE CODE (SMALL ESTATE SET-ASIDE)

The Commission considered Memorandum 85-49, the First Supplement to Memorandum 85-59, and a portion of Memorandum 85-57.

The Commission considered the draft statute attached to Memorandum 85-49.

§ 6601. Net value of decedent's estate must not exceed \$20,000;

exclusions in determining value

The Commission discussed the meaning of the phrase "the decedent's whole estate" in existing law. The question was whether the phrase includes real property located in another state. It was noted that the value of the estate is determined by the appraisal of a probate referee.

A statement should be added to 6601 to note that community property belonging to the deceased spouse is not excluded in determining the value of the value of the estate.

Concern was expressed that the decedent may leave the surviving spouse or minor children a substantial amount of real property located in another state that would not be included in the California estate if the normal meaning of decedent's estate were given to the phrase "the decedent's whole estate." Yet the surviving spouse or minor children or both (who were so well provided for by receiving the real property in the other state) would take under the small estate set-aside and defeat the right of the person who would take under the decedent's will.

The Commission considered whether the small estate set-aside should be repealed and not continued. However, there may be cases where there is no probate homestead and no exempt property but a small amount of stock or cash in the bank. Hence, the small estate set-aside should be continued in some form.

The Commission decided to make the small estate set-aside discretionary with the court, like the probate homestead and exempt property provisions. The staff was requested to redraft the provisions along these lines for consideration by the Commission at a future meeting.

STUDY L-1050 - PROBATE CODE (GUARDIANSHIP-CONSERVATORSHIP)

The Commission considered Memorandum 85-7, the First, Second, and Third Supplements to Memorandum 85-7, and a letter from the San Diego County Bar Association concerning Memorandum 85-7 which was handed out at the meeting and is attached to these Minutes as Exhibit 6.

It was agreed that no change should be made in the notice required to be given on the hearing of a petition for appointment of a conservator. The staff recommended in the Second Supplement to Memorandum 85-7 that notices given after the conservatorship is established be given under the general notice provisions (Sections 1460-1469) for notices of other hearings after the conservatorship is established. This recommendation met the approval of the Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association (Third Supplement to Memorandum 85-7) and the Probate and Estate Planning Subcommittee for Legislation of the San Diego County Bar Association (See Exhibit 6 to these Minutes). However, the representative of the Estate Planning, Trust and Probate Law Section of the State Bar requested that the Section have an opportunity to review the staff recommendation and submit comments to the Commission before the Commission makes a decision on this matter. The Commission deferred making a decision in order to permit the State Bar Section to review the matter and submit comments.

At the suggestion of the representative of the Estate Planning, Trust and Probate Law Section, the Commission decided to require that notice of the hearing on the establishment of a conservatorship be given to relatives within the third degree if there are no relatives within the second degree.

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

Date

Chairperson

Executive Secretary

WILLIAM E. GEARY
JOHN F. SHEA
MICHAEL F. O'DONNELL
PATRICK G. GRATTAN
THOMAS C. TAYLOR, JR.
ALLAN D. HARDCASTLE
NANCY A. NUGENT

LAW OFFICES OF
GEARY, SHEA & O'DONNELL, P. C.
37 OLD COURTHOUSE SQUARE
POST OFFICE BOX 429
SANTA ROSA, CALIFORNIA 95402-0429
707-545-1660

DONALD GEARY (1958-1966)
RICHARD F. PAWSON (1967-1976)

May 7, 1985

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94306

Re: Reinstitution-Confirmation Estate Sales
Probate Code Section 591.3 and related sections

Dear Commission Members:

As a lawyer whose practice is limited almost entirely to probate and real estate law, I am most concerned about the recent revisions to Probate Code section 591.3 and related sections, removing from court supervision the sale or exchange of real property or the grant of options to purchase such property.

Much has recently been written to you by experienced lawyers and learned probate judges about the benefits of competitive bidding and judicial review under the former procedures and the risks of inept or unscrupulous action under the new. I will not reiterate those arguments here, but I wish to note a point which was not addressed in the letters I reviewed on this subject.

1. When enacted in 1974, the Independent Administration of Estates Act was a sensible and long-needed response to many probate decisions which had theretofore required court supervision. Perhaps one force that led to reform was an increasing concern that probate was viewed, correctly or not, as an expensive process. By removing some items from automatic judicial review, not only would the courts be relieved of otherwise unnecessary work, but legal fees attendant the preparation of some petitions and court hearings could be reduced. However, concern for the cost of probate administration does not justify adding real estate sales and exchanges to the list of transactions for which no court supervision is required.

2. Even under IAEA, the attorney has a fiduciary obligation to: review with the personal representative the wisdom of any proposed sale; scrutinize all marketing efforts; examine title reports and documents; negotiate with parties regarding price and terms; and either draft or review listing agreements, sales

California Law Revision Commission
Page Two
May 7, 1985

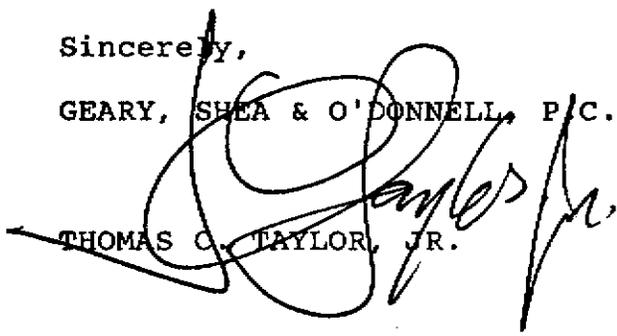
contracts, deeds, escrow instructions and other typical documents. These services have often been regarded as extraordinary and thus compensable in addition to the statutory fees otherwise allowed for routine probate matters.

3. By removing real estate sales transactions from court supervision, the Legislature has eliminated none of the foregoing costs, but at most, the expense of handling pre-hearing inquiries from interested bidders (which are often referred on to the listing broker) and the cost of a court appearance--usually representing only a minor portion of the probate attorney's time charges in connection with real estate sales transactions. Accordingly, the savings in administrative fees to the beneficiaries and heirs under the recent amendments is really quite small. In view of the benefits of competitive bidding and court supervision and the risks of the present procedure, one must question whether any projected savings in administrative fees in this instance is sound.

Accordingly, I urge you to reconsider the recent amendments to Probate Code section 591.3 and related sections, and to again restore real estate sales and exchanges to the former procedure of court supervision.

Sincerely,

GEARY, SHEA & O'DONNELL, P/C.



THOMAS C. TAYLOR, JR.

TCT:gs

cc: Honorable R. Bryan Jamar
Sonoma County Superior Court (Probate)

EXHIBIT 1 (continued)

ALBERT J. FORN, INC.
A PROFESSIONAL LAW CORPORATION
4032 WILSHIRE BOULEVARD, SUITE 506
LOS ANGELES, CALIFORNIA 90010
TELEPHONE (213) 739-8890

May 8, 1985.

John De Mouilly, Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, Calif. 94306

Dear Mr. De Mouilly:

As a member of the Estate Planning Trust and Probate Law Section, I receive its NEWS, and eventually I read it.

However it wasn't until this past weekend that I read through the Spring 1985 issue (Vol. 6, No. 4) and saw Jerome Sapiro's letter to you protesting the probate code change that removed real property sales from court supervision.

I support Mr. Sapiro's position wholeheartedly and urge the Commission to return to the state legislature to request that probate real property transactions be made subject to court approval.

Apparently Mr. Sapiro's letter included a large amount of documentation illustrating fraud and dishonesty in probate sales. Accordingly I will not enlarge on that point.

Perhaps an even larger source of damage to heirs and devisees will arise out of sheer incompetence, which court supervision prevents much more frequently than dishonesty. Even the Public Administrator's office, where one would expect an accumulation of experience if not brains, there have been real property sales at give-away prices, usually where the probate referee undervalued the property, sometimes out of incompetence and sometimes out of a softheaded perception that this saved on death taxes.

In other instances, just as a deputy county counsel fails to question the P. A.'s supposed expertise, weak or ignorant private attorneys allow an executor to make stupid sales or to cheat and defraud through sham sales.

John De Mouilly, Executive Secretary -2- May 8, 1985.

In my personal experience, I have seen objections to a real property sale result in the finding of new buyers and the bringing of an additional \$200,000.00 or more to the estate.

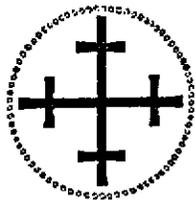
For the normal, uneventful sale the cost in court and attorney's time is very little; but in the five percent of the sales where fraud or incompetence is uncovered, the benefits are enormous.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Albert J. Forn", with a long horizontal flourish extending to the right.

ALBERT J. FORN

AJF:RR



St. Mary Magdalen's - Dominican Parish
phone 526-4811

10 May 1985

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94306

Re: Reinstitution of required Court confirmation of Estate
Sales; Probate Code Sections 591.3 et al.

Dear Members of the Commission:

The undersigned is both an attorney at law in California and a Catholic priest serving as Associate Pastor of this North Berkeley parish.

My work brings me into contact with a large number of elderly persons, particularly widows, who need all the help they can get in dealing with matters of property, law, and finance as affected by the death of family members.

In the course of a recent presentation I made to our senior group I discovered amazement and distress, coupled with disbelief, when they heard that, under present California law, their homes might be sold after their deaths without competitive bidding or court confirmation of the sale.

Older people tend to believe, and wish to believe, that the law will protect their greatest asset, their home, and they are chagrined to discover that, under present law, this is not necessarily the case.

These people have abided by the law throughout their lives, and they want the law to abide by them, and to oversee the distribution of their hard-earned property after their deaths.

On their behalf I urge you to recommend to the Legislature the reinstatement of required Court confirmation of Estate Sales under the Independent Administration of Estates as well as in full probate cases.

I would be happy to testify before you on this matter during the Sacramento hearings next week.

Sincerely,

John Finbarr Hayes, O.P.
(Rev.) John Finbarr Hayes, O.P.

2005 Berryman Street - Berkeley, California 94709

HAND-DELIVERED

16 May 1985

TO: CALIFORNIA LAW REVISION COMMISSION

SUBJECT: Supplement to Memorandum 85-90 In Support of Required Court
Supervision and its Restoration Concerning Probate Real
Property Sales, Exchanges and Grants of Option
(Hearing: June 16, 1985. Submitted by Jerome Sapiro)

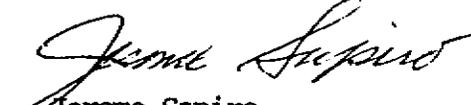
This supplement is submitted to the Commission because some letters were not included in prior supplements.

The attachments, all in support of restoration of Court supervision as to all probate real property sales, exchanges and grants of option, as a requirement, include the following copies:

1. Letter to the California Law Revision Commission from R. Bryan Jamar, Presiding Probate Judge of County of Sonoma, dated May 9, 1985;
2. Supplementary Letter (original) dated March 4, 1985 from Raymond J. Arata, Jr., Probate Judge of the Superior Court of the City & County of San Francisco;
3. Letter dated May 13, 1985 from the Honorable Gordon A. Fleury (of Wilke, Fleury, Hoffelt, Gould & Birney) of Sacramento, California to the California Law Revision Commission;
4. Ltr. dated January 2, 1985 from Richard Belcher (of Kroloff, Belcher, Smart, Perry & Christopherson) of Stockton, County of San Joaquin, to the California Law Revision Commission;
5. Ltr. dated May 13, 1985 from Mario G. Paolini (of Paolini, Paolini and Dobbins, P.C.) to the California Law Revision Commission;

Also included and attached hereto is a copy of the State Bar Section Estate Planning, Trust and Probate News, Vol. 6, No.1, Spring 1984, page 24 thereof showing the results of the survey vote to which I have alluded and will discuss.

Respectfully submitted


Jerome Sapiro

Attachments: 6 as indicated

Superior Court

State of California
County of Sonoma

MAY 10 1985

R. Bryan Jamar, Judge
Department No. 2

May 9, 1985

203-J Hall of Justice
Santa Rosa 95401
(707) 527-2441

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94306

Re: Reinstitution-Confirmation Estate Sales
Probate Code §591.3, et al.

Dear Commission Members:

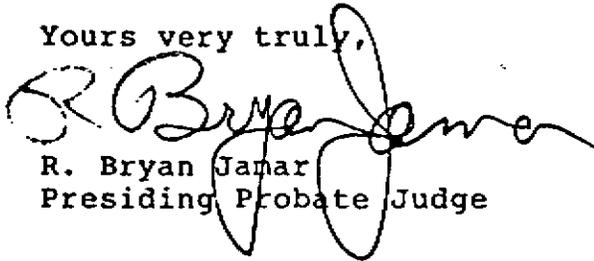
I am concerned over the impact of Probate Code sections 591.3 and 591.4 insofar as they permit sales of real property handled under the Independent Administration of Estate Act without the need for court confirmation. I believe the statute should immediately be amended to restore the requirement of court confirmation of such sales.

It has been my experience that court confirmation frequently produces overbids, sometimes of a very substantial nature. I have in mind a sale in which the appraisal and bid to be confirmed was \$775,000. Through the court confirmation, the successful bid was \$1,250,000. The estate was being administered by a professional (trust department of a major bank) with expertise far superior to the typical executor or administrator handling the once-in-a-lifetime family probate. Without these sales coming before the court for confirmation, the estates and the heirs are deprived of the full value of estate assets.

It is my opinion that giving notice of proposed action to beneficiaries and heirs is an inadequate protection. In my experience, most members of the public would not understand what is meant by a request to operate under the Independent Administration of Estates Act and would not take the time or spend the money to consult with a lawyer to find out. It has also been my experience that some attorneys representing estates, upon receiving inquiry from beneficiaries, are less than forthright about rights and duties of the respective parties.

This legislation inhibits the court's ability to carry out its responsibility to the public in monitoring probate of decedent's estates and to protect the beneficiaries and heirs.

Yours very truly,

A handwritten signature in cursive script, appearing to read "R. Bryan Jamar". The signature is written in dark ink and is positioned above the typed name and title.

R. Bryan Jamar
Presiding Probate Judge

RBJ/jp

bcc: Mr. Jerome Sapiro
Mr. Peter M. Duffy

Superior Court of California

MAR 6 1985

San Francisco



RAYMOND J. ARATA, JR., JUDGE

March 4, 1985

Jerome Sapiro, Esquire
100 Bush Street
San Francisco, California 94104

Re: Restoration of Court Confirmation of
Real Property Sales, etc., as a
Required Procedure

Dear Jerome:

Reference your letter of February 8, 1985, please feel free to use my letter dated January 14, 1985 to the California Law Revision Commission in any way useful.

Since then I have been shown several letters written by a real estate broker to an attorney handling separate probates, (they were form letters) each offering a stated cash payment if the attorney were to list the real estate for sale with that broker. I have also heard broker friends of mine bring up the subject. It doesn't look very ethical.

As far as court confirmations are concerned, I had a returned sale of \$1,226,000 sell for \$1,425,000 after overbidding in open court and another one today come in at \$822,200 go for \$977,000 after bidding. In both cases the appraisal was for the original bid or lower.

Good luck,


Raymond J. Arata, Jr.

RJA:ni

MAY 14 1985

LAW OFFICES

WILKE, FLEURY, HOFFELT, GOULD & BIRNEY

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

SUITE 1100
555 CAPITOL MALL

SACRAMENTO, CALIFORNIA 95814

TELEPHONE
(916) 441-2430

OF COUNSEL
SHERMAN C. WILKE
GORDON A. FLEURY

RICHARD H. HOFFELT *
WILLIAM A. GOULD, JR. *
PHILIP R. BIRNEY *
THOMAS G. REDMON *
SCOTT L. GASSAWAY
DONALD REX HECKMAN II *
ALAN G. PERKINS
THOMAS E. BONE
BRADLEY N. WEBB
ERNEST JAMES KRTEL
BENJAMIN G. DAVIDIAN
CRAIG E. MODLIN
BRUCE A. KIMZEY
ANITA S. MARMADUKE
MARK H. VAN BRUSSEL
PAUL R. BEHRENS
SHAWN E. HANSON
A. KENT SUMMERS
MATTHEW W. POWELL

*PROFESSIONAL CORPORATIONS

May 13, 1985

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94306

RE: Reinstatement of Confirmation of Estate
Sales, Granting of Options to Purchase
Real Property and Long-Term Leases

Dear Commission Members:

I have been a practicing attorney for forty years, and during that time as presiding judge of the Sacramento Superior Court. My duties included sitting as the Probate Court Judge.

The necessity of court confirmation of sales of real property to me is one of the most important functions of the probate procedure.

You have adequate evidence of the importance of this function in material already submitted; however, I must add that without the confirmation procedure the door is wide open for fraud and a method to cheat heirs of their rights.

The costs involved in this procedure are minimal when compared to the huge sums of money that heirs could be deprived of.

I heartily endorse the arguments of Jerome Sapiro and believe his presentation overwhelmingly proves the need to restore the requirement of court confirmation of sales.

Sincerely,



GORDON A. FLEURY

GAF:ng

✓ bcc: Jerome Sapiro

JAN 7 1985

KROLOFF, BELCHER, SMART, PERRY & CHRISTOPHERSON
ATTORNEYS AT LAW
1044 NORTH EL DORADO STREET
POST OFFICE BOX 720
STOCKTON, CALIFORNIA 95201
(209) 943-2222

RICHARD BELCHER, RETIRED 1980

YALE S. KROLOFF
CLAUDE H. SMART, JR.
THOMAS O. PERRY
GARY E. CHRISTOPHERSON
J. DOUGLAS VAN SANT
JOHN F. STRANGMAN
DANIEL F. QUINN
PETER A. VIRI
ORLIE L. CURTIS
CHRISTOPHER ENGH
KIM A. SMITH
RICHARD M. FLORES
ELIZABETH HUMPHREYS
JOHN E. VAN DE POEL, JR.
VELMA LIM

January 2, 1985

TELEPHONE
AREA CODE 209
943-2222

California Law Revision Commission
4000 Middlefield Road, Rm. D-2
Palo Alto, CA 94306

Gentlemen:

It is my understanding that your Commission has been making a study on the question of restoring Court confirmation and competitive bidding as a requirement in all probate real property sales, exchanges and grants of option and may be discussed at a meeting scheduled in January of 1985 or at a possible later meeting.

I have discussed this question with a number of our local attorneys here in Stockton who feel that Court confirmation and competitive bidding should be required. Our feeling is that it will result in the opportunity for a fair price to estates and their beneficiaries and will act as a shield against possible careless or even unscrupulous conduct.

I hope that your Commission will agree with this position.

Respectfully,

RICHARD BELCHER

RB:tkg

✓ bcc: Jerome Sapiro, Esq.

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P

Y

LAW OFFICES
PAOLINI, PAOLINI & DOBBINS
A PROFESSIONAL CORPORATION

EZIO M. PAOLINI
MARIO G. PAOLINI
ROBERT A. DOBBINS

MAY 14 1985
4657 MISSION STREET AT OCEAN AVENUE
SAN FRANCISCO, CALIFORNIA 94112
586-3600

May 13, 1985

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94306

RE: Restoration of Probate Code Requirements that
Probate Sales, Exchanges and Grants of Option
of Real Property be subject to Court Process

Gentlemen:

In respect for the value of your time, and being aware that you have on hand a number of letters from Judges and attorneys who urge the restoration of court procedures outlined in the subject hereof, I will avoid repetition of their presentations. Nonetheless, we consider it our duty to associate of record with their position.

The senior members of this firm represent in the aggregate more than a century of full-time private practice, most of which is now in the probate field. We have processed probates throughout our State from Humboldt County to San Diego County and have witnessed the adaptation of our probate system to effectively meet the need of California's post-World War II growth.

The Courts have carried out the basic purpose of our Probate Code: to assist in the devolution of property at death, either in accord with the express wish of a testate decedent, or according to a fair and equitable process if death is intestate. The Code has always been directed to an orderly system to preserve rights and to protect the interests of heirs. It is ironic that a legislature which in recent decades has been especially solicitous to protect consumer interests in a variety of transactions, many of relatively minor monetary amounts, now deregulates an established protective process that may well represent the largest transaction in the lifetime of the decedent or some or all of the heirs. And I might add, this protection has been available at absolutely no cost whatever to the beneficiaries thereof.

We have processed hundreds of probate sales, and we have witnessed many hundreds more while in Court awaiting our turn. Perhaps one example will be graphic enough to illustrate our position: In late 1983, Testatrix decided to sell certain property in San Francisco. She retained a recommended Independent Appraiser and on October 26, 1983, received his report. The twelve-page document, accompanied by photographs, was in accord with the accepted triple analysis: Cost

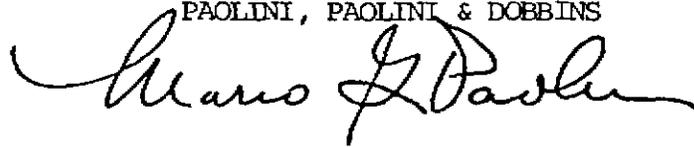
May 10, 1985

Approach, Income Approach and Market Approach. The conclusion: Fair Market Value was \$275,000. She died on November 9, 1983, before she could list the property. The Broker who had recommended the Appraiser pressed the Executor for a listing, but upon our advice, she declined. We followed the open market probate method. A sale was returned to San Francisco Probate Court on July 16, 1984 at \$377,000. Five "finalists" competed in open Court, and after 27 raises, the final price confirmed was \$446,000 all cash. When Court adjourned and as he was about to leave the Bench, I commented to Judge Arata in words something to this effect: "If only the legislators who have just voted to do away with this system could have been here this morning, I am certain their vote would have been different".

We urge you to recommend to the Legislature the restoration of the prior law and the imposition of a mandatory requirement of court supervision and confirmation in the probate procedures which are the subject hereof.

Respectfully,

PAOLINI, PAOLINI & DOBBINS

A handwritten signature in cursive script, appearing to read "Mario G. Paolini".

MARIO G. PAOLINI

MGP/im

Probate Administration Survey—Your Views

The California Law Revision Commission is commencing its review of Division III of the Probate Code, that is Sections 300 through 1313, the division dealing with probate administration. The Executive Committee of this Section recently sent a questionnaire to all Section members to ascertain members' views on certain basic areas of probate administration. In addition, the questionnaire was distributed at certain of the recent CEB programs on Impact of California's Probate Code Reform. The questionnaire has also been used by the Probate Section of the San Bernardino County Bar Association and of the San Diego County Bar Association to ascertain the views of their members. The questionnaire was intended to compare basic aspects of probate administration where there is a significant difference between existing California law, provisions of the Uniform Probate Code (UPC) and other proposals of the Law Revision Commission (LRC). Your responses will provide guidance for the Section's Executive Committee in its presentations to the California Law Revision Commission and to appropriate committees of the California Legislature considering probate reform.

RESULTS

The summary which follows includes a tabulation of answers on 1313 questionnaires. In some instances not all questions were answered by all persons and therefore the totals for specific questions do not always add up to that number, but in most cases they are very close to the total number. In some cases the answers indicated that the person found more than one alternative acceptable.

Your views as expressed in answering the probate administration survey are as follows:

	Approve	Disapprove		Approve	Disapprove
1) WILL			9) BONDS		
a) Admit to Probate by court order after notice (existing law)	1,090	122	a) No bond if all interested parties waive bond for personal representative	1,137	117
b) Admit to probate by clerk without prior notice to interested parties (UPC Concept)	232	995	b) Court discretion on bond even if all interested parties waive bond	340	766
2) PERSONAL REPRESENTATIVE			c) No bond for special administrator if all interested parties waive bond	985	182
a) Appointed by court after noticed hearing (existing law)	1,041	142	10) ACCOUNTINGS		
b) Appointed by clerk without prior notice (UPC concept)	268	952	a) Formal Accounting Settled by Court Order after notice hearing (existing law)	708	205
3) INVENTORY AND APPRAISEMENT			b) Formal Accounting Served on Beneficiaries and filed with Court as matter of record, but not reviewed by Court	386	695
a) Appraisal of all non-cash items by probate referee (existing law)	684	428	c) Informal Accounting given beneficiaries to become final in 60 days if no objection filed. Not filed with Court unless objections.	495	680
b) Self-appraisal of all probate assets by personal representative (UPC)	624	611	11) FINAL DISTRIBUTION		
c) File inventory with court (existing law)	874	248	a) By court order (existing law)	971	24
d) Serve copy of inventory on beneficiaries of estate, but don't file with court (UPC)	442	751	b) Informal distribution by personal representative without court order (one UPC alternative)	152	919
4) REAL PROPERTY SALES			c) Informal distribution with closing statement filed with court and served on interested parties showing distribution. No court hearing unless objections filed within 6 months (another UPC alternative)	419	727
a) Require court order confirming sale (existing law)	694	426	12) PROBATE ADMINISTRATION GENERALLY		
b) Allow sale without court confirmation under independent administration (LRC proposal)	660	546	a) Retain existing system	811	155
5) \$500 AFFIDAVIT			b) Repeal §§300-1242 and replace with Uniform Probate Code	237	774
a) Increase dollar amount to \$50,000	756	356	6) INDEPENDENT ADMINISTRATION		
b) Increase dollar amount to \$100,000	400	728	a) Make advice of proposed action binding on all who receive advice and don't object within 15 days (LRC proposal)	1,002	240
c) No change in existing \$30,000 limit	281	743	b) Make advice nonbinding (existing law)	294	753
7) EXECUTOR'S COMMISSIONS			8) ATTORNEYS' FEES		
a) Statutory commissions (existing law)	1,012	192	a) Statutory fees (existing law)	1,022	180
b) Reasonable fees fixed by court	261	841	b) Reasonable fees fixed by court	238	868
c) Reasonable fees determined by personal representative (UPC concept)	231	918	c) Reasonable fees determined by personal representative (UPC)	271	883

COMMENTS

More than 400 of you who answered the survey added comments. In some cases, these comments were lengthy letters; in other cases, they were very brief. Some comments discussed probate administration generally; many comments spoke of only specific areas. While it is not possible to accurately reflect all of the comments by way of summary, there were

Minutes
HOME AND
INCOME PROPERTIES

LOANS
LEASING

PROPERTY
MANAGEMENT

EXHIBIT 3

**KMOOSER &
Kavanagh**
REALTORS

520A CLEMENT ST. NEAR 6TH AVE.
P.O. BOX 18246
SAN FRANCISCO, CALIFORNIA 94118
PHONE 752-4922

May 16-17, 1985



BRIAN J. KAVANAGH
Broker

15 May 1985

Jerome Sapiro
100 Bush Street
San Francisco, Ca. 94104

Re: Petition for compulsory Court Confirmation
of all Realty Probate Sales

Dear Mr. Sapiro:

Please use the petition which I have attached for any presentation that you
deem adviseable.

Sincerely

Brian J. Kavanagh

We, the undersigned real estate brokers and agents of the State of California support the restoration of Court supervision as a requirement in the matter of probate sales of real property, because:

1. The Court assures reasonable and greater exposure to the market and thereby has greater participation by brokers and their agents;
2. Court supervision protects against closed door deals and hanky pank;
3. The Probate Court provides a forum where problems and disputes of and between brokers, and between brokers and estates, are and can be settled promptly and without expense of attorneys' fees and costs, whereas if sale is made outside of Probate Court supervision suit and the hiring of attorney may be required or rights would have to be given up, - involving greater expense to the brokers;
4. In-Court raises or increases benefit both estates and brokers, - the higher price means higher aggregate commissions;
5. The greater exposure does tend to create good will and good repute for brokers who do participate conscientiously in probate sales;
6. A substantial segment of the industry does follow Probate Court sales and participates therein; and
7. Probate Courts, their commissioners and examiners, do protect brokers as well as estates against erroneous and improper procedures.

<u>Name</u>	<u>Firm</u>	<u>Address (Street Address, City, Zip)</u>
Brian J. Kavanagh	MOOSER & KAVANAGH	520 A CLEMENT ST. SAN FRANCISCO 94118
Kepe Ladinier	COMMERCIAL REALTY	5144 CLEMENT ST SAN FRANCISCO, CA 94118
Thomas D. Harvey, Jr	THOMAS D. HARVEY	1048 VALENCIA ST SAN FRANCISCO CA 94110
Thomas D. Harvey	THOMAS D. HARVEY	1048 VALENCIA ST. SF 94110
Burt E. Nelson	Golden Gate Co	145 - SK QM SAN FRANCISCO CA 94118
William Ferdon III	FERDON BROTHERS 4141	414 MASON ST # 703 SAN FRANCISCO 94107
James J. Horwitt	HORWITT Horwitt Realty Co.	1609 NORIEGA ST. SAN FRANCISCO CA 94122
Ray J. Cooper	REARLY WEST	700 - 9TH AVE. S.F. 94118
Antonio Castellano	Home Realty	700 - 9TH AVE. S.F. 94118
David S. Gallagher	Frank J. Gallagher Realty	3371 - Mission St SF 94110

EXHIBIT 4

OTHER STATES HAVING "CLOSE RELATIVE REQUIREMENT"

- Uniform Probate Code § 3-1201 (1980) (no close relative requirement)
- Alabama Code §§ 43-2-691, 43-2-692 (1982) (no close relative requirement)
- Alaska Stat. §§ 13.16.680, 13.16.685 (Supp. 1984) (no close relative requirement)
- Arizona Rev. Stat. Ann §§ 14-3971, 14-3972 (1984) (no close relative requirement)
- Arkansas Stat. Ann. §§ 62-2127 (Supp. 1983) 62-2128 (1971) (no close relative requirement)
- Connecticut Gen. Stat. Ann. § 45-266 (West Supp. 1984) (no close relative requirement)
- Deleware Code Ann., tit. 12, §§ 2306 (Supp. 1984), 2307 (1979) (limited to spouse of the decedent or any person who is a grandparent of the decedent, a lineal descendant of a grandparent of the decedent, the personal representative of any of the foregoing who may be deceased, or the guardian or trustee of any of the foregoing who may be incapacitated, or the trustee of a trust created by the decedent)
- Florida Stat. Ann. § 735.301 (West Supp. 1984) (no close relative requirement)
- Hawaii Rev. Stat. §§ 560:3-1201, 560:3-1202 (Supp. 1983) (no close relative requirement)
- Idaho Code §§ 15-3-1201, 15-3-1202 (1979) (no close relative requirement)
- Illinois Ann. Stat. ch. 110 1/2 § 25-1 (Smith-Hurd Supp. 1984) (no close relative requirement)
- Indiana Code Ann. §§ 29-1-8-1, 29-1-8-2 (West 1979) (no close relative requirement)
- Kansas Stat. Ann. § 59-1507b (1983) (Special provision applicable only to surviving spouse)
- Louisiana Code Civ. Proc. Ann. arts. 3431, 3432, 3434 (West Supp. 1985) (no close relative requirement)
- Maine Rev. Stat. Ann. tit. 18-A, §§ 3-1201, 3-1202 (1981) (no close relative requirement)

Massachusetts Gen. Laws Ann. ch. 195, § 16 (1981) (limited to decedent's surviving spouse, child, grandchild, parent, brother, sister, niece, nephew, aunt, or uncle and includes state department of mental health and state department of public welfare where decedent was receiving public assistance)

Mississippi Code Ann. § 91-7-322 (1984) (limited to surviving spouse, children, and parents of decedent)

Missouri Ann. Stat. § 473.097 (Vernon Supp. 1984) (no close relative requirement)

Montana Code Ann. §§ 72-3-1101, 72-3-1102 (1983) (no close relative requirement)

Nebraska Rev. Stat. §§ 30-24,125, 30-24,126 (1979) (no close relative requirement)

Nevada Rev. Stat. § 146.080 (1979) (This provision is drawn from existing California law and is limited to the surviving spouse, the children, issue of deceased children, parents, brothers and sisters of the decedent)

New Jersey Rev. Stat. §§ 3:B10-3, 3:B10-4 (1984) (no close relative requirement)

New Mexico Stat. Ann. § 45-3-1201 (Supp. 1984), 45-3-1202 (1978) (no close relative requirement)

New York Surrogates' Court Procedure Act Law §§ 1301, 1303 (McKinney Supp. 1984), 1304 (McKinney 1967) (special provisions relating to "voluntary administrators" which are limited to surviving spouse, child, grandchild, parent, brother or sister of decedent)

North Carolina Gen. Stat. § 28A-25-1 (1982) (not limited to close relatives)

North Dakota Cent. Code § 30.1-23-01, 30.1-23-02 (1981) (No close relative requirement)

Oregon Rev. Stat. §§ 114.515, 114.525, 114.535 (1981) (no close relative requirement)

South Dakota Codified Laws Ann. § 30-11A-1 (1977) (no close relative requirement)

Tennessee Code Ann. §§ 30-4-103, 30-4-104 (1984) (no close relative requirement)

Texas Prob. Code Ann. §§ 137 (Vernon Supp. 1984), 139, 140 (Vernon 1980) (no close relative requirement)

Utah Code Ann. §§ 75-3-1201, 75-3-1202 (1978) (no close relative requirement)

Virginia Code §§ 64.1-132.2, 64.1-132.2 (1984) (no close relative requirement)

Wisconsin Stat. Ann § 867.03 (West Supp. 1984) (no close relative requirement)

Wyoming Stat. § 2-1-210 (1981) (no close relative requirement)



May 7, 1985

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

Re: Law Revision Commission Study L-1030

Dear Mr. DeMouilly:

The California State Genealogical Alliance is a statewide genealogical association which serves as an umbrella organization for more than 100 local genealogical societies in California.

We will appreciate the following comments being brought to the attention of the Commission at the May 16 meeting in Sacramento.

We understand that current California law allows relatives as far removed as "issue of a deceased brother or sister" (e.g. nephews, grand nephews, great grand nephews) to establish the right of inheritance by executing an affidavit showing the heirs at law of a decedent. We feel that there is a great possibility of erroneous information in such affidavits.

While a person's knowledge of his own siblings is often accurate as to names and order of birth, information beyond that is apt to be flawed. That is, inaccuracies and errors of omission occur when an individual attempts to give information which outlines the marriages and offspring of his siblings, as required in such heirship affidavits.

In the case where the decedent's nephew attempts to account for all of the decedent's heirs at law, there exists a still greater possibility of error, misstatement or omission. The nephew would be making statements regarding the existence or non-existence not only of his siblings, but also of his



aunts and uncles, his cousins, first cousins once removed, etc. It follows that in the case of testimony of a grand nephew, the probability of error increases enormously as the relationships become even more distant.

We believe that to include the decedent's cousins as affiants increases the probability of misinformation beyond any acceptable standard. By definition a "cousin" may be related to either the father or mother or the decedent and such cousin is, therefore, a relative of one parent of the decedent and a stranger to the other parent. Under the proposal, a cousin would be required to provide all of the information outlined above, which is difficult even for more closely related heirs to provide. In addition, all of that data in regard to the family of the decedent's parent to whom the cousin is not related whatsoever, must be provided.

We feel there is a strong probability that the data in an affidavit completed by a decedent's cousin would be genealogically inaccurate, and we do not feel that such an affidavit should be used as the basis for heirship and distribution with no formal probate procedure.

We will be pleased to appear before the Commission to discuss this information further.

Sincerely,

for

California State Genealogical Alliance

Approved 10 May 1985
California State Genealogical Alliance Board

MAIL INQUIRIES TO: Carlton Smith, 3219 Cobblestone Drive
Santa Rosa, CA 95404

EXHIBIT 6

JACK E. COOPER

ATTORNEY AT LAW

225 BROADWAY, SUITE 1500

SAN DIEGO, CALIFORNIA 92101

(619) 232-4525

May 10, 1985

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303

Gentlemen:

Members of the Probate And Estate Planning Subcommittee For Legislation, San Diego County Bar Association, met on May 9, 1985. At the meeting we discussed a number of your memorandums.

The consensus of the committee concerning Memorandum 85-7 is agreement with your staff recommendation i.e. notice of the hearing of the petition for establishment of a conservatorship should be given to all relatives within the second degree. Notice of subsequent proceedings to be sent only to a limited scope of interested parties.

We also discussed Memorandum 85-16 at length and are generally in agreement with your recommendations. One item that was questioned is the complete lack of any cross-reference to Probate Code, sections 6341 et seq. The general feeling is that most people are unaware of the provisions of those sections and they will become more and more applicable as wills using the Uniform Gifts To Minors Act are probated. Could you not insert in section 3925, or some other section, reference to sections 6341 et seq.?

Very truly yours,



Jack E. Cooper