

0239a
February 26, 1986

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

<u>Time</u>	<u>Place</u>
March 13 (Thursday) 3:00 p.m. -10:00 p.m.	Room 125
March 14 (Friday) 8:30 a.m. - 5:00 p.m.	State Capitol Sacramento

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Sacramento

March 13-14, 1986

1. Minutes of February 14, 1986, Meeting (enclosed)
2. Administrative Matters
3. 1986 Legislative Program
Legislative Program Generally
Memorandum 86-25 (enclosed)
Study L -Assembly Bill 2625 - Comprehensive Probate Bill
Memorandum 86-26 (enclosed)
Amended AB 2625 (to be sent)
First Supplement to Memorandum 86-26 (to be sent if needed)
Study L - Assembly Bill 2652 - Comprehensive Trust Bill
Memorandum 86-16 (sent 1/24/86; another copy sent 2/19/86)
First Supplement to Memorandum 86-16 (sent 2/6/86; another copy sent 2/19/86)
Assembly Bill 2652 (enclosed)
Second Supplement to Memorandum 86-16 (~~to be sent~~ ^{enclosed})
Third Supplement to Memorandum 86-16 (to be sent if needed)
4. Study L-1010 - Estate and Trust Code (Opening Estate Administration)
Notice to Creditors
Memorandum 86-23 (Notice to Creditors) (sent 2/6/86; another copy sent 2/19/86)

Tentative Recommendation

Memorandum 86-27 (enclosed)
Tentative Recommendation (attached to Memorandum)

5. Study L-1028 - Estate and Trust Code (Independent Administration)

Memorandum 86-29 (enclosed)
Tentative Recommendation (attached to Memorandum)

6. Study L-930 - Estate and Trust Code (Guardian ad Litem)

Memorandum 86-28 (enclosed)
Draft Statute (attached to Memorandum)

7. Study L-1050 - Estate and Trust Code (Notice in Guardianship and Conservatorship Proceedings)

Memorandum 85-108 (sent 12/12/85; another copy sent 2/19/86)
Memorandum 86-30 (enclosed)

8. Study L-700 - Estate and Trust Code (Testamentary Capacity of Conservatee)

Memorandum 86-22 (sent 2/4/86; another copy sent 2/19/86)

9. Study L-1050 - Estate and Trust Code (Sterilization of Conservatee)

Memorandum 85-109 (sent 12/18/85; another copy sent 2/19/86)
First Supplement to Memorandum 85-109 (sent 1/31/86; another copy sent 2/19/86)

- SPECIAL (10. Study L-655 - Estate and Trust Code (Probate Referees)
ORDER OF (
BUSINESS (
7:30 P.M.(
March 13 (
(
Memorandum 86-18 (sent 1/31/86; another copy sent 2/19/86)
First Supplement to Memorandum 86-18 (sent 2/6/86; another copy sent 2/19/86)
Second Supplement to Memorandum 86-18 (to be sent)

11. Study L-1029 - Estate and Trust Code (Closing Estate Administration)

Memorandum 86-21 (sent 1/31/86; another copy sent 2/19/86)
Draft Statute (attached to Memorandum)

12. Study L-1033 - Estate and Trust Code (Establishing Identity of Heirs)

Memorandum 85-89 (sent 10/17/86; another copy sent 2/19/86)
Draft Statute (attached to Memorandum)
First Supplement to Memorandum 85-89 (sent 12/18/85; another copy sent 2/19/86))

13. Study L-1035 - Estate and Trust Code (Administration of Estates of Missing Persons Presumed Dead)

Memorandum 85-91 (sent 10/17/85; another copy sent 2/19/86)
Draft Statute (attached to Memorandum)
First Supplement to Memorandum 85-91 (sent 12/31/85; another copy sent 2/19/86)

14. Study L-1040 - Estate and Trust Code (Public Administrators)

(
SPECIAL (Memorandum 86-19 (sent 1/24/86; another copy sent 2/19/86)
ORDER OF (Draft Statute (attached to Memorandum)
BUSINESS (First Supplement to Memorandum 86-19 (sent 1/24/86; another
1:30 P.M.(copy sent 2/19/86)
March 14 (Second Supplement to Memorandum 86-19 (sent 1/28/86;
(another copy sent 2/19/86)
(Third Supplement to Memorandum 86-19 (sent 1/10/86; another
(copy sent 2/19/86)

15. Study L-1045 - Estate and Trust Code (Definitions)

Memorandum 86-31 (enclosed)
Draft Statute (attached to Memorandum)

16. Study L - Terminology Used in Comments to Indicate How New Section Compares to Existing Law

Memorandum 85-113 (sent 1/10/86; another copy sent 2/19/86)

To be Considered if Time Permits

17. Handbook of Practices and Procedures

Memorandum 85-107 (sent 12/12/85; another copy sent 2/19/86)
Draft of Revised Handbook (attached to Memorandum)

18. Topics and Priorities for 1988 and Thereafter

Memorandum 85-94 (sent 1/23/86; another copy sent 2/19/86)
First Supplement to Memorandum 85-94 (sent 1/23/86; another copy sent 2/19/86)
Second Supplement to Memorandum 85-94 (to be sent)

2/17/86

SCHEDULE FOR WORK ON ESTATE AND TRUST CODE

MARCH MEETING

Preliminary Consideration of New Material

Probate Referees
Guardianship-Conservatorship Law
 Notice Provisions
 Sterilization of Conservatee
 Testamentary Capacity of Conservatee
Closing Estate Administration
Establishing Identity of Heirs
Administration of Estates of Missing Persons Presumed Dead
Public Administrators
Definitions
Guardian ad Litem

Approve Tentative Recommendations for Distribution for Comment

Opening Estate Administration
Independent Administration

APRIL MEETING

Approve Tentative Recommendations for Distribution for Comment

Distribution and Discharge
Guardianship-Conservatorship Law (Notice; Sterilization; Testamentary
Capacity)
Presentation and Payment of Claims

Approval for Distribution

Compensation, Commissions, and Fees (Staff Prepared Questionnaire)

Preliminary Consideration of New Material

Estate Management
Abatement; Distribution of Interest and Income

MAY MEETING

Approve Tentative Recommendations for Distribution for Comment

Definitions
Public Administrators
Establishing Identity of Heirs
Administration of Estates of Missing Persons Presumed Dead
Estate Management

Preliminary Consideration of New Material

Inventory and Appraisal (including Probate Referees)
Multiple-Party Accounts
Ancillary Administration
Anti-Lapse Statute

JUNE MEETING

Approve Tentative Recommendation for Distribution for Comment

Inventory and Appraisal (including Probate Referees)
Multiple-Party Accounts
Ancillary Administration

Preliminary Consideration of New Material

Compensation, Commissions, and Fees
Notices
Rules of Procedure
Orders
Appeals
Operative Date of New Code

JULY MEETING

Approve Tentative Recommendations for Distribution for Comment

Anti-Lapse Statute
Abatement; Distribution of Interest and Income
Compensation, Commissions, and Fees
Notices
Rules of Procedure
Orders
Appeals
Operative Date of New Code

Preliminary Consideration of New Material

Review for technical and substantive changes and prepare Comments

Preliminary Provisions
General Provisions
Disclaimers
Guardianship-Conservatorship Law
Management of Disposition of Community Property Where Spouse
Lacks Legal Capacity
Authorization of Medical Treatment for Adult Without
Conservator
Other Protective Proceedings
California Uniform Transfers to Minors Act
Wills
Intestate Succession

Review for technical and substantive changes and prepare Comments
(continued)

Family Protection
Escheat of Decedent's Property
Disposition Without Administration
Trusts

SEPTEMBER MEETING

Preliminary Consideration of New Material

Conforming Revisions of Sections in Other Codes
Review Comments on Tentative Recommendations Sent Out For Comment

OCTOBER MEETING

Approve Text of New Estates and Trusts Code for Introduction

Arrange for introduction as preprinted bill

Approve Printing of Recommendation for Estates and Trusts Code

NOVEMBER AND DECEMBER

Staff prepares Recommendation for Printing

FEBRUARY 1987 MEETING

Printed bill available for review and distribution

MARCH 1987 MEETING

Printed Commission Recommendation Available for Distribution
Review Comments from Interested Persons on Bill Proposing New Code

NEW PROBATE STUDIES TO BE COMMENCED IN 1987

Uniform Transfers to Minors Act
 Make possible to make outright gift to remain in custody until
 age 25
 Co-custodians
Draft new Division 3 (Powers of Attorney; Powers of Appointment)
Claims Procedure for Trusts
Rights of Estranged Spouse
Anti-lapse and Construction of Instruments
Trustee's Use of Section 650 Procedure
Ancestral Property Doctrine
Directive to Physicians (Uniform Act)

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION
MARCH 13-14, 1986
SACRAMENTO

A meeting of the California Law Revision Commission was held in Sacramento on March 13-14, 1986.

Law Revision Commission

Present: Arthur K. Marshall, Vice Chairperson Tim Paone
Roger Arnebergh Ann E. Stodden
Bion M. Gregory (Mar. 13)

Absent: Bill Lockyer, Member of Senate
Alister McAlister, Member of Assembly
Edwin K. Marzec, Chairperson

Staff Members

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

Consultant Present

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

Other Persons Present

Edward V. Brennan, California Probate Referees, San Diego
Lenore DeMouilly, Los Altos
James D. Devine, State Bar Estate Planning, Trust and
Probate Law Section, Monterey
Jonathan Ferdon, Public Administrator/Guardian, San
Francisco (Mar. 14)
Nancy E. Ferguson, California Probate Referees, Chico
(Mar. 13)
Sandra Kass, Los Angeles County Bar Association, Los Angeles
Paulette Leahy, California Bankers Association, San Diego
James Quillinan, State Bar Estate Planning, Trust and
Probate Law Section, Mountain View
Matthew S. Rae, Jr., Private Attorney, Los Angeles
James R. Scannell, Public Administrator/Guardian, San
Francisco (Mar. 14)
Gerald L. Scott, California Probate Referees, San Jose
(Mar. 13)

Theresa Taken, Public Administrator/Guardian, San Francisco
(Mar. 14)
James A. Willett, State Bar Estate Planning, Trust and
Probate Law Section, Sacramento
Shirley Yawitz, California Probate Referees, San Francisco

ADMINISTRATIVE MATTERS

MINUTES OF FEBRUARY 14, 1986, MEETING

The Minutes of the February 14, 1986, Meeting were approved as submitted by the staff after the following corrections were made:

(1) On page 2, line 1, "JANUARY 16-17" was substituted for "FEBRUARY 14".

(2) On page 2, line 2, "January 16-17" was substituted for "February 14".

FUTURE MEETINGS

The following is the schedule for future meetings.

April 1986

10 (Thursday)	2:00 p.m. - 8:00 p.m.	Eureka
11 (Friday)	8:30 a.m. - 6:00 p.m.	

May 1986

15 (Thursday)	3:00 p.m. - 8:00 p.m.	Sacramento
16 (Friday)	9:00 a.m. - 4:15 p.m.	

June 1986

26 (Thursday)	3:00 p.m. - 8:00 p.m.	Monterey
27 (Friday)	9:00 a.m. - 4:00 p.m.	

July 1986

17 (Thursday)	3:00 p.m. - 8:00 p.m.	San Diego
18 (Friday)	9:00 a.m. - 4:00 p.m.	

September 1986

4 (Thursday)	3:00 p.m. - 8:00 p.m.	Sacramento
5 (Friday)	9:00 a.m. - 4:15 p.m.	

November 1986

13 (Thursday)	3:00 p.m. - 8:00 p.m.	Orange County
14 (Friday)	9:00 a.m. - 4:00 p.m.	

December 1986

4 (Thursday)	3:00 p.m. - 8:00 p.m.	Los Angeles
5 (Friday)	9:00 a.m. - 4:00 p.m.	

1986 LEGISLATIVE PROGRAM

The Commission considered Memorandum 86-25 and the following report on the 1986 Legislative Program.

Approved by Legislative Committee in Second House

Assembly Bill 625 - Buol case urgency bill - provides that 1983 statute applies only to proceedings commenced after January 1, 1984 (Commission recommended legislation amended into existing bill) (Assembly Member McAlister has further amended bill to make other technical changes in family law; bill being amended to delete these additional amendments) (Approved by Senate Judiciary Committee on February 25)

Passed by First House

Assembly Concurrent Resolution 93 - Continues Commission Authority to Study Topics Previously Authorized for Study (Approved by Assembly Judiciary Committee on February 19)

Set for Hearing in First House

Assembly Bill 2625 - Comprehensive Probate Bill (Disposition of Estate Without Administration; Small Estate Set-Aside; Proration of Estate Taxes; Technical and Clarifying Revisions) (Set for Hearing by Assembly Judiciary Committee on April 1)

Assembly Bill 2652 - Comprehensive Trust Statute (Set for hearing by Assembly Judiciary Committee on April 1)

Dead

Assembly Bill 2626 - Reservation of Legislative Power for Disposition of Property in Marriage Dissolution Cases (Heard by Assembly Judiciary Committee on February 25 and not sufficient votes in favor of bill to approve it)

SENDING TENTATIVE RECOMMENDATIONS ONLY TO PERSONS WHO SUBMIT COMMENTS

The Commission has a policy of sending drafts of tentative recommendations to interested persons and organizations for review and comment. To reproduce and mail hundreds of copies of the tentative recommendations relating to portions of the new Estate and Trust Code will be a substantial burden on the support staff of the Commission. In addition, it will be expensive to reproduce and mail copies of the tentative recommendations.

The Commission decided that the two tentative recommendations approved for distribution at the March meeting should be sent to all persons and organizations that have indicated a willingness to review and comment on tentative recommendations relating to probate law and procedure. A letter should accompany the two recommendations advising the persons to whom they are sent that future tentative recommendations will be send only to persons who submit comments concerning the two recommendations.

STUDY L - ASSEMBLY BILL 2625

The Commission considered Memorandum 86-26 and the First Supplement thereto with proposed amendments to the Commission's comprehensive probate bill (Assembly Bill 2625, amended in Assembly March 5, 1986). The Commission approved the addition to Section 20110 of the following language as contained in the printed bill: "If federal law directs the manner of proration of the federal estate tax, the California estate tax shall be prorated in the same manner." Comparable language is included in the provisions governing the generation-skipping transfer tax.

The Commission approved the following new amendments to AB 2625:

AMENDMENT ____

On page 6, line 33, strike out "to"

AMENDMENT ____

On page 9, line 9, strike out "that" and insert:

such

AMENDMENT ____

On page 9, line 11, strike out "those" and insert:

such

AMENDMENT ____

On page 11, line 6, after "707.5" insert:

or

AMENDMENT ____

On page 12, line 25, after "upon" insert:

such

AMENDMENT ____

On page 12, line 27, after "such" strike out "a"

AMENDMENT ____

On page 13, line 2, strike out "order" and insert:

petition

AMENDMENT ____

On page 14, line 13, strike out "that" and insert:

the

AMENDMENT ____

On page 14, line 16, strike out "that" and insert:

the

AMENDMENT ____

On page 14, line 19, strike out "any" and insert:

an

AMENDMENT ____

On page 14, line 20, strike out "duly admitted to" and insert:

, the optionee has the right to exercise the option at any time within the time limits provided by the will. For the purposes of this section, if a time limitation in the will is measured from the death of the testator, that time shall be extended by the period between the

testator's death and the issuance of letters testamentary or letters of administration with the will annexed or by six months, whichever is the shorter period.

(b) When an option to purchase real or personal property is given in a will admitted to

AMENDMENT ____

On page 14, line 21, after "optionee" insert:
or the personal representative

AMENDMENT ____

On page 14, line 21, after "court" insert:
, within any time limits provided in the will,

AMENDMENT ____

On page 14, strike out lines 22 and 23 and insert:
requiring that the property be transferred or conveyed to the optionee upon

AMENDMENT ____

On page 14, strike out line 25

AMENDMENT ____

On page 14, line 26, strike out "(b) The" and insert:
will. The

AMENDMENT ____

On page 14, line 31, strike out "(c) The" and insert:
The

AMENDMENT ____

On page 14, strike out lines 35 to 40, inclusive, and on page 15, strike out lines 1 to 3, inclusive, and insert:

(c) Subject to subdivision (d), if the option given in the will is exercisable under the terms of the will after the time that the estate would otherwise be closed, the property subject to the option shall be distributed subject to the option.

(d) If the will does not provide a time limit for exercise of the option, the time limit is one year from the death of the decedent.

AMENDMENT ____

On page 29, between lines 23 and 24, insert:

13052. In making an inventory and appraisal for the purposes of this part, the probate referee shall use the date of the decedent's death as the date of valuation of the property.

AMENDMENT ____

On page 29, line 24, strike out "13052." and insert:
13053.

AMENDMENT ____

On page 29, line 32, strike out "13053." and insert:
13054.

AMENDMENT ____

On page 39, line 30, after "A" insert:

legal

AMENDMENT ____

On page 39, line 32, after "petitioner" insert:
and the interest of the decedent therein

AMENDMENT ____

On page 41, line 6, after "alleges" insert:

is

AMENDMENT ____

On page 44, line 16, after "affidavit" insert:
in the form prescribed by the Judicial Council pursuant to Section
13209

AMENDMENT ____

On page 44, line 20, after "A" insert:

legal

AMENDMENT ____

On page 49, between lines 22 and 23, insert:

13209. The Judicial Council shall prescribe the form of affidavit to be used under this chapter. Any such form prescribed by the Judicial Council is deemed to comply with this chapter.

AMENDMENT ____

On page 60, line 26, strike out both commas

AMENDMENT ____

On page 62, line 2, strike out the comma

AMENDMENT ____

On page 68, line 14, strike out "(c)" and insert:

20117. (a)

AMENDMENT ____

On page 68, line 19, strike out "The" and insert:

(b) The

AMENDMENT ____

On page 68, line 21, after "representative" insert:

in the discretion of the personal representative,

AMENDMENT ____

On page 68, after line 25, insert:

(c) The personal representative or person who has a right of reimbursement may commence a proceeding to have a court determine the right of reimbursement. The provisions of Article 3 (commencing with Section 20120) shall govern the proceeding, with changes necessary to make the provisions appropriate for application to the proceeding, and the court order determining the right of reimbursement is an enforceable judgment.

AMENDMENT ____

On page 69, line 11, strike out "The" and insert:
Not less than 30 days before the hearing the

AMENDMENT ____

On page 69, strike out line 12 and insert:
(a) Cause

AMENDMENT ____

On page 69, strike out line 18 and insert:
(b) Cause a

AMENDMENT ____

On page 72, line 23, strike out "(c)" and insert:
20215. (a)

AMENDMENT ____

On page 72, line 29, strike out "The" and insert:
(b) The

AMENDMENT ____

On page 72, line 30, after "trustee" insert:
in the discretion of the trustee,

AMENDMENT ____

On page 72, after line 34, insert:
(c) The trustee or person who has a right of reimbursement may commence a proceeding to have a court determine the right of reimbursement. The provisions of Article 3 (commencing with Section 20220) shall govern the proceeding, with changes necessary to make the provisions appropriate for application to the proceeding, and the court order determining the right of reimbursement is an enforceable judgment.

AMENDMENT _____

On page 73, line 20, after "shall" insert:
do both of the following

The Commission asked the staff in preparing the new Estate and Trust Code to do the following;

(1) To draft a statutory form of affidavit to be used for collection of personal property. The statute would require the form to be in "substantially" the prescribed form.

(2) To consider whether the appeals provision in Section 20123(b) should be compiled with the general appeals provisions (existing Sections 1240-1242).

STUDY L-640 - TRUSTS

The Commission considered Memorandum 86-16 and the First, Second, Third, and Fourth Supplements thereto, relating to the Trust Law bill, AB 2652. The Commission approved the proposed technical amendments as set forth in the memorandum and in the First and Fourth Supplements, with minor changes noted below. The substantive amendments set forth in the Second Supplement (comments of California Bankers Association) and in the Third Supplement (comments of State Bar Estate Planning, Trust and Probate Law Section Executive Committee) were adopted as noted below:

§ 83. Trust company

The amended definition of trust company should be further revised as follows:

83. "Trust company" means an entity that ~~is authorized~~ has qualified to engage in and conduct a trust business in this state.

Comment. Section 83 is drawn from parts of former Probate Code Sections 480 and 1120.1a. See also Section 300 (appointment of trust company as executor or administrator), 15643 (vacancy in office of trustee), 17351-17353 (removal of trust from continuing court jurisdiction). Entities that are ~~authorized~~ may qualify to conduct a trust business in this

state include state chartered commercial banks (see Fin. Code §§ 107, 1500.1) and national banking associations (see Fin. Code §§ 1502, 1503), corporations authorized to conduct a trust business (see Fin. Code § 107), trust departments of title insurance companies (see Fin. Code §§ 107, 1501; Ins. Code §§ 12392, 12395), and state and federal savings and loan associations (see Fin. Code §§ 5102, 6515). See also Fin. Code § 106 ("trust business" defined). Whether an entity has qualified to engage in and conduct a trust business in this state depends upon other law. In order to fall within the definition of "trust company" in Section 83, a corporation, association, or other entity must satisfy the requirements of state or federal law that apply to the particular type of entity.

§ 15003. Constructive and resulting trusts and other confidential relationships unaffected

Section 15003 should be revised as follows:

15003. (a) Nothing in this division affects the law relating to constructive or resulting trusts.

(b) The repeal of Title 8 (commencing with Section 2215) of Part 4 of Division 3 of the Civil Code is not intended to alter the rules applied by the courts to fiduciary and confidential relationships, except as to express trusts governed by this division.

§ 15307. Income in excess of amount for education and support subject to creditors' claims

In the interest of clarity, the first sentence of this section should be revised as follows:

Notwithstanding a restraint on transfer of a beneficiary's interest in the trust under Section 15300 or 15301, any amount to which the beneficiary is entitled under the trust instrument or ~~pursuant to that the trustee,~~ in the exercise of the trustee's discretion, has determined to pay to the beneficiary in excess of the amount that is or will be necessary for the education and support of the beneficiary may be applied to the satisfaction of a money judgment against the beneficiary.

The comment should contain a cross-reference to Section 15303 which provides that a transferee or creditor does not have the power to compel the trustee to exercise discretion.

§ 15400. Presumption of revocability

This section should be revised as follows:

15400. Unless a trust is expressly made irrevocable by the trust instrument, the trust is revocable by the settlor. This section applies only where the settlor is domiciled in this state when the trust is created, where the trust instrument is executed in this state, or where the trust instrument provides that the law of this state governs the ~~revocability of the~~ trust.

As revised, the California rule presuming revocability will apply to trusts that incorporate California law, without the necessity to specifically incorporate the presumption of revocability.

§ 15401 & Civil Code § 2467. Revocation of trust by attorney in fact

The Commission reaffirmed the policy reflected in these sections of the bill that requires both the trust instrument and the power of attorney to authorize the attorney in fact to revoke a trust before such a power may be exercised.

§ 15407. Trustee's powers on termination of trust

In the interest of clarity, this section should be revised as follows:

15407. (a) A trust terminates when any of the following occurs:

- (1) The term of the trust expires.
- (2) The trust purpose is fulfilled.
- (3) The trust purpose becomes unlawful.
- (4) The trust purpose becomes impossible to fulfill.
- (5) The trust is revoked.

(b) On termination of the trust, the trustee continues to have the powers needed reasonably necessary under the circumstances to wind up the affairs of the trust.

§ 15643. Vacancy in office of trustee

The Comment to Section 15643 should contain a cross-reference to Section 15660 in order to clarify the relationship between the section governing occurrence of a vacancy and the section governing when a vacancy must be filled.

§ 15644. Powers of resigning or removed trustee

This section should be revised as follows:

15644. When a vacancy has occurred in the office of trustee, the former trustee who holds property of the trust shall deliver the trust property to the successor trustee or a person appointed by the court to receive the property and remains responsible for the trust property until it is delivered. A trustee who has resigned or is removed has the powers reasonably necessary under the circumstances to preserve the trust property until it is delivered to the successor trustee and to perform actions necessary to complete the resigning or removed trustee's administration of the trust.

§ 16012. Delegation to agents

This section should be revised to read as follows:

16012. (a) The trustee has a duty not to delegate to others the performance of acts that the trustee can reasonably be required personally to perform and may not transfer the office of trustee to another person nor delegate the entire administration of the trust to a cotrustee or other person.

(b) In a case where a trustee has properly delegated a matter to an agent, cotrustee, or other person, the trustee has a duty to exercise general supervision over the person performing the delegated matter.

The comment should note that the duty not to delegate does not preclude employment of an agent in a proper case and should make clear that a trust company may delegate matters to its affiliates.

§ 16014. Duty to use special skills

This section should be revised to read as follows:

16014. ~~If the~~ (a) The trustee has special a duty to apply the full extent of the trustee's skills or if,

(b) If the settlor, in selecting the trustee, has relied on the trustee's representation of having special skills, the trustee has a duty to use these is held to the standard of the skills represented.

The comment should read as follows:

Comment. Subdivision (a) of Section 16014 codifies a duty set forth in Coberly v. Superior Court, 231 Cal. App. 2d 685, 689, 42 Cal. Rptr. 64 (1965).

Subdivision (b) is similar to the last part of Section 7-302 of the Uniform Probate Code (1977) and the last part of Section 174 of the Restatement (Second) of Trusts (1957). Subdivision (b) does not limit the duty provided in subdivision (a). Thus, the nature of the trustee's representations to the settlor leading up to the selection of the trustee does not affect the trustee's duty to use the full extent of his or her skills.

For a provision permitting beneficiaries to consent to acts of the trustee and thereby relieve the trustee from liability for breach of trust, see Section 16463. See also Sections 16000 (duties subject to control by trust instrument), 16040 (trustee's standard of care in performing duties).

§ 16040. Comment language relating to standard of care

The comment to this section should be revised to read as follows:

. . . . An expert trustee is held to the standard of care of other experts. See the discussions in Estate of Collins, 72 Cal. App. 3d 663, 673, 139 Cal. Rptr. 644 (1977); Coberly v. Superior Court, 231 Cal. App. 2d 685, 689, 42 Cal. Rptr. 64 (1965); Estate of Beach, 15 Cal. 3d 623, 635, 542 P.2d 994, 125 Cal. Rptr. 570 (1975) (bank as executor); see also the Comment to Section 2401 (standard of care applicable to professional guardian or conservator of estate) and the Comment to Section 3912 (standard of care applicable to professional fiduciary acting as custodian under Uniform Transfers to Minors Act). . . .

§ 16062. Types of accounting statements and application of requirement

Section 16062 should be revised to unify the types of accounting statements that would be required after the operative date, and also to clarify the application of the accounting requirement to pre-operative date trusts. These revisions would be accomplished as follows:

(b) A trustee of a living trust created by an instrument executed before July 1, 1987, or of a trust created by a will executed before July 1, 1987, ~~and not incorporated by reference in a will on or after July 1, 1987,~~ is not subject to the duty to account provided in this section, but the requirement of an account pursuant to former Probate Code Section 1120.1a may be satisfied by furnishing an account that satisfies the requirements of Section 16063.

The deleted language appears to be surplus in light of the definition of "will" to include a codicil. The comment to this section should state that a trust created by a will executed before July 1, 1987, is governed by prior law regardless of whether any codicils are executed after the operative date.

§§ 16200-16249. Trustees' powers

Section 16203 should provide that pre-operative date trusts will not lose any powers that they had under former law and the trustee will not be required to obtain court approval for exercise of a power that was not required under former law.

§ 16308. Accounting principles in farming operations

This section should be revised to take the Nebraska approach which refers to "recognized methods of accounting for a comparable business" so that farming operations will not be required to adopt "generally accepted accounting principles." Accordingly, subdivision (b) should be deleted.

§ 16311. Underproductive property

Subdivision (d) should be added to this section to read as follows:

(d) This section does not apply to securities listed on a national securities exchange or traded over the counter if the securities are held in a broadly diversified portfolio designed to produce a reasonable return appropriate to the purposes of the trust.

This language is intended to resolve the conflict between the portfolio approach to investment decisions embodied in Section 16040(b) and the underproductive property provision of Section 16311.

§ 16312(d)(5). Interest on estate tax as charge against principal

The provision for apportioning interest in this paragraph should be deleted. Thus, the default rule that applies the general standard of care to trustee decisions regarding allocation of principal and income would apply to the allocation of interest on estate tax principal.

§ 16401. Trustee's liability for acts of agents

This section should not be revised as suggested by the California Bankers Association. The comment should contain the following cross-reference: "In the case of a revocable trust, the trustee is not liable, with regard to hiring agents, for following the written directions of the person holding the power to revoke. See Section 16462."

§§ 16402-16403. Application of liability rules

These sections should apply only prospectively, in the same manner as Section 16401. The Comment to Section 16403 should contain a cross-reference to consent, release, and ratification (Sections 16463-16465) in connection with the ability of a successor trustee to be relieved of liability for the breach of a predecessor trustee. This comment should also note that "it may not be reasonable to enforce a claim depending upon the likelihood of recovery and the cost of suit and enforcement." The word "proper" in Section 16403(b)(2) and (3) should be changed to "reasonable" to be consistent with Section 16010 (duty to enforce claims).

§ 16460. Limitations on proceedings against trustee

Subdivision (c) of this section should provide a one-year grace period for filing claims against the trustee for breach of trust that arose before the operative date of the new law. Thus a claim that otherwise could not be asserted under the new rule in Section 16460 could nevertheless be asserted within one year after the operative date of the new law.

§ 16463. Consent of beneficiary to relieve trustee of liability

The Comment to Section 16463 should be revised to refer to the doctrines of estoppel and laches which are not codified, and to newly added Sections 16464 (discharge of trustee's liability by release or contract) and 16465 (discharge of trustee's liability by subsequent affirmance).

§ 16464. Discharge of trustee's liability by release or contract

A new Section 16464, dealing with release, should be added to AB 2652. The following language was approved as revised:

16464. (a) Except as provided in subdivision (b), a beneficiary may be precluded from holding the trustee liable for a breach of trust by the beneficiary's release or contract effective to discharge the trustee's liability to the beneficiary for that breach.

(b) A release or contract is not effective to discharge the trustee's liability for a breach of trust in any of the following circumstances:

(1) Where the beneficiary was under an incapacity at the time of making the release or contract.

(2) Where the beneficiary did not know of his or her rights and of the material facts (1) that the trustee knew or reasonably should have known and (2) that the trustee did not reasonably believe that the beneficiary knew.

(3) Where the release or contract of the beneficiary was induced by improper conduct of the trustee.

(4) Where the transaction involved a bargain with the trustee that was not fair and reasonable.

Comment. Section 16464 is a new provision that is the same in substance as Section 217 of the Restatement (Second) of Trusts (1957). Section 16464 supersedes former Civil Code Section 2230 to the extent that section governed release.

§ 16465. Discharge of trustee's liability by subsequent affirmance

A new Section 16465, dealing with affirmance, should be added to AB 2652. The following language was approved as revised:

16465. (a) Except as provided in subdivision (b), if the trustee in breach of trust enters into a transaction that the beneficiary can at his or her option reject or affirm, and the beneficiary affirms the transaction, the beneficiary cannot thereafter reject it and hold the trustee liable for any loss occurring after the trustee entered into the transaction.

(b) The affirmance of a transaction by the beneficiary does not preclude the beneficiary from holding the trustee liable for a breach of trust if, at the time of the affirmance, any of the following circumstances existed:

(1) The beneficiary was under an incapacity.

(2) The beneficiary did not know of his or her rights and of the material facts (1) that the trustee knew or reasonably should have known and (2) that the trustee did not reasonably believe that the beneficiary knew.

(3) The affirmance was induced by improper conduct of the trustee.

(4) The transaction involved a bargain with the trustee that was not fair and reasonable.

Comment. Section 16465 is a new provision that is the same in substance as Section 218 of the Restatement (Second) of Trusts (1957).

§ 17000. Jurisdiction

This section should be revised as follows to make its meaning clearer:

17000. (a) The superior court having jurisdiction over the trust pursuant to this part has exclusive jurisdiction of proceedings concerning the internal affairs of trusts.

(b) The superior court having jurisdiction over the trust pursuant to this part has concurrent jurisdiction of the following:

(1) Actions and proceedings to determine the existence of trusts.

(2) Actions and proceedings by or against creditors or debtors of trusts.

(3) Other actions and proceedings involving trustees and third persons.

§ 17104(b). Conclusiveness of order

The provision relating to the conclusiveness of the court's order in the proposed Trust Law will be considered when identical provisions in probate administration are presented for consideration. The question is whether it is necessary for the court to find that notice has been regularly given for the order to be conclusive.

§ 17208. Appointment of guardian ad litem

The comment to this section should make clear that a guardian ad litem may be appointed where there is already a guardian or conservator, if the need exists. The comment should also make clear that this section does not limit the power of the court to appoint an attorney to represent the interests of an incapacitated person.

§ 18000. Contract liability of trustee

This section should be revised as follows:

18000. (a) Unless otherwise provided in the contract or in this chapter, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administration of the trust unless the trustee fails to reveal the trustee's representative capacity and or identify the trust in the contract.

(b) The personal liability of a trustee on a contract entered into before July 1, 1987, is governed by prior law and not by this section.

Changing "and" to "or" means that the trustee is relieved of personal liability on the contract if either the representative capacity or the identity of the trust is revealed in the contract (unless, of course, the contract provides otherwise).

§ 18102. Protection of third person dealing with former trustee

This section should be revised, for clarity, as follows:

18102. If a third person acting in good faith and for a valuable consideration enters into a transaction with a former trustee without knowledge that ~~the trustee's office is vacant~~ the person is no longer a trustee, the third person is fully protected just as if the former trustee were still a trustee.

Civil Code § 5110.150. Community property in revocable trust

This section should be replaced with the latest draft of Section 5110.150. The Commission will consider additional changes in this provision after receipt of the report from the State Bar study group in the near future.

Creditors' Claims

The Commission reaffirmed its intention to work on a creditors' claims procedure for the Trust Law; however, this work should await consideration of creditors' claims procedures in probate and receipt of the report of the State Bar study group on this subject.

Operative Date of Repeal of Old Trust Statutes

The bill should be amended to impose the delayed operative date on the repeal of the old statutes, to be consistent with the delayed operative date of the new law. This would be accomplished by the following provision to be added to AB 2652:

SEC. 41. (a) Except as provided in subdivisions (b) and (c), this act becomes operative on July 1, 1987.

(b) After the effective date of this act, the Judicial Council may adopt any forms necessary so that the forms may be used when this act become operative.

(c) After the effective date of this act, the courts may adopt any rules necessary so that the rules will be effective when this act becomes operative.

STUDY L-655 - ESTATE AND TRUST CODE (PROBATE REFEREES)

The Commission considered Memorandum 86-18, containing an analysis of responses to the Commission's probate referee questionnaire, together with the First, Second, and Third Supplements to Memorandum 86-18, containing letters from the California Probate Referees Association and the State Bar Probate Section Executive Committee. The Commission also considered AB 2896 (Harris), relating to waiver of the probate referee (copy attached to Minutes as Exhibit), and a letter from Valerie J. Merritt distributed at the meeting (copy attached to Minutes as Exhibit).

The Commission made the following decisions with respect to the probate referees:

(1) The Commission's report should reflect the careful study made of the probate referee system, in support of the changes recommended by the Commission.

(2) The Commission considered a possible name change from "probate referee" to "estate appraiser", but deferred decision on this matter pending further input from the Probate Referees Association.

(3) The statute should provide a procedure for court removal of a referee for cause upon petition by the estate. "Cause" would mean incompetence or delay, in this context.

(4) The statute should provide a procedure for challenge and removal without cause of the first referee assigned by the court in the particular case upon affidavit of the estate, similar to peremptory challenge of judge by affidavit. The challenge should be exercised before the probate referee has done any work in the estate, e.g., before delivery of the inventory. Where the only referee in the county is removed, the court should be authorized to appoint a referee in another county.

(5) The estate should be able to request a specific referee for good cause, in cases where the referee has recently appraised the same assets that are to be appraised again, or where the same referee will be making related appraisals in another proceeding, or possibly where the referee has recently appraised a similar estate. This issue depends also on policy decisions relating to waiver of the probate referee.

(6) The statute should make clear that the court has authority and discretion not to appoint a particular referee that is on the panel for that county.

(7) Cash items to be appraised by the personal representative rather than the probate referee should be defined in accordance with the California Probate Referee's Manual to include a check, draft, money order or similar instrument issued before the decedent's death that can be immediately converted to cash and whose fair market value can be determined solely from its face without calculation or reference to other sources. The personal representative should also be authorized to appraise money market accounts, cash in brokerage accounts, and refund checks (including tax and utility refunds) issued after the decedent's death if their face value is the same as their market value.

(8) A unique asset may be appraised by an independent appraiser, subject to review by the probate referee. The estate and referee may agree to reduction or waiver of a fee in this situation, or if unable to agree, the court may determine what fee, if any, is appropriate.

(9) Backup data should be provided by the probate referee upon demand without additional fee. The probate referee should also be required to justify the appraisal upon demand, subject to payment of an additional fee, to be negotiated between the referee and the estate, or if they are unable to agree, to be determined by the court.

(10) A system should be devised, analogous to that currently found in Probate Code Section 1025.5, for a status report to be made after 90 days if the appraisal has not been completed by then. The status report should show cause for the delay, or the referee would be subject to reduction of fees or removal.

(11) The appraisal should be given by the personal representative to beneficiaries and persons who have requested special notice. These persons would be able to object to the appraisal via a procedure similar to that used for challenging inheritance tax values.

STUDY L-700 - TESTAMENTARY CAPACITY OF CONSERVATEE

The Commission considered Memorandum 86-22 and the attached letter from attorney Harcourt Hervey concerning testamentary capacity of a conservatee. The Commission decided not to recommend any change in the rule that appointment of a conservator does not take away the conservatee's capacity to make a will (Prob. Code § 1871). The Commission thought that a proceeding to take away the conservatee's capacity to make a will would, in effect, be trying a will contest in advance, and would be of dubious benefit because a conservatee may in fact have capacity at some later date when the will is executed. The staff should write to Mr. Hervey explaining the Commission's view.

STUDY L-930 - ESTATES AND TRUSTS CODE (GUARDIAN AD LITEM)

The Commission considered Memorandum 86-28 and the draft of a general provision to govern appointment of a guardian ad litem in probate proceedings. The Commission approved the section as drafted. The Comment to draft Section 7205 should be revised, however, to make clear that a guardian ad litem may be appointed where there is already a guardian or conservator, if the need exists. The comment should also state that this section does not limit the power of the court to appoint an attorney to represent the interests of an incapacitated person.

STUDY L-1010 - ESTATE AND TRUST CODE (OPENING ESTATE ADMINISTRATION)

The Commission considered Memorandum 86-27, containing a draft of the tentative recommendation relating to the opening of estate administration, and Memorandum 86-23, relating to notice to creditors. The Commission approved the draft of the tentative recommendation for distribution for comment, subject to the following decisions.

§ 8100. Form of notice. The notice of probate should refer to the "Superior Court of California, County of _____".

§ 8110. Persons on whom notice served. The Commission made the policy decision to require actual notice to known creditors and those who become known to the personal representative through the inspection of the decedent's affairs while compiling the schedule of assets. For this purpose, ordinary creditors would be distinguished from potential claimants of unliquidated amounts, in some fashion; the Commission is looking to the State Bar for guidance in this area. Creditors who are given actual notice would have one month after notice is given in which to make a claim. The tentative recommendation should include a note concerning these policy decisions, and should solicit comments concerning them.

§ 8252. Trial. The Comment should note that nothing in this section precludes consolidation for trial of two wills offered for probate.

§ 8270. Petition for revocation. Subdivision (b) should only apply to a minor or incompetent person "who had no guardian or conservator".

§ 8404. Statement of duties and liabilities. This section should be limited to non-corporate personal representatives. The statement should be delivered to the personal representative either before or at the time the oath of office is filed. The statement should be phrased so that it does not necessarily assume the personal representative will be using a lawyer, and should note that the probate referee must appraise the property unless the referee is waived by the court. Signature and filing of the statement should be a prerequisite to issuance of letters. In addition to signing, the personal representative should include his or her drivers license number and social security number. The social security number should not be part of the file but should be kept confidential for court use only.

§ 8461. Priority for appointment. Subdivision (h) should refer to "other" issue of grandparents.

§ 8481. Waiver of bond. The Comment should describe the change being made in the waiver of bond provisions.

STUDY L-1028 - ESTATE AND TRUST CODE (INDEPENDENT ADMINISTRATION)

The Commission considered Memorandum 86-29 (and the attached staff draft of a Tentative Recommendation Relating to Independent Administration) and the First Supplement to Memorandum 86-29.

The Commission revised the staff draft of the Tentative Recommendation as indicated below and approved the Tentative Recommendation (as so revised) for distribution to interested persons and organizations for review and comment.

The substance of the addition to the preliminary portion of the Tentative Recommendation (as set out in the First Supplement to Memorandum 86-29) was approved.

§ 10551. Actions requiring advice of proposed action

The Commission approved subdivision (c)(2) and subdivision (e) of Section 10551. Subdivision (e) was revised to insert "fully" before "performed."

The word "or" was substituted for "of" in the introductory portion of paragraph (4) of subdivision (h).

§ 10560. Effect of failure to object to proposed action

Subdivision (d) of Section 10560 was revised to read in substance as follows:

(d) The court may review the action of the personal representative on its own motion where necessary to protect the interests of any of the following:

(1) A creditor of the estate who was not given advice of the proposed action.

(2) An heir or devisee who, at the time the advice was given lacked capacity to object to the proposed action or was a minor and no advice of proposed action was given to the guardian, conservator, or other personal representative of such heir or devisee.

§ 10603. Statutory form for waiver of advice of proposed action

This section should be revised to permit the Judicial Council to prescribe a form for a Statutory Waiver of Advice of Proposed Action and to require that the Judicial Council form be used if one is prescribed.

STUDY L-1029 - ESTATE AND TRUST CODE (CLOSING ESTATE ADMINISTRATION)

The Commission considered Memorandum 86-21, relating to closing estate administration. The Commission made the following decisions concerning the draft.

§ 12201. Report of status of administration. The report of status of administration should include an estimate of the time needed to close the estate. The statute should provide that notice of hearing is given to "persons then interested in the estate"; this language should be bracketed, however, and a note added that it will be reviewed in connection with general notice provisions.

§ 12203. Continuation of administration to pay family allowance. The Commission raised the question of the relationship of this section to the law requiring termination of a family allowance within one year in the case of an insolvent estate. The staff will prepare some background research on this matter.

§ 12205. Sanction for failure to timely close estate. In determining appropriate sanctions under this section, the court should take into account any previous delay in making the report causing prior action under Section 12202 (failure to make petition or report).

§ 12206. Testamentary limitation of time for administration. The words "or necessary" were deleted from this section.

§ 12250. Receipt for distributed property. This section should provide that in the case of real property, "the personal representative shall record the order for distribution in the county in which the real property is located", and the recordation is deemed to be a receipt. As an alternative, or in addition, the personal representative's deed may be recorded with the same effect.

§ 12251. Decree of discharge. The leadline should refer to an order rather than a decree of discharge. The petition should be made ex parte.

§ 12253. Administration after discharge. The Comment should include a reference to the statutory omnibus clause for after-discovered property.

STUDY L-1033 - ESTATE AND TRUST CODE (ESTABLISHING IDENTITY OF HEIRS)

The Commission considered Memorandum 85-89 and the First Supplement thereto, relating to establishing the identity of heirs. The Commission approved the draft statute without change. The existing provision of Section 1191 requiring posting of notice of hearing should be corrected in AB 2625.

STUDY L-1035 - ESTATE AND TRUST CODE (ADMINISTRATION OF ESTATES OF MISSING PERSONS PRESUMED DEAD)

The Commission considered Memorandum 85-91 and the First Supplement thereto, relating to administration of estates of missing persons presumed dead. The Commission made the following decisions with respect to the draft statute.

The Comments to the various sections should not refer to the sections that preceded the existing sections, because it is too confusing.

§ 9002. Manner of administration and distribution of missing person's estate. The one year limitation on distribution of property of the estate was eliminated, in reliance on the general four month limitation on any preliminary distribution. The Comment to this section should cross-refer to the four month preliminary distribution provision.

§ 9003. Jurisdiction of court. The general venue rules should be reviewed to see whether they should be made consistent with this provision.

§ 9004. Petition for administration or probate. The petition should be filed by the spouse or a relative of the missing person, or by a person interested in the estate. The Comment should note that this does not affect the order of priority of appointment of an administrator, which is still controlled by the general statutory scheme.

§ 9006. Determination whether person is person presumed to be dead; search for missing person. The second sentence of subdivision (a) was revised to read, "The court may receive evidence and consider the affidavits and depositions of persons likely to have heard from or know the whereabouts of the alleged missing person."

The cost of any search ordered by the court should be paid by the estate of the missing person, but if there is no administration the court in its discretion may order the petitioner to pay the costs.

§ 9008. Recovery of property by missing person upon reappearance. The reference to legatees should be deleted.

STUDY L-1040 - ESTATE AND TRUST CODE (PUBLIC ADMINISTRATORS)

The Commission considered Memorandum 86-19 and the Second, Fourth, and Fifth Supplements thereto, relating to public administrators. The Commission did not consider the First and Third Supplements to Memorandum 86-19, relating to public guardians.

The Commission heard a presentation by James R. Scannell, San Francisco Public Administrator/Public Guardian. Mr. Scannell noted that the great majority of the estates handled by his office are small, 70% being less than \$10,000 in value and 88% being less than \$50,000 in value. Mr. Scannell noted that there is a need to handle these small estates by summary proceedings, but that the limits in existing law are too low.

The Commission made the following decisions concerning the public administrator draft statute.

§ 7600. Notice of death. This provision should be replaced by a provision (and possibly combined with Section 7621) to the effect that if any public official, hospital, or other person knows or believes that a person has died without known heirs, the public official, hospital, or other person must report those facts to the public administrator.

§ 7602. Enforcement of chapter by district attorney. This provision was deleted as unnecessary. The normal sanctions apply to the situation to which the provision related.

§ 7620. Authority of public administrator. This section should also require the public administrator to take prompt possession or control (as opposed to taking "charge") of assets upon court order, with appropriate notice.

§ 7621. Report of civil officers. The references to civil officers should be replaced by references to "public officer or employee".

§ 7622. Search for property, will, and burial instructions. The reference to burial instructions should be replaced by a reference to disposition of remains or other proper terminology.

§ 7623. Providing information and access. The references in this section to a written certification should be replaced by references to a written statement. Persons should also be required under this section to surrender to the public administrator property that is in need of immediate attention. The staff was also instructed to review the various standards under Sections 7620, 7622, and 7623 for the public administrator to act, to see whether they should be made consistent, with the view to broadening the public administrator's authority and duties.

§ 7624. Costs and fees for taking charge of property. Subdivision (b) of this section, providing maximum and minimum fees, should be deleted.

§ 7640. Authority of public administrator. The phrase "with all convenient dispatch" should be replaced by the word "promptly". A new subdivision (c) should be added requiring the public administrator to take estates upon order of the court. To implement this provision, procedures should be added to Section 7641 to require notice to the public administrator in cases where the public administrator is not the petitioner.

§ 7641. Appointment of public administrator. A provision should be added to this section allowing the county to recoup a share of the cost of the public administrator's official bond. The amount should be one-half the current statutory maximum allowance for bond costs in other estate proceedings.

§ 7642. General rules governing administration of estates apply. The staff should investigate the persons entitled to remove the public administrator to make sure there is an easy way for a person entitled to the estate to do this.

§ 7643. Conflict of interest. This section should be revised to require that the public administrator not be "personally financially" interested in any expenditure. The staff should review the provision to see whether it should be phrased in terms of a prohibition on the public administrator acting, unless authorized by the court, and whether general conflict of interest provisions are adequate. It may be sufficient to have a deputy or assistant handle the transaction where the public administrator has a conflict.

§ 7644. Payment of unclaimed funds. The 10 day period for payment under subdivision (a) should be changed to 60 days. The staff should circulate this draft to the county treasurers for comment.

§ 7660. "Deposit in a financial institution" defined. Reference should be made to "insured" bank deposits, or general definitions should be incorporated so that the same language is used throughout the code.

§ 7661. Deposit by public administrator. This section might be revised so the defined phrase is used.

§ 7663. Interest on money earned. In subdivision (b), the phrase "in an amount no more than necessary to offset the cost to the general fund of the services of the public administrator and public guardian" should be deleted.

§ 7680. Summary disposition authorized. The amount in subdivision (a)(1) was increased to \$10,000. The staff was directed to work on the concept of summary disposition of real property of less than \$10,000 value. A new subdivision (c) was added as set out in the Second Supplement to Memorandum 86-19.

§ 7681. Liquidation of assets. Authority should be added for the public administrator to sell real property subject to court confirmation. Authority should also be added to petition the court to proceed by independent administration with respect to a particular asset.

§ 7682. Payment of demands. Subdivision (a) was revised to read: "Costs of administration, including commissions and attorney's fees." In subdivision (c), the four month period should be changed to six months. Recipients of property should be personally liable for creditor claims.

§ 7683. Distribution of property. The Commission considered, but deferred decision on, the concept of paying all proceeds under subdivision (b) to the county rather than the State. The public administrator agreed to give the Commission some statistics on the amount we are talking about under this provision.

§ 7684. Public administrator's statement of disposition. The staff was asked to check on general record keeping and disposal requirements in connection with estates as to which a statement of disposition is not made.

§ 7685. Commission of public administrator. Fees should be the same as applicable to general personal representatives, but the minimum fee should be raised to \$350.

STUDY L-1050 - NOTICE IN GUARDIANSHIP AND
CONSERVATORSHIP PROCEEDINGS

The Commission considered Memorandums 85-108 and 86-30 concerning notice in guardianship and conservatorship proceedings. The Commission decided to recommend the following:

(1) To increase notice on establishment of a guardianship or conservatorship and in proceedings for appointment of a successor guardian or conservator by requiring notice to relatives within the third degree when there are no relatives within the second degree. The State Bar is sponsoring a bill (SB 1909, Rosenthal) to accomplish this.

(2) To substitute mailed notice for personal service, and to eliminate notice to relatives who have neither requested special notice nor appeared in the matter to which the hearing relates, in the following five types of post-establishment proceedings: termination of conservatorship (Prob. Code § 1862), consent to medical treatment (id. § 1892), modification of powers of limited conservator (id. § 2351.5), removal of guardian or conservator (id. § 2652), and objections to appraisement (id. 2614). This would be accomplished by replacing existing notice provisions with a cross-reference to the general notice provisions of Sections 1460-1469.

(3) Not to reduce notice on a petition to transfer guardianship or conservatorship assets to an out-of-state guardian or conservator (Prob. Code § 2804), and not to reduce notice of the final account when assets are transferred out of state (id. § 2808).

(4) Not to eliminate notice to a minor's relatives within the second degree of a petition for guardianship of the person.

The staff should draft amendments to the State Bar bill (SB 1909) to accomplish item (2) above, and submit them to the State Bar for approval and inclusion in the bill. The bill will then be a Commission-recommended bill.

STUDY L-1050 - STERILIZATION OF CONSERVATEE

The Commission considered Memorandum 85-109 concerning sterilization of a conservatee. The Commission decided not to take any action on this because of the pendency of a comprehensive bill by Assembly Member Klehs on this subject (AB 3900).

APPROVED AS SUBMITTED _____

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

Date

Chairperson

Executive Secretary

EXHIBIT

CALIFORNIA LEGISLATURE—1985-86 REGULAR SESSION

ASSEMBLY BILL

No. 2896

Introduced by Assembly Member Harris

February 5, 1986

An act to amend Section 605 of the Probate Code, relating to probate referees.

LEGISLATIVE COUNSEL'S DIGEST

AB 2896, as introduced, Harris. Probate referees.

(1) Existing law requires all assets of an estate not appraised by the executor or administrator to be appraised by a probate referee appointed by the court, except in specified cases, including those in which the court waives the appointment of a probate referee for good cause.

This bill would require the appointment of a probate referee in all cases, thereby imposing a state-mandated local program by requiring a higher level of service under an existing program; and would provide that upon motion of the probate referee or a representative duly made after the appointment of the probate referee, the probate referee may be dismissed, provided the court finds that the services of the probate referee will not be needed.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed \$500,000 statewide and other procedures for claims whose statewide costs exceed \$500,000.

This bill would provide that reimbursement for costs mandated by the bill shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed \$500,000, shall be payable from the State Mandates Claims

Fund.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 605 of the Probate Code is
2 amended to read:

3 605. (a) The appraisal shall be made by the
4 executor or administrator and a probate referee as
5 follows:

6 (1) The executor or administrator shall appraise at fair
7 market value moneys, currency, cash items, bank
8 accounts and amounts on deposit with any financial
9 institution, and the proceeds of life and accident
10 insurance policies and retirement plans payable upon
11 death in lump sum amounts, excepting therefrom such
12 items whose fair market value is, in the opinion of the
13 executor or administrator, an amount different from the
14 ostensible value or specified amount.

15 As used in this subdivision, "financial institution"
16 means a bank, trust company, federal savings and loan
17 association, savings institution chartered and supervised
18 as a savings and loan or similar institution under federal
19 or state law, federal credit union or credit union
20 chartered and supervised under state law.

21 (2) *A probate referee shall be appointed in all cases.*
22 All assets other than those appraised by the executor or
23 administrator pursuant to paragraph (1) shall be
24 appraised by a probate referee appointed by the court or
25 judge, except with respect to the following:

26 (A) Interspousal transfers, as provided in Section 650.

27 (B) Estates subject to summary probate proceedings
28 pursuant to Section 630.

29 (C) ~~Such cases in which the court waives, for good~~
30 ~~cause, the appointment of a probate referee~~ *Upon motion*
31 *of the probate referee or a representative duly made*
32 *after the appointment of the probate referee, the probate*
33 *referee may be dismissed, provided the court finds that*
34 *the services of the probate referee will not be needed.*

1 (3) If an executor or administrator seeks a waiver of
2 the appointment of a probate referee pursuant to
3 subparagraph (C) of paragraph (2), the executor or
4 administrator, at the time of filing the inventory and
5 appraisement pursuant to Section 600, shall file an
6 appraisal of the fair market value of all assets of the estate
7 and a statement which sets forth the good cause which
8 justifies the waiver. The clerk shall set a hearing on the
9 waiver not sooner than 15 days after the filing. A copy of
10 the inventory and appraisement, the statement, and
11 notice of the date of the hearing shall be served on and
12 in the same manner as on, all persons who are entitled to
13 notice pursuant to Section 926.

14 (b) The executor or administrator shall furnish to the
15 referee such information concerning the assets appraised
16 by him or to be appraised by the referee as the referee
17 shall require.

18 (c) The executor or administrator or his attorney shall
19 not be entitled to receive compensation for extraordinary
20 services by reason of appraising any asset pursuant to this
21 section.

22 SEC. 2. Reimbursement to local agencies and school
23 districts for costs mandated by the state pursuant to this
24 act shall be made pursuant to Part 7 (commencing with
25 Section 17500) of Division 4 of Title 2 of the Government
26 Code and, if the statewide cost of the claim for
27 reimbursement does not exceed five hundred thousand
28 dollars (\$500,000), shall be made from the State Mandates
29 Claims Fund.

EXHIBIT

Minutes
March 13-14, 1986

DREISEN, KASSOY & FREIBERG

A PROFESSIONAL CORPORATION

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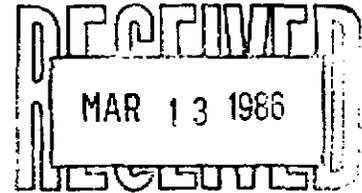
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March 12, 1986



California Law Revision Commission
4000 Middlefield Road
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Palo Alto, CA 94303-4739

Re: The First and Second Supplements to Memorandum 86-18

Dear Commissioners:

This letter reflects my individual opinions. I was only moved to act by what I believe to be slanted presentations to the Commission. The other side should be articulated.

While a decision to keep the current Probate Referee system was made by the Commission in June of 1985, there were a number of legitimate concerns voiced about the workings of the system. Some of those concerns were correctly listed in the letter of the California Probate Referees Association in the Second Supplement to Memorandum 86-18. However, because of their own parochial interests, the California Probate Referees Association (the Association) has not directly confronted some of those issues, nor has it been candid in its method of describing the issues, in either that Supplement or in the First Supplement.

In the First Supplement, the Association makes much of the fact that a Probate Referee is a "statutory officer of the court and an adjunct of the probate judge" when it suits their purposes of saying how helpful they are to the judicial process and in seeking judicial immunity. In the Second Supplement, the Association continues to seek judicial immunity, but retreats from the judicial officer concept in claiming the judge "should not have the power to remove Referees from the panel since that is an executive function."

While the role of Probate Referee has long been in a peculiar "independent" function, they have never been held to be solely within the province of the executive branch. So long as the *the* Court has ability to appoint referees, the court should have the ability to not appoint referees. A blanket decision not to appoint a particular referee effectively removes him or her from the panel. A referee has no vested constitutional right to be appointed by the judge, and the judge should be free to not appoint a particular referee.

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Among the things not mentioned by the Association is that there are a number of incompetent referees who should be removed by the executive branch, if not by the judge. The Association has not indicated how it is attempting to identify those referees and to act on behalf of the Association as a whole in removing those particular referees from practice. It receives numerous complaints about certain referees and it seems that the Association is in a position to recommend to the executive branch that certain referees be removed.

A related issue, especially in the context of A.B. 2896, is that the Association takes the position that once a judge appoints a referee to an estate, the judge has no power to remove the referee. Since the Bill would require mandatory appointment in all cases, the Association believes it can then tie the hands of probate judges.

There is a pervasive concern by the Association with the size of the fee base. The fee base can be increased dramatically if all bad referees were removed and not replaced. The smaller number of good referees would then have more probates to appraise and a better fee base.

In paragraph three of the Association's letter found in the Second Supplement, they seem to have the interesting idea that the only alternative to referee appraisal of securities is brokerage printouts. Such is not the case. Some representatives use a manual system of computing values from quotations in the Wall Street Journal. Other representatives employ securities evaluation services which charge a fee per issue of security and not a fee based on the value of the securities. Many probate referees use the same valuation services that are used by representatives and their attorneys; they are not unaware of these services. Why should they use those same valuation services and then make a profit at the expense of the estate?

This is directly related to the issue of waiver of referees. On page 3 of their letter in the Second Supplement, the Association indicates that good cause for waiver should be that the entire estate consists solely of unique assets of tangible personal entity or of a single publicly held stock. Such situations are exceedingly rare. On the other hand, good cause may exist if the entire estate consists of marketable securities which can be valued by the estate representative at one-tenth the cost to the estate and its beneficiaries. The whole reason for the probate process is to protect the creditors of the decedent and the beneficiaries of the estate. Unreasonably increasing the costs to those parties is not carrying out the function of the probate system. It seems to me that good cause exists for waiving a referee in a situation where the cost is excessive in relation to the services to be performed and that cost is to be borne by the residuary beneficiaries of an estate. In other words, if the referee is not needed, then there seems to me good cause to dispense with the referee.

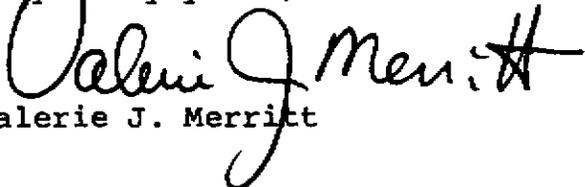
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There are situations other than those involving unique assets of tangible personal entity when the services of an outside appraiser may be necessary to the estate. If the services of an outside appraiser of real property who is a member of the American Institute of Real Estate Appraisers is needed for tax purposes or for other reasons, then it may be good cause for the estate to not use the referee. To employ the referee in addition to the outside appraiser is a double fee. Even if the outside appraiser is initially more expensive than the referee, it may be that the estate determines that this expense to be necessary under all of the circumstances. In the situation of large estates which contain depreciable real property, the use of outside appraisers is increasingly common because recent rulings of the Internal Revenue services indicate that an estate beneficiary may not necessarily rely on the appraisal by the executor in filing later income tax returns. To the extent a referee is not an "expert", some fear the Internal Revenue Service may soon question some of their results. If negligence penalties and other penalties are going to be incurred, the hiring of eminently qualified expert appraisers may be necessary.

A related issue is that the Association seeks to change the current system by giving a judge the discretion to grant a referee a reasonable amount of compensation in excess of the fees computed under the current system. We all recognize that fees based on the value of property are sometimes woefully inadequate. This is especially true when one is valuing a small percentage interest in a closely held company, real property, or partnership. If we are going to grant judges the power to increase compensation for referees in appropriate circumstances, because they are inadequately compensated for the valuation of low-value assets, then the concern with the "erosion of the fee base" would be obviated and there would be less need for keeping in certain highly profitable portions of the fee base, such as marketable securities and cash equivalents.

Very truly yours,


Valerie J. Merritt

VJM:jv