

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

jd10
01/09/87

Time

January 15 (Thursday) 3:00 p.m. - 8:00 p.m.
January 16 (Friday) 9:00 a.m. - 3:30 p.m.

Place

Hyatt at LA Airport
6225 W. Century Blvd.
Los Angeles 90045
(213) 670-9000

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Los Angeles

January 15-16, 1987

1. Minutes of December 4-5, 1986, Meeting (sent 12/23/86)

2. Administrative Matters

Schedule for Future Meetings

Attached to this Agenda

Topic Suggested for Study

Memorandum 87-4 (sent 12/16/86)

First Supplement to Memorandum 87-4 (sent 12/30/86)

Special Salary Adjustment

Memorandum 87-8 (sent 01/08/87)

3. 1987 Legislative Program

Status of Probate Legislation

Oral Report at meeting

Letter from Professor Dukeminier

First Supplement to Memorandum 87-7 (sent 12/16/86)

4. Study L-1028 - Independent Administration of Estates Act

Memorandum 87-3 (sent 01/07/87)
Draft of Recommendation (attached to Memorandum)

5. Study L-1055 -- General Provisions Relating to Notice

Memorandum 87-5 (sent 01/08/87)
Draft of Recommendation (attached to Memorandum)

6. Study L-1025 - Creditor Claims

**SPECIAL
ORDER OF
BUSINESS
ON JANUARY
16 AT
9:00 A.M.**

Draft of Recommendation

Memorandum 87-2 (sent 12/23/86)
Draft of Recommendation (attached to Memorandum)

Actions Involving Decedent

Second Supplement to Memorandum 86-202 (sent 11/20/86)

State Bar Comments on Actions Involving Decedent

Fifth Supplement to Memorandum 86-202 (sent 12/16/86)

7. Study L-655 - Inventory and Appraisal

Draft of Tentative Recommendation

Memorandum 86-84 (sent 10/1/86)

Governor's Veto Message

First Supplement to Memorandum 86-84 (sent 10/9/86)

Comments on Draft

Second Supplement to Memorandum 86-84 (sent 10/10/86)

Letter from Matthew S. Rae, Jr.

Third Supplement to Memorandum 86-84 (sent 11/10/86)

More Comments on Draft

Fourth Supplement to Memorandum 86-84 (sent 11/20/86)

Letter from California Probate Referees Association

Fifth Supplement to Memorandum 86-84 (sent 11/25/86)

8. Study L-1041 -- Rules of Procedure

Draft of Statute

Memorandum 86-91 (sent 9/24/86)

Comments on Draft

Revised First Supplement to Memorandum 86-91 (sent 12/16/86)

Comments of Charles A. Collier, Jr.

Second Supplement to Memorandum 86-91 (sent 12/16/86)

9. Study L-1047 - Appeals

Draft of Tentative Recommendation

Memorandum 86-90 (sent 9/25/86)

Comments on Draft

First Supplement to Memorandum 86-90 (sent 11/19/86)

10. Study L-1027 - Accounts

Memorandum 87-1 (sent 12/16/86)

Draft of Tentative Recommendation (attached to Memorandum)

11. Study L - Name of New Code

Memorandum 87-6 (sent 01/07/87)

FUTURE MEETING SCHEDULE

February 1987

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

March 1987

12 (Thursday)	3:00 p.m. - 8:00 p.m.	San Francisco
13 (Friday)	9:00 a.m. - 4:00 p.m.	

APRIL 1987

9 (Thursday)	3:00 p.m. - 8:00 p.m.	Sacramento
10 (Friday)	9:00 a.m. - 3:30 p.m.	

MAY 1987

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

JUNE 1987

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

JULY 1987

16 (Thursday)	3:00 p.m. - 8:00 p.m.	Newport Beach
17 (Friday)	9:00 a.m. - 4:00 p.m.	

SCHEDULE FOR WORK

January 1987 Meeting

Approval for Printing and Submission to Legislature

Recommendation Relating to Independent Administration of Estates Act
Recommendation Relating to Notice in Probate Proceedings
Recommendation Relating to Creditor Claims Against Decedent

Review Draft Statute

Rules of Procedure

Approval of Tentative Recommendation for Distribution for Review and
Comment

Appeals
Inventory and Appraisal
Accounts

February 1987 Meeting

Additional Aspects of Legislation to be Introduced in 1987

Transitional Provisions
Comments from Interested Persons and Organizations

Review Comments on Tentative Recommendation

Opening Estate Administration
Distribution and Discharge
Nonresident Decedent
Determining Class Membership
Public Guardian and Public Administrator

Approve Tentative Recommendation to Send Out for Review and Comment

Marital Deduction Gifts
Rules of Procedure

Work on Estate and Trusts Code

Interest and Income Accruing During Administration
Abatement

March 1987 Meeting

Review of Comments on 1987 Legislation

Approve Tentative Recommendation to Send Out for Review and Comment

Interest and Income Accruing During Administration
Abatement

Work on Estate and Trusts Code

Multiple Party Accounts

April 1987 Meeting

Approval for Inclusion in Estate and Trust Code

Opening Estate Administration
Distribution and Discharge
Nonresident Decedent
Determining Class Membership
Public Guardian and Public Administrator

Work on Estate and Trust Code

Compensation and Fees
Antilapse Statute
Operative Date and Transitional Provisions

Review of comments on Tentative Recommendations

Marital Deduction Gifts
Appeals
Inventory and Appraisal

Approve Tentative Recommendation to Send Out for Review and Comment

Multiple Party Accounts

May 1987 Meeting

Approval for Inclusion in Estate and Trust Code

Marital Deduction Gifts
Appeals
Inventory and Appraisal

Approve Tentative Recommendation to Send Out for Review and Comment

Compensation and Fees
Antilapse Statute
Operative Date and Transitional Provisions

Review Comments on Tentative Recommendations Sent out for Comment

Rules of Procedure
Accounts

June 1987 Meeting

Approve for Inclusion in Estate and Trust Code

Rules of Procedure
Accounts

Review for Technical and Substantive Changes and Prepare Official Comments

Preliminary Provisions and Definitions
General Provisions
Disclaimers
Guardianship-Conservatorship Law
Management and Disposition of Community Property Where Spouse Lacks Legal Capacity
Authorization of Medical Treatment of Adult Without Conservator
Other Protective Proceedings
California Uniform Transfers to Minors Act
Wills
Intestate Succession
Family Protection
Escheat of Decedent's Property
Disposition Without Administration
Trusts

Review Comments on Tentative Recommendations Sent Out for Comment

Compensation and Fees
Antilapse Statute
Operative Date and Transitional Provisions
Multiple Party Accounts
Interest and Income Accruing During Administration
Abatement

July 1987 Meeting

Approve Text of New Estate and Trust Code for Preprint Bill

Approve Text of Recommendation for Estate and Trust Code for Printing

September 1987 Meeting

Conforming Revisions of Sections in Other Codes

October 1987

Printed Commission Recommendation Available for Distribution

Interim Legislative Hearing on Proposed New Code

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION
JANUARY 15-16, 1987
LOS ANGELES

A meeting of the California Law Revision Commission was held in Los Angeles on January 15-16, 1987.

Law Revision Commission

Present: Arthur K. Marshall, Chairperson Edwin K. Marzec
Ann E. Stodden, Vice Chairperson Tim Paone (Jan. 15)
Roger Arnebergh

Absent: Bill Lockyer, Member of Senate Bion M. Gregory

Staff Members

Present: John H. DeMouilly Stan G. Ulrich
Nathaniel Sterling

Absent: Robert J. Murphy III

Consultants Present

None

Other Persons Present

Bonnie Brennan, San Diego (Jan. 15)
Edward V. Brennan, California Probate Referees Association,
San Diego (Jan. 15)
Phyllis Cardoza, Beverly Hills Bar Association, Probate,
Trust and Estate Planning Section, Beverly Hills (Jan. 16)
Charles Collier, State Bar Estate Planning, Trust and
Probate Law Section, Los Angeles
James D. Devine, State Bar Estate Planning, Trust and Probate
Law Section, Monterey
Nancy E. Ferguson, California Probate Referees' Association,
Chico (Jan. 15)
Ralph Palmieri, Beverly Hills Bar Association, Probate,
Trust and Estate Planning Section, Beverly Hills (Jan. 16)
Kenneth Petrulis, Beverly Hills Bar Association, Probate,
Trust and Estate Planning Section, Beverly Hills (Jan. 16)
James Quillinan, Executive Committee, State Bar Estate,
Planning, Trust and Probate Law Section, Mountain View
Irv Reifman, California Probate Referees' Association, Los
Angeles (Jan. 15)

Richard L. Stack, Executive Committee, State Bar Estate Planning, Trust and Probate Law Section, Los Angeles
H. Neal Wells III, State Bar Estate Planning, Trust and Probate Law Section, Irvine (Jan. 16)
Shirley Yawitz, California Probate Referees' Association, San Francisco (Jan. 15)

ADMINISTRATIVE MATTERS

MINUTES OF DECEMBER 4-5, 1986, MEETING

The Commission approved the Minutes of the December 4-5, 1986, Meeting as submitted by the staff with the following correction: On page 14, in the first line under the heading "Prob. Code § 303 (amended). Disqualification of judge," the word "relating" was deleted.

FUTURE MEETINGS

The following schedule was adopted for future meetings of the Commission:

FEBRUARY 1987

19 (Thursday)	3:00 p.m. - 8:00 p.m.	San Diego
20 (Friday)	9:00 a.m. - 4:00 p.m.	Sheraton Grand 1590 Harbor Island Dr. (619) 291-6400

MARCH 1987 Place of meeting changed

12 (Thursday)	3:00 p.m. - 8:00 p.m.	San Francisco
13 (Friday)	9:00 a.m. - 4:00 p.m.	State Bar Building 555 Franklin Street

APRIL 1987

9 (Thursday)	3:00 p.m. - 8:00 p.m.	Sacramento
10 (Friday)	9:00 a.m. - 3:30 p.m.	State Capitol

MAY 1987 Place of meeting changed

14 (Thursday)	3:00 p.m. - 8:00 p.m.	Sacramento
15 (Friday)	9:00 a.m. - 3:30 p.m.	

JUNE 1987 Dates for meeting changed

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

JULY 1987 Dates for meeting changed

23 (Thursday)	3:00 p.m. - 8:00 p.m.	Newport Beach
24 (Friday)	9:00 a.m. - 4:00 p.m.	

TOPIC SELECTED FOR FUTURE STUDY

The Commission considered Memorandum 87-4. The Commission decided that it would request authority to study a new topic -- administrative law. The staff should seek to have one of the Commission's legislative members introduce a current resolution to authorize the study of this new topic. If the topic is approved for study by the Commission, the Commission will review its financial resources after July 1, 1987, and determine whether there are sufficient resources available to retain a research consultant to prepare an outline of the matters that might be considered in a study of administrative law. The Executive Secretary should inform Mr. Wyler of the Los Angeles County Bar Association of this decision.

The Commission decided defer study the problem concerning "professional" conservators discussed in the First Supplement to Memorandum 87-4. If legislation is not enacted in 1987 to deal with this problem, the Commission will consider whether it will undertake a study of the problem in 1988. The Commission suggested that the Executive Secretary bring the Los Angeles Times article to the attention of the legislative members of the Commission. One of the Commission's legislative members may wish to introduce legislation on his own to deal with the situation.

SPECIAL SALARY ADJUSTMENT

Meeting in executive session, the Commission considered Memorandum 87-8 relating to a Special Salary Adjustment for the position of Executive Secretary. The Commission determined to request that the Department of Personnel Administration fix the salary for the position of Executive Secretary at the same level as the salary for the position of Deputy Legislative Counsel IV.

1987 LEGISLATIVE PROGRAM

The Executive Secretary reported that Assembly Member Harris is planning to introduce the two bills recommended for enactment in 1987 -- the urgency bill to make technical revisions in the Trust Law and the bill to effectuate a number of recommendations relating to probate law and procedure. Senator Lockyer has been asked to introduce the concurrent resolution to continue the Commission's authority to study topics previously authorized for study.

The comprehensive probate bill will be introduced in the form in which the draft was provided to the Legislative Counsel even though that draft does not reflect actions taken at the January 1987 meeting of the Commission and technical revisions that are needed in the draft. Assembly Member Harris wanted to introduce the bill so that the bill could be heard as soon as possible and amended as soon as possible. Under the rules, the bill cannot be heard or amended until it has been in print for 30 days. The staff indicated that it planned to present all the amendments to the bill that are then known to be required at the March meeting of the Commission. After the Commission has considered and determined the amendments that should be made, the bill will be amended and set for hearing. The bill must be approved by the policy committee in the Assembly before a deadline that is approximately May 1, 1987.

The staff reported that the comprehensive probate bill would include the general notice provisions in the form they are contained in Memorandum 87-5 and the independent administration provisions in the form in which they are contained in Memorandum 87-3 and the other provisions previously approved by the Commission. The general notice provisions and independent administration provisions in the bill will be amended to reflect the provisions the Commission ultimately approves for printing in its printed recommendation.

STUDY L-655 -- INVENTORY AND APPRAISAL

The Commission considered Memorandum 86-84 and the first through fifth supplements to Memorandum 86-84, relating to the inventory and appraisal. The Commission approved the tentative recommendation to distribute for comment, subject to the following revisions and technical corrections noted in Exhibits to the memoranda.

§ 452. Examination, testimony, and production of documents. The probate referee should be authorized to "issue a subpoena to compel" production of documents.

§ 453. Protective orders and enforcement. This section should include a specific cross-reference to the notice of motion procedures.

§ 8802. Form of inventory and appraisal. The second sentence relating to rounding off should be deleted.

§ 8803. Notice of filing of inventory and appraisal. The section should cross-refer to the special notice provisions relating to inventory and appraisal.

§ 8804. Objection to inventory and appraisal. The provision for objection to an inventory should be deleted and reference made in the Comment to other available procedures such as Section 851.5.

§ 8805. Failure to timely file inventory and appraisal. The reference in the introductory clause to the "time required in this chapter" should be instead to the "time allowed under Section 8800." Subdivision (c) should allow attorney's fees in the court's discretion.

§ 8851. Discharge or devise of claims. Reference should be made in this section to "debt or demand" rather than "claim." A comma should follow the word "necessary" in the fourth line of the section.

§ 8901. Appraisal by personal representative. "Brokerage cash accounts" should be added to subdivision (d).

§ 8923. Disqualification of probate referee. Reference should be made in this section to a judge "or commissioner".

§ 8924. Removal of probate referee. This provision should provide for removal by written declaration without a petition, and a copy should be served on the probate referee.

§ 8941. Report of status of appraisal. This section should provide either for a citation or for service of a type that ensures actual notice through acknowledgment or execution of a receipt.

§ 8942. Failure to make appraisal or report. This section should be combined with Section 8942.

§ 8962. Maximum and minimum commissions. A cross-reference should be made to the general notice provisions.

STUDY L-1025 -- CREDITOR CLAIMS

The Commission considered Memorandum 87-5, together with a letter from State Bar Study Team 3 (attached to these Minutes as Exhibit 1), relating to creditor claims. The Commission approved the recommendation after making the following revisions and subject to technical corrections noted in the State Bar letter. The legislation should be added to the 1987 probate bill, and will be reviewed by the Commission for possible amendments when the bill has been printed. The report on the bill should be prepared for printing, but should be circulated to the Commissioners with a 5-day hold for comments before it is sent to the printer.

§ 9050. Notice required. The discussion in the Comment concerning actual knowledge of the personal representative should refer only to information that comes to the attention of the personal representative in the course of administration, deleting the phrase "or otherwise". The Comment should note, as an illustration of the principal that the personal representative may not willfully ignore information, that it would be improper for the personal representative to fail to inspect a file of the decedent marked "unpaid bills."

§ 9052. Form of notice. The form should be rephrased to state that the recipient has four months after a specified date (noting parenthetically that is the date letters were issued) in which to file a claim. The words, "with the personal representative" should be deleted from the last sentence of the notice. The proof of notice should be deleted from the form, and the form should include a space to be completed that shows the date of mailing. The Comment should note that the Judicial Council may adopt an optional form.

§ 9053. Immunity of personal representative and attorney. This section should be rephrased to avoid the implication that good faith of either the personal representative or of the attorney immunizes the other. The word "reasonably" should be deleted from the Comment. The Comment should illustrate the point that a personal representative is not liable for an inadvertent failure to give notice, for example where a creditor's bill is accidentally lost while being processed.

§ 9100. Claim period. The phrase "or after the creditor otherwise has knowledge of the administration of the estate of the decedent" was deleted from paragraph (a)(2) of Section 9100. The paragraph should be revised to make clear that the 30 day claim provision only applies to notice given within the first four months after opening estate administration.

§ 9103. Late claims. The late claim period in subdivision (a) should be limited to one year after first issuance of letters. Subdivision (a)(1) was revised to apply to a creditor who did not have knowledge of the administration of the estate of the decedent. The subdivision does not apply to "a creditor who does business in the state on a claim that arises out of the conduct by the creditor of a trade, business, or profession." Evidence that the conditions of (a)(1) are satisfied should be clear and convincing. Subdivision (a)(2) was deleted.

§ 9104. Amended or revised claim. The section should include a reference to Section 9103 (late claims). The Comment should note that specification of a claim made under Section 9151(a)(2) (claim not due, contingent, or not yet ascertainable) is not an increase within the meaning of this section.

§ 9150. How claim is filed. A Comment should be added that the precise filing requirements would negate the ruling in Estate of Schweitzer, 182 Cal. App. 3d 330, 227 Cal. Rptr. 11 (1986), that settlement negotiations amount to presentation of a claim, but that other principles such as estoppel might be available in such a case.

§ 9151. Documentary support of claim. The section should require a statement that the claim is a "just claim". Subdivision (a)(1) should be revised to provide that no payments have been made on the claim, and there are no offsets to the claim, that are not credited. Subdivision (a)(2) should include a reference to claims "not yet ascertainable."

§ 9153. Form of claim. The requirement of a statement under penalty of perjury of the filing was deleted.

§ 9200. Claim by surviving spouse for payment of debt of decedent. This section and the following sections relating to claims of the surviving spouse should be deleted, and the provision for allocation of debts between the surviving spouse and decedent should be expanded to make clear the surviving spouse may simply petition for allocation of a debt paid or payable by the surviving spouse. Useful provisions from this and the following sections should be incorporated in the allocation procedure.

§ 9250. Claim by public entity required. The last sentence of the Comment should be expanded to note that obligations owed to the United States are governed by federal law.

§ 9251. Claims governed by other statutes. Technical corrections suggested by Team 3 will be made in the draft.

§ 9253. Distribution before claim. The 90 day period should be keyed to the date of issuance of letters rather than the date of the decedent's death.

§ 9255. Limitation on application of chapter. The words "claim or" were deleted from this section.

§ 9300. Procedure by personal representative. Subdivision (d) should note that the allowance or rejection form may be part of the claim form.

§ 9302. Where personal representative is creditor. This section should apply to claims of the personal representative's attorney as well as to claims of the personal representative. A provision should be added that the court in its discretion may require that the claimant file a petition and give notice of hearing.

§ 9303. Effect of statute of limitations. The filing of a claim before expiration of the statute of limitations should toll the statute. After rejection of a claim, the creditor should have 90 days within which to commence an action on the claim, regardless of the time remaining on the statute of limitations. These rules should only apply to estates of decedent's dying after the operative date of the rules.

§ 9304. Allowed and approved claims. "Contest of" should be added at the beginning of the lead line. The section should refer to the settlement of the "report or" account of the personal

representative. The burden of proof should be on the contestant in the case of an allowed and approved claim and on the personal representative in the case of independent administration.

§ 9307. Action on rejected claim. "In addition to any other county in which the action may be brought" should be added to subdivision (b). The 10 day requirement in subdivision (c) should be deleted.

§ 9350. Money judgment against decedent. This section should be reviewed to provide that all money judgments against the decedent or against the personal representative on a claim against the decedent or estate are payable in the course of administration and are not enforceable under the Enforcement of Judgments Law.

§ 11420. Priority for payment. Subdivision (c) should be incorporated with subdivision (a), and should be revised to make clear that debts of the United States and debts of this state are being referred to. Subdivision (a)(1) should refer to general debts by more specific language, such as "Judgments that are not liens rendered against the decedent in the decedent's lifetime and all other demands against the estate, without preference or priority one over another." (Existing Section 950(8)).

§ 11421. Immediate payment of priority debts. The conflicting provision of the Revenue and Taxation Code should be amended consistent with this section.

§ 11423. Interest. A subdivision (c) should be added recognizing special statutory interest rates.

§ 11425. Payment of debt not due. This provision should refer to a waiver of interest.

§ 11428. Deposit for unknown creditor. The lead line of this section should refer to a missing creditor.

§ 11429. Omitted creditor. This section or Comment should be revised in some manner to indicate that "debt" is a term of art with a specific definition or to otherwise clarify the application of the section.

STUDY L-1028 - INDEPENDENT ADMINISTRATION

The Commission considered Memorandum 87-3 and the attached draft of a Recommendation Relating to Independent Administration of Estates Act. The Commission also considered a letter from Charles A. Collier, Jr., containing the views of Team 4 and Mr. Collier on the draft statute. A copy of this letter is attached to these Minutes as Exhibit 2. The Recommendation was approved for submission to the Legislature with the revisions indicated below.

The representative of the State Bar Section indicated that Team 4 had not been allowed sufficient time to make a careful review the staff draft. The team may want to submit additional comments concerning the draft after the meeting and during the course of consideration of the proposed legislation during the legislative session.

The draft of the Recommendation attached to Memorandum 87-3 was approved for printing and the proposed legislation was approved for submission to the Legislature after the revisions set out below have been made. The comprehensive probate bill that will be introduced by Assembly Member Harris will be amended to make it conform to the proposed legislation as revised by the Commission.

Letter of Transmittal

The second sentence of the first paragraph was revised to read: "The Commission is preparing a new code to replace the existing Probate Code."

In the first line of the second paragraph, the word "all" was inserted before "recommendations" and in the last line of the same paragraph the word "entire" was substituted for "new".

The last two sentences of the third paragraph was deleted and the following new paragraph was added:

This recommendation is submitted pursuant to Resolution Chapter 37 of the Statutes of 1980.

Text of Preliminary Portion of Recommendation

Conforming to decisions made concerning substance of proposed legislation

If decisions made when the Commission considers the proposed legislation require changes in the preliminary portion of the recommendation in order that the recommendation be accurate, those changes should be made by the staff before the recommendation is printed.

Changes to be made in text of preliminary portion

The substance of the following sentence was added at the end of the first paragraph:

Authority to administer the estate under the Independent Administration of Estates Act is granted to the personal representative in the great majority of cases where administration is required.

In the second sentence of the first full paragraph on page 2, "to" was inserted after "difficult" and a footnote call should be added at the end of the sentence. The footnote should give one or two examples of a case where it is difficult to determine whether or not notice of proposed action is required.

In the first line of the full paragraph on page 3, the words "adds a further limitation on" were substituted for the words "further limits". The last sentence of the same paragraph should be further developed by including the substantive effect of the statement in the footnote to that sentence. In other words, the text should indicate how the amount of the bond of the personal representative having only limited authority is computed and how this justifies the additional limitation proposed by the Commission on the authority of a personal representative having only limited authority.

The first sentence of footnote 19 on page 6 was revised to read: "However, in some cases, existing law requires notice of proposed action for specific types of actions that may involve a conveyance."

The last line of the first full paragraph on page 8 was revised to read: "published daily in many newspapers." A conforming change should be made in the text of the Comment to the relevant section of the proposed legislation.

The first paragraph on page 11 should be revised so that it includes a statement of the text of the language which the Commission proposes be included in the notice of hearing.

Proposed Legislation

§ 10401. "Court supervision" defined

The text of this section was revised to read:

10401. As used in this part, "court supervision" means the judicial order, authorization, approval, confirmation, or instructions that otherwise would be required if authority to administer the estate had not been granted under this part.

§ 10402. "Full independent administration authority" defined

The phrase "full authority" should be defined in this section, and "limited authority" should be defined in Section 10403, and those terms should be used in the statute and Comments instead of the phrases "full independent administration authority" and "limited independent administration authority."

§ 10403. "Limited independent administration authority" defined

See the discussion under Section 10402.

In the third line of the last paragraph of the Comment, the word "existing" was inserted before "independent administration authority."

A new paragraph should be added at the end of the Comment, to read:

As to the reason why the personal representative may request only limited authority, see the Comment to Section 10450.

The discussion in the Comment to Section 10450 will indicate that ordinarily only limited authority is requested because of the difference in the amount of the bond required if full authority is granted.

§ 10405. Special administrator

The text of the statute section was revised to read:

10405. A special administrator may be granted authority to administer the estate under this part if the special administrator is appointed with, or has been granted, the powers of a general administrator.

The Comment should include a statement along the following lines. If the special administrator is not granted the powers of a general administrator at the time of appointment but is later granted the powers of a general administrator, the special administrator may be granted authority to administer the estate under this part at the time the special administrator is granted the powers of a general administrator or at any time after the powers of a general administrator have been granted.

In the last sentence of the last paragraph of the Comment the extra word "will" should be omitted.

§ 10406. Application of part

The last portion of subdivision (c) should be revised to read in substance:

the personal representative may use ~~the---independent administration that existing~~ authority on or after July 1, 1988, to borrow money on a loan secured by an encumbrance upon real property, whether or not ~~the---independent administration that~~ authority includes the authority to sell real property.

§ 10450. Petition for order granting independent administration authority

In subdivision (a) of the statute text, the phrase "appointment of the personal representative" was substituted for the phrase "his or her appointment".

Paragraphs (1) and (2) of subdivision (b) were revised to read:

- (1) Full ~~independent---administration~~ authority to administer the estate under this part.
- (2) Limited ~~independent---administration~~ authority to administer the estate under this part.

The last sentence of the third paragraph of the Comment on page 6 was deleted and the substance of the following new paragraph added:

If a bond is required, the amount of the bond of the personal representative who is granted full authority is fixed by the court at not less than the estimated value of the personal property, the estimated net proceeds of the real property authorized to be sold under this part, and the estimated value of the probable annual gross income of all the property belonging to the estate. See Section 10453(a).

The amount of the estimated net proceeds of the real property is excluded in determining the amount of the required bond if the personal representative has only limited authority. See Section 10453(b). Thus, in some cases, a significant saving in the bond premium can be realized by seeking only limited authority. Because of this consideration, limited authority ordinarily is sought only where a bond is required and the personal representative seeks to avoid the increased bond premium that is required when full authority is granted. Accordingly, a personal representative who is not required to provide a bond almost always will request full authority; and a personal representative who is required to provide a bond for an estate that includes real property ordinarily will request limited authority unless the personal representative wishes to use independent administration authority for a sale of some or all of the real property or to borrow money secured by the real property.

The Commission noted the objection of Team 4 to the concept of limited authority. However, the Commission determined to retain the concept to avoid the need in every case to provide a bond that includes the estimated net proceeds of the real property included in the estate.

§ 10451. Notice of hearing

The correct references to the new notice provisions will be inserted in this section. The second sentence of subdivision (b) was revised to read:

In addition, at least 15 days before the date set for hearing of the petition by the court, the petitioner shall cause notice of the hearing to be mailed to (1) ~~the~~ any person named as executor in the will of the decedent if ~~not-the~~ the person is not a petitioner, (2) all known devisees and ~~to~~ all known heirs of the decedent, and (3) all persons who have requested special notice as provided in Section ~~1202~~ 1250.

When the general provisions governing requests for special notice have been approved, the Commission will consider whether a reference to special notice is required in the provision set out above.

The third sentence of the statement in the notice of hearing set out in subdivision (c) was revised to read:

Before However, before taking some certain actions, the personal representative will be required to give ~~prier~~ notice to interested persons unless they have waived notice or have consented to the proposed action.

The Comment will be revised to substitute references to the appropriate provisions of the new general notice statute for the existing references in the Comment to the the provisions of the existing general notice statute.

§ 10452. Hearing; order; endorsement on letters

Subdivision (a) of Section 10452 was revised to read:

(a) Any interested person may ~~appear--and~~ object to the granting of authority to administer the estate under this part by filing at or before the hearing a written statement setting forth the objection *or by appearing at the hearing and making the objection.*

The last paragraph of the Comment should be revised to indicate that language has been added to make clear that the objector can appear at the hearing and object without filing a written statement setting forth the objection.

"Limited authority" should be substituted in the statute section and Comment for "limited independent administration authority."

§ 10453. Amount of bond

The existing section is to be made a subdivision (a) and a new subdivision (b) is to be added to read:

(b) If the personal representative is otherwise required to file a bond and has limited authority, the court, in its discretion, shall fix the amount of the bond at not more than the estimated value of the personal property 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.

The Comment should be revised to reflect this addition.

§ 10454. Revoking or limiting independent administration authority

The Commission revised Section 10454 and the Comment to that section to read in substance as follows:

10454. (a) Any interested person may file a petition requesting that the court make either of the following orders:
(1) An order revoking the authority of the personal representative to continue administration of the estate under this part.

(2) An order revoking the full authority of the personal representative to administer the estate under this part and granting the personal representative limited authority to administer the estate under this part.

(b) The petition shall set forth the basis for the requested order.

(c) Notice of the hearing on the petition shall be given as provided in Section 1220. In addition, the personal representative shall be served with a copy of the petition and a notice of the time and place of the hearing at least 15 days prior to the hearing. Service on the personal representative shall be made in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as may be authorized by the court.

(c) If the court determines that good cause has been shown, the court shall make an order revoking the authority of the personal representative to continue administration of the estate under this part. Upon the making of the order, new letters shall be issued without the endorsement described in subdivision (c) of Section 10452.

(d) If the personal representative was granted full authority and the court determines that good cause has been shown, the court shall make an order revoking the full authority and granting the personal representative limited authority. Upon the making of the order, new letters shall be issued with the endorsement described in subdivision (c) of Section 10452 that is required where the authority granted is limited authority.

Comment. Section 10454 restates former Section 591.7 with the following changes:

(1) Section 10454 makes clear that an order may be made which revokes full authority and instead grants limited authority.

(2) The requirement that notice of the hearing be given as provided in Section 1220 is new. Former Section 591.7 required notice of hearing only to the personal representative. Giving notice of hearing as provided in Section 1220 will give notice to other persons who may be interested in the petition.

§ 10501. Matters requiring court supervision

Subdivisions (a) to (i) of Section 10501 were revised to read:

(a) Allowance of the personal representative's commissions ~~of the personal representative.~~

(b) Allowance of attorney's fees.

(c) Settlement of accountings.

(d) Preliminary and final distributions and discharge.

(e) *Where the personal representative has been granted limited authority:*

(1) Sale of real property, ~~γ-exchange~~

(2) Exchange of real property, ~~γ-grant~~

(3) Grant of an option to purchase real property, ~~or borrow~~

(4) Borrow money with the loan secured by an encumbrance upon real property, ~~if the authority of the personal representative granted under this part specifically excludes the authority to take such action under the authority of this part.~~

(f) Sale of property of the estate to the personal representative.

(g) Exchange with ~~the personal representative~~ of property of the estate for other property of the personal representative.

(h) Grant to the personal representative of an option to purchase property of the estate.

(i) Allow, pay, or compromise a claim of the personal representative, or the attorney for the personal representative, against the estate.

In the Comment, the discussion of the supervised administration provisions concerning possible conflict of interest situations should be expanded to indicate that those provisions require consent of the heirs or devisees and approval of the court before the personal representative may purchase property of the estate.

§ 10502. Powers exercisable under independent administration authority

The phrase "unless restricted by the will" was deleted from the sentence and a new sentence was added at the end of the section, to read in substance as follows: "The will may restrict the powers that the personal representative may exercise under this part."

§ 10503. Manner of sale of property under independent administration authority

The staff should try to work into the statute a reference to the requirement that the court at the confirmation hearing examines into the efforts of the personal representative to obtain the highest and best price for the property reasonably attainable.

In the second to the last paragraph, a reference to notice being waived or consent to the proposed action being given should be included. A similar inclusion should be made comparable provisions.

The last paragraph "execute" was substituted for "make". Maybe should be phrased in terms of "execution of instrument."

Abandonment of tangible personal property

The Commission decided that Section 10563, relating to the abandonment of tangible personal property, should be moved into Chapter 2 so that notice of proposed action will be required.

§ 10511. Investing in securities

Sections 10511 and 10512 should be compiled in Article 3 (powers the exercise of which requires giving of notice of proposed action under some circumstances) together with the other provisions that authorize the investing of money of the estate. Taking this approach will provide a single section describing the authority to make investments of money and indicating which of the investments requires notice of proposed action.

§ 10512. Investing money in manner provided in will

See the discussion under Section 10511 *supra*.

§ 10513. Selling or exchanging real property

This section was revised to read:

10513. The personal representative who has full authority has the power to sell or exchange real property of the estate.

§ 10515. Borrowing; encumbering estate property

This section was revised to read in substance as follows:

10515. The (a) *Subject to subdivision (b)*, the personal representative has the following powers:

(a) (1) The power to borrow.

(b) (2) The power to place, replace, renew, or extend any encumbrance upon any property of the estate.

(b) *Only a personal representative who has full authority has the power to borrow money with the loan secured by an encumbrance upon real property.*

§ 10516. Granting option to purchase real property

This section was revised to read:

10516. The personal representative who has full authority has the power to grant an option to purchase real property of the estate for a period within or beyond the period of administration.

§ 10519. Determining claims to property claimed to belong to decedent
or other person

This section was revised to read in substance:

10519. The personal representative has the following powers power to determine any of the following:

(a) ~~The power to determine a~~ A third-party claim to real or personal property if the decedent died in possession of, or holding title to, the property.

(b) ~~The power to determine the~~ decedent's claim to real or personal property, title to or possession of which is held by another.

§ 10531. Managing and controlling estate property generally

Subdivision (b) of Section 10531 was revised to read;

(b) The personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) in any case where ~~the a~~ provision of ~~this chapter~~ Chapter 3 (commencing with Section 10530) governing the exercise of a specific power so requires.

The last sentence of the fourth paragraph of the Comment was revised to read: "Under Section 10556, the personal representative is authorized to execute a conveyance in any case where a power is exercised and the conveyance is necessary or desirable to effectuate the exercise of the power."

§ 10532. Entering into contracts

The word "giving" should be substituted for the words "the need to give" as used in the second sentence of subdivision (a) of Section 10532 and elsewhere in the proposed legislation where the words "the need to give" are now used.

Subdivision (b) should be revised to read in substance:

(b) The personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) where the contract is one that by its provisions ~~(1) cannot be terminated by the personal representative within two years and (2) is not to be fully performed within two years~~, except that the personal representative is not required to comply with those requirements if the personal representative has

the unrestricted right under the contract to terminate the contract within two years.

The staff should review the second full paragraph on page 31 and see if the discussion of subdivision (c) can be made easier to understand.

§ 10533. Continuing operation of decedent's business

The introductory portion of subdivision (a) was revised to read: "Subject to the partnership agreement and the provisions of the Uniform Partnership Act."

§ 10536. Selling or exchanging personal property

The words "during the regular course of business of the broker-dealer" were deleted from subdivision (b)(1).

The words "to the issuer" were added following surrendered in subdivision (b)(4). The staff should consider whether the same addition should be made in the comparable provision governing supervised administration.

In the fifth paragraph of the Comment, the reference to the Wall Street Journal should be omitted.

In the first paragraph of the Comment on page 37, the word "are not" was substituted for "will be sold but will not be."

§ 10537. Granting or extending exclusive right to sell property

Subdivision (a)(2) was revised to read:

(2) The power to grant to the same broker one or more extensions of an exclusive right to sell property, each extension being for a period not to exceed 90 days.

The first portion of subdivision (c) was revised to read:

(c) The personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) where the personal representative grants to the same broker an extension of an exclusive right to sell property and . . .

§ 10551. Powers that any personal representative may exercise without court supervision

In the first line of the Comment, "supersedes" was substituted for "continues the apparent effect of."

The reference to deposits in banks and savings and loan associations in the paragraph of the Comment beginning on page 40 should be deleted, since the investment of moneys section will supersede the provision authorizing investments in banks and savings and loan associations.

§ 10552. Acting on claims against estate

Sections 10552 and 10554 should be combined in one section. This combination will eliminate the overlap of the two sections with respect to the power to compromise claims.

The first sentence of the third paragraph of the Comment to Section 10552 was revised to read: "Notice of proposed action is not required to exercise the power granted by Section 10552 (see Section 10550), but the personal representative may use the notice of proposed action procedure if the personal representative so desires." A comparable revision should be made in the Comments in other sections.

§ 10553. Commencing and defending actions and proceedings

The word "commence" was substituted for "institute" in subdivision (a) of Section 10553.

§ 10554. Compromising or settling claim, action, or proceeding

This section should be combined with Section 10552. See the discussion of Section 10552 above.

§ 10555. Modifying terms of obligation

The word "running" was deleted as unnecessary.

§ 10557. Paying taxes, assessments, and expenses

This section was revised to read substantially as follows:

10557. The personal representative has the power to pay all of the following:

(a) ~~taxes, assessments, and other expenses~~ Taxes and assessments.

(b) *Expenses* incurred in the collection, care, and administration of the estate.

§ 10558. Purchasing annuity for devisee

This section was revised to read substantially as follows:

10558. The personal representative has the power to purchase any of the following from an insurer, admitted to do business in this state:

(a) ~~an annuity expressly~~ An annuity granted by the will to a devisee named in the will.

(b) An annuity to provide for the payment of an amount granted by the will to a devisee named in the will.

§ 10559. Exercising restricted option

This section was revised to delete the restrictive language "and is not transferrable except by testate or intestate succession from the decedent."

The comparable provision of the supervised administration statute should be reviewed to determine whether it should be conformed.

§ 10561. Holding securities in name of nominee or in other form

The clause at the end of the section -- "but the personal representative is liable for any act of the nominee in connection with the security so held" -- was deleted.

The Comment was revised to add the following additional language:

Section 10561 does not continue the provision of former Section 591.6 that made the personal representative "liable for any act of the nominee in connection with the security so held." The liability of the personal representative is now determined under Section 9600 which requires the personal representative to use ordinary care and diligence in managing and controlling the estate and not to exercise a power to the extent that ordinary care and diligence requires that the power not be exercised. See Section 9600 and the Comment to that section. See also Section 10502 and the Comment to that section.

§ 10562. Exercising security subscription or conversion rights

The word "of" was inserted after "substance" in the first line of the Comment to Section 10562.

§ 10563. Abandoning tangible personal property

This section should be moved to the Chapter where notice of proposed action is required.

The Comment should explain that the phrase "or any interest therein" has been omitted as unnecessary, "property" being defined in Section 62 to include both real and personal property "or any interest therein."

§ 10580. When notice of proposed action required or permitted

In the next to last line of the section, the word "that" was inserted after "action."

§ 10581. Persons to whom notice must be given

This section was revised to read substantially as follows:

10581. Except as provided in Sections 20582 and 10583, notice of proposed action shall be given to all of the following:

(a) Each known devisee whose interest in the estate is affected by the proposed action.

(b) Each *If the estate is an intestate estate, each* known heir of the decedent *whose interest in the estate is affected by the proposed action if ~~the estate is an intestate estate.~~*

(c) Each person who has filed a request for special notice pursuant to Section ~~1202~~ 1250.

(d) The State of California if any portion of the estate is to escheat to it *and its interest in the estate is affected by the proposed action.*

§ 10584. Revocation of consent or waiver

This section should be revised to omit the reference to the "Cancellation of Waiver" portion of the statutory form, that part of the form has been omitted from the form. Accordingly, subdivision (b) should be omitted from Section 10584.

§ 10586. Delivery or mailing of notice

This section should be revised so that 15 days is the time allowed, whether the notice is mailed or personally delivered, and the time is not extended because the notice is mailed. The statute should state that extra time is not allowed when it is mailed. The language in the general notice provisions to this effect should be picked up and used here.

§ 10589. Court supervision and notice of hearing required if personal

representative has notice of objection

The Commission discussed the consequences of the personal representative going ahead with a transaction after the personal representative has notice of a written objection to the transaction. As far as the third party to the transaction is concerned, the third party is protected if the third party is a bona fide purchaser or a third person dealing in good faith with the personal representative who changes his or her position in reliance upon the action, conveyance, or transfer, without actual notice of the failure of the personal representative to comply with the court supervision requirements. See Section 10591. As far as the personal representative is concerned, there are two sanctions that would apply where the personal representative goes ahead with a transaction knowing that there is a written objection to the transaction. First, the personal representative can be surcharged if the personal representative violates the standard of reasonable care and diligence set out in Section 9600. In view of the objection, the burden is on the personal representative to establish that the action taken satisfied the requirements of Section 9600. Second, taking an action without obtaining court supervision where there has been an objection to the proposed action is grounds for removal of the personal representative. See Section 10592 and the Comment to that section.

§ 10590. Effect of failure to object to proposed action

The first portion of the Comment was revised to read: "Section 10590 does-not-apply-unless applies only where the person . . ."
A sentence might be added to the effect that if a person was not given notice, the person's right to obtain review of the action of the personal representative is not limited by Section 10590.

§ 10592. Failure of personal representative to satisfy statutory requirements grounds for removal from office

Subdivision (a) was revised to read substantially as follows:

(a) Fails to give notice of proposed action as-required, or to obtain a waiver of the notice or a consent to the proposed action, in a case where notice of proposed action is required by this chapter.

The two references in the Comment to "Section 10589" were changed to "Section 10592."

§ 10600. Statutory Waiver of Notice of Proposed Action Form

The fourth and fifth lines of subdivision (b) were revised to read:
subdivision, either ~~typed in all capital letters or~~ printed
in not less than 10-point bold-face type or a reasonable
equivalent thereof or *typed in all capital letters*:

The language in the form dealing with cancellation should be revised to conform to the deletion of the "Cancellation of Waiver" portion of the form.

The form also should include the mailing address to which notice to the personal representative may be delivered or mailed.

STUDY L-1045 - DEFINITIONS

The Commission considered the First Supplement to Memorandum 87-7 and the attached letter from Professor Dukeminier, a Commission consultant, supporting the Commission's decision not to provide a definition for "personal property" in the new code. A letter from Jack E. Cooper, representing the San Diego County Par Association, Trust and Estate Planning Subcommittee for Legislation, supporting the concept of defining "personal property" in the new code was handed out at the meeting. A copy of this letter is attached to these Minutes as Exhibit 3.

After considering the two letters and discussing the problem, the Commission reaffirmed the decision made at the December 1986 meeting not to attempt to provide a definition of "personal property" in the new code.

APPROVED AS SUBMITTED _____

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

Date

Chairperson

Executive Secretary

EXHIBIT 1

Minutes
Jan. 15-16, 1987

OSCAR LAWLER
1896-1966
MAX FELIX
1922-1954
JOHN M. HALL
1916-1973

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January 8, 1987

James V. Quillinan, Esq.
444 Castro Street
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Re: LRC Memorandum 87-2
Creditors Claims

Dear Jim:

Team 3 has reviewed the above memorandum. Our comments are as follows:

Section 9002 - Claim requirements: The staff will want to modify the third line of page 3 of the comment by substituting "personal representative" for "executor or administrator" and "a decedent" for "any testator or intestate" consistent with the comment to Section 9000.

Section 9052 - Form of notice: The form of notice does not specify the time for filing a claim by a creditor who knows of the estate administration apart from the giving of the notice by the personal representative (see Section 9100 (a)(2)). However, addition of this factor would make the notice (Section 9052) more difficult to draft and comprehend.

James V. Quillinan, Esq.
Page Two
January 8, 1987

Accordingly, Team 3 recommends that knowledge by the creditor be left out of the notice. This would also require eliminating the "knowledge of the administration of the estate of the decedent" from Section 9100(a)(2).

The same reasons do not dictate elimination of the knowledge factor from Section 9103(a)(1) (late claims). Accordingly, we suggest that the language "under Chapter 2 (commencing with Section 9050) or otherwise have knowledge of the administration of the estate of the decedent" be added to the end of the first sentence of subsection 9103 (a)(1) and that the comment concerning knowledge be moved from Section 9100 to 9103.

The form of notice could be clarified by addition of the clause "in the case of service other than by mailing, the date of" immediately before the word "delivery" at the start of the next to last line on page 5. This would help prevent an unsophisticated creditor from thinking that he or she has 30 days from mail delivery to file a claim.

The form of notice could also assist the creditor if it stated the date of mailing. This could be accomplished by a statement at the end of the notice. A creditor need not be advised of the date of personal service because the creditor knows when a document is received.

James V. Quillinan, Esq.
Page Three
January 8, 1987

Section 9100 - Claim period: As noted in our comment to Section 9052, the phrase "knowledge of the administration of the estate of the decedent" may be deleted from subsection 9100(a)(2).

The time period in subsection 9100(b) ("one year after letters are first issued") is inconsistent with subsection 9103(a) ("one year after the time prescribed in paragraph (1) of subdivision (a) of Section 9100"), which would be one year and four months after letters are first issued. Subsection 9103(a) retains existing law as to the time prescribed. However, the shorter flat one year period is both reasonable and more in keeping with expeditious administration of estates. We therefore recommend that subsection 9103(a) be amended consistent with subsection 9100(b). We further recommend that Section 9402 be similarly amended.

Team 3 has earlier suggested that the period for a spouse to file a claim as presently permitted by Sections 704.2 and 704.4 be retained. The reason for the additional time is that the spouse may be personally liable for the debt of a decedent (e.g. a joint line of credit) but not be aware of the liability until the normal four month creditor's claim period has expired. In such an event, it does not appear fair to bar the spouse from seeking reimbursement for the decedent's portion of the liability.

James V. Quillinan, Esq.
Page Four
January 8, 1987

This is particularly true when section 11440 allows the personal representative up to the "order for final distribution" to petition to require contribution from the surviving spouse. What's fair for one should be fair for the other.

Would it be helpful to add another cross-reference to this Section, Late Claims 9103?

Section 9103 - Late Claims: As noted in our comments to Section 9100, Team 3 suggests that the phrase "under Chapter 2 (commencing with Section 9050) or otherwise have knowledge of the administration of the estate of the decedent" be added to the end of the first sentence of subsection 9103(a)(1) and that the comment concerning knowledge be moved from Section 9100 to 9103.

Also, this would be the place to preserve the extended filing time of a spouse as noted in our comments to Section 9100.

Section 9104 - Amended or revised claim: There does not appear to be any reason why a claim filed late under Section 9103 should not be subject to amendment or revision to the same extent and within the same time as a claim which has been timely filed. Accordingly, Team 3 suggests that the first sentence of Section 9104 be amended to include Section 9103.

Should the comment to this Section address the question of unliquidated claims or other claims the extent of which are

James V. Quillinan, Esq.
Page Five
January 8, 1987

not known at the time of filing? May a creditor who files a claim "for damages according to proof" or "in an amount not yet ascertained" amend the claim later to insert the amount requested? Would this be an increase from zero upward? If such claims are not to be permitted, or to be amended later, it would constitute a trap for attorneys who are familiar with general civil pleading practices but not probate claim procedures or the recent amendments thereto. Perhaps the trap could be avoided if the comment to this section cautioned creditors that claims must have a dollar amount, even if unliquidated or contingent. Even a "not to exceed" figure would be helpful to the personal representative in planning the administration of the estate.

Section 9151 - Documentary support of claim: The Section, as drafted, eliminates the requirement that a creditor declare "that the amount is justly due." A creditor is only required to state "the facts supporting the claim," and not the facts in defense of the claim. Retention of the declaration "that the amount is justly due" is warranted because it requires the creditor to at least state, in essence that, taking every-

James V. Quillinan, Esq.
Page Six
January 8, 1987

thing into account, he or she is owed the money.

Section 9153 - Form of claim: This section may imply that the judicial council form supercedes sections 9051-9052. Such implication could be negated by a comment to the section or by changing "the form" in the first sentence to "a form". The latter was done in Section 9300.

Is the final clause ("that the creditor state under penalty of perjury that the creditor has filed the claim with both") of subdivision (b) necessary? A creditor really cannot state that he has filed something before he has done it. Sections 9051-9052 only require the duplicate filing, not swearing to it.

Section 9154 - Waiver of formal defects: The section is fine. However, please note for future work on accounts that Section 929 is still desireable and should be retained for debts irrespective of whether a claim is written or filed.

Chapter 5 - Claims by surviving spouse: Team 3 concurs with staff that cross-references are best placed following sections to which they pertain.

Section 9200 - Claim by surviving spouse for payment of debt of decedent: Please see our comments to Section 9100 requesting retention of the time period for claims by a surviving spouse pursuant to Sections 704.2 and 704.4. Team 3 would concur with staff that the earlier reason proffered for

James V. Quillinan, Esq.
Page Seven
January 8, 1987

the retention may not suffice, but submits that the allocation of debts between the surviving spouse and the estate should have the same time period irrespective of who institutes the allocation. Also, couldn't the surviving spouse be a petitioner under Section 11440 and thereby circumvent the shorter time period anyway?

Please see Neal Wells December 23, 1986 letter (copy enclosed) to John DeMouly regarding Section 66. That section as presently drafted, literally creates quasi-community property from the separate property of the decedent even though the decedent was not domiciled in California as of the date of death. This is contrary to the intent of the Commission that there be no quasi-community property for succession purposes unless the decedent was a California resident at the time of death, the same should be true for debt allocation.

Section 9251 - Claims by public entities: The staff will want to capitalize the "L" on the "Bradley, Burns... Law".

Was the reference to the Motor Vehicle Transportation License Tax Law intentionally dropped from 707.5 (b)?

Section 9253 - Distribution before claim: Team 3 suggests that the time requirement of giving notice "not later than 90 days after the date of the decedent's death" be deleted from Section 9253 for the same reasons and in the same manner that the like provision was eliminated from Section 700.1 when it was redrafted as Section 9252.

James V. Quillinan, Esq.
Page Eight
January 8, 1987

Section 9300 - Procedure by personal representative:

Subdivision (b) requires the personal representative (attorney) to give notice of the allowance of a claim, together with a copy of the allowance, to each creditor. At present, only notices of rejection must be given. Preparing individual allowances on separate forms, copying them, and sending them to each creditor could entail 2 hours of work in a modest estate. This burden would be borne by the attorney for the personal representative and be on top of the additional work to be performed in sending individual notices of administration. The current statutory fee schedule already precludes corporate fiduciaries from handling modest estates and is making it difficult for attorneys to maintain normal hourly rates. If the modest statutory fee schedule is to be maintained, additional statutory work should not be placed upon the attorneys unless there is a substantial relative benefit to persons interested in the estate. The suggested notice of allowance procedures do not sufficiently benefit creditors whose claims are approved and going to be paid in due course to warrant \$200 - \$300 in absorbed uncompensated time by the attorney. In fact, the notice could even mislead the creditor by insufficient information. The additional items suggested by the Beverly Hill's Bar Association would add even more work. The present practice of simply noting the allowance on the claim and filing it with the court should be retained.

James V. Quillinan, Esq.
Page Nine
January 8, 1987

Section 9307 - Action on rejected claim: The note of the staff respecting the 10 day lis pendens period is well taken. Team 3 concurs in the suggested revision.

Section 9350 -Money judgment against decedent: The note of the staff is well taken. Team 3 concurs in the suggested revision.

Section 9403 - Claim covered by insurance: The section could be clarified by adding that the judgment may be enforced against the insurance carrier in subdivision (a). This would protect the insured's estate in a case where the decedent's insurance company is insolvent. (See Team 3's letter dated November 25, 1986 attached hereto for comment on this Section and other provisions of the second supplement.)

Section 11421 - Immediate payment of priority claims: Team 3 concurs in the suggestion by the staff in the final paragraph of the note to this section.

Section 11429 - Omitted creditor: The section as drafted is fine. "Debt" is defined by Section 11401 as "a claim that is established under Part 4...or that is otherwise payable in the course of administration." Accordingly, the section does not apply to claims which are not established and the revisions suggested by the Beverly Hills Bar Association are not required. However, it is easy to overlook the fact that "debt" is a defined term. Could the comment to the section be expanded to highlight this fact?

James V. Quillinan, Esq.
Page Ten
January 8, 1987

Section 11446 - Funeral expenses and last illness

expenses: This section serves two useful purposes. It allocates the last illness and funeral expenses to the estate of the decedent rather than to the estate of the surviving spouse. This is where these expenses should be borne. In larger estates, the section also preserves the full deductibility of such expenses for federal estate tax purposes.

As noted by the staff, creditors of an insolvent estate may look to the surviving spouse for payment of necessary last illness expenses. However, the section should not be amended to be inapplicable if the estate is insolvent because an insolvency of say \$100 should not subject the surviving spouse to a prorata portion of thousands of dollars of last illness expenses following the allocation of which the estate becomes solvent to the benefit of beneficiaries other than the surviving spouse.

Respectfully submitted,

Team 3

By H. Neal Wells...

cc/Valerie Merritt
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H. NEAL WELLS III
PARTNER

December 23, 1986

Mr. John DeMouilly
Executive Secretary
California Law Revision Commission
4000 Middlefield Road
Suite D-2
Palo Alto, California 94303-4739

Dear John:

Thank you for providing to me the two Recommendations and Studies I requested.

Page E6 of the Recommendation and Study relating to Rights of Surviving Spouse in Property Acquired by Decedent while Domiciled Elsewhere dated December 20, 1956 reflects the following intent of the Commission: "The limitation recommended would make it clear, however, that Section 201.5, as revised in accordance with the commission's second recommendation to include real property, is not intended to apply to real property acquired in this State by a married person domiciled elsewhere at the time of acquisition unless the owner is a domiciliary of California at the time of his death."

The confusion I recently experienced came about by Stats 1983 Chapter 842 which transferred to new Probate Code Section 66 the substance of portions of former Probate Code Section 201.5 without the modifying qualification "upon the death of any married person domiciled in this State". As a consequence

of the omission, Probate Code Section 66 now literally provides that separate property of a non-resident which is invested in California real property may become the quasi-community property of the investor and his or her spouse even though neither spouse becomes domiciled in California.

Probate Code Section 101 retains the qualifying language. This makes the section inapplicable to quasi-community property if the decedent does not die domiciled in this state, but does not provide what happen to the quasi-community property of a non-resident. The answer is that there is no quasi-community property unless the decedent was domiciled in this state at the time of death. It is in this respect that Probate Code Section 66 could be clarified.

I would be happy to work with a member of the Commission staff in clarifying the section once my work on this year's legislation (creditor's claims and estate administration) is concluded, or at least in limbo.

Thank you once again for your help.

Best wishes for the holidays.

Sincerely yours,

A handwritten signature in cursive script, appearing to be the name 'Paul'.

Jan. 15-16, 1987

ESTATE PLANNING, TRUST AND
 PROBATE LAW SECTION
 THE STATE BAR OF CALIFORNIA

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555 FRANKLIN STREET
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January 14, 1987

Mr. John H. DeMouilly
 Executive Secretary
 California Law Revision Commission
 4000 Middlefield Road, Room D-2
 Palo Alto, California 94303-4739

Re: Memorandum 87-3 - Independent
 Administration of Estates Act

Dear John:

Although I am not a member of Team Four, the team assigned to review the Independent Administration of Estates Act, I did participate in a conference call on January 13 with other members of that team. Because the Memorandum had just been received, there was not adequate time to review the proposed statute itself. Rather, the discussion centered entirely on the introductory comments and the policy issues raised therein.

Team Four will have a further conference call early next week to go through the statute section by section and make comments thereon.

Since the introductory remarks raised policy issues, it was felt most productive to discuss some of those by way of preliminary review.

Team Four takes the same position as the Executive Committee of the Section, namely, that the proposed statute though vastly improved from the version set forth in Memorandum 86-83 still has a number of problems and raises a number of basic concepts which need further study and evaluation. Therefore, it was felt that the provisions on independent administration should not be included in the 1987 bill.

Mr. John H. DeMouilly
January 14, 1987
Page Two

The following comments highlight the basic policy issues considered by the members of Team Four on the conference call on January 13:

1. Restricting Authority of Personal Representative Having "Limited Authority:"

While members of Team Four questioned the concept of "limited authority," it was installed as a device only to save the cost of a bond premium. Is that cost significant enough to necessitate the concept and procedures of limited authority? The team felt that:

- a. If bond is waived, there should be no limited authority available.
- b. If bond was not waived, then, assuming limited authority was otherwise appropriate, it should apply.

The team also felt that there was some merit to giving consideration to providing that under independent administration the personal representative had all powers except as specifically limited on the order and letters. This would be similar in concept to what is now provided under the conservatorship law.

As to the limit on the authority to borrow money with the loan secured by an encumbrance on real property, that would appear to be applicable only if there is a bond required. Obviously, if a bond is waived, that should have no applicability.

2. Restricting Authority of Personal Representative in Conflict of Interest Situations:

The members of Team Four felt that the requirement for a court hearing and order where there is a possible conflict of interest or an actual conflict of interest is not necessary where the personal representative is the sole beneficiary, is not necessary where the only persons interested in the estate consent in writing to the transaction, etc.

3. Special Administrator:

This proposed change is a good idea and should be implemented.

4. Giving Notice of Proposed Action:

While the word "advice" is perhaps not as descriptive as the word "notice" for most persons, the word "advice" was carefully selected at the time the Act was originally drafted in 1973 and 1974 to differentiate the type of notice given under independent administration from other types of probate notices. There is concern that changing the word "advice" to the word "notice" for independent administration will lead to confusion as to the particular notice to be given. For example, the requirements of an advice are rather specific as to the contents of the advice. A general notice of hearing for a court matter does not require such detail and, if they are both referred to as notice, it may lead to improper notices, inadequate detail in the notice of proposed action, etc.

The proposal for using notice of proposed action where giving of notice is not mandatory raised comments from members of the team. They felt that, if the particular action involved one where a court petition was otherwise required, it would be appropriate to give advice of proposed action in lieu of filing the court petition and giving notice to all interested parties. In short, the personal representative should be able to get the same protection as to all matters where a court petition was otherwise required.

However, the team had considerable difficulty with the concept of allowing an advice of proposed action as to an action that could be taken under full administration without any court petition. In other words, why should the person acting under independent administration have greater rights to restrict the rights of beneficiaries than that person would have under full court supervision without any independent powers?

a. Substituting Specific Powers for General Powers to "Convey" Property:

The listing of the specific types of transactions that might involve a conveyance appears satisfactory if it is clear that there are no other types of conveyance that would not be included in these separate powers. In other words, is there any restriction on the existing power to "convey" by the listing of the specific types of transactions that are now found in the proposed statute?

b. Extending Exclusive Right to Sell:

Members of Team Four felt that there should be clarification as to whether the exclusive right to sell for three consecutive 90 day periods was limited to one broker or whether it meant that, if the personal representative used a different broker for each 90 day period, that only three such 90 day exclusive listings could be granted without giving advice. It was felt that clarification was needed.

5. Statutory Waiver of Notice of Proposed Action Form:

The statutory waiver form should be only a suggested form, and lawyers should be able to utilize a form that in substance has the same provisions in lieu of a statutory form.

6. Revocation of Waiver or Consent:

It was felt that the revocation of a waiver or consent should be on a separate document and not on the same document as the waiver itself. There was concern that a person interested in the estate might just automatically fill out both at the same time. If the waiver had been returned, then that person would have no form on which to execute the cancellation. It was felt that there should be a separate form for cancellation which would be sent together with the form for waiver.

7. Review Upon Court's Own Motion of Actions of Personal Representative:

Team Four felt that the limitations on the court's power to review a proposed action was appropriate and an improvement over existing law.

8. Sanction for Failure to Comply with Statute:

Failure to give notice of proposed action as required by the statute it was felt was imprecise because obviously there would be a right to obtain a consent without formal notice or a waiver of notice before or after the action. Further, it should be a ground for removal only if there is some prejudice resulting therefrom. Presumably, if no notice is given, the persons then are not precluded from having the court review the personal representative's actions.

Mr. John H. DeMouilly
January 14, 1987
Page Five

The above are some preliminary comments on the redraft. As noted initially, the team felt that the redraft was a substantial improvement over the draft contained in Memorandum 86-83. The team will hold a further conference call within the next week and thereafter will submit a series of detailed comments on the individual sections.

Sincerely,



Charles A. Collier, Jr.

CAC:vjd

cc: Members of Team Four
Lloyd Homer, Esq.
James Quillinan, Esq.
James Devine, Esq.
James Opel, Esq.
Irwin Goldring, Esq.

Minutes

Jan. 15-16, 1987

EXHIBIT 3

JACK E. COOPER
ATTORNEY AT LAW
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(619) 232-4525

JAN 12 1987
RECEIVED

January 9, 1987

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Gentlemen:

On January 7, 1987, the San Diego County Bar Association, Trust And Estate Planning Subcommittee For Legislation, met to consider and discuss various memoranda issued from your office. My comments are limited to Memorandum 86-98, other members of the subcommittee will address other memoranda.

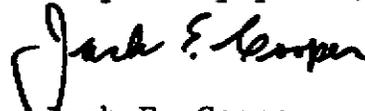
Our group wholeheartedly endorses the comments in the study teams recommendation that a definition of personal property be retained in the code, and further recommends that the definition be something like:

"Personal property" does not include a leasehold interest in real property nor a note secured by real property.

We opted for the above phrase instead of "note secured by deed of trust" so that any other form of security interest in real property would be included. It is our belief that such a definition is particularly appropriate in view of the provisions of Probate Code, section 630. If such a note is to be considered personal property how is the security interest to be terminated if the note is transferred under section 630?

Under Probate Code, §24 (amended) the last line of paragraph (a) states ". . . the estate of a decedent who died intestate, means a devisee." We believe that a typographical error has been made and "testate" should be substituted for "intestate".

Very truly yours,


Jack E. Cooper

cc: D. B. Crabtree, Esq.