

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

jd10
06/19/87

Time

June 25 (Thursday) 10:00 a.m. - 6:00 p.m.
June 26 (Friday) 9:00 a.m. - 3:00 p.m.

Place

San Diego
Viscount Hotel
1960 Harbor Island Drive
(619) 291-6700

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

San Diego

June 25-26, 1987

1. Minutes of May 14-15, 1987, Meeting (sent 6/2/87)

2. Administrative Matters

1987 Legislative Program

Oral Report at Meeting

Schedule for Future Meetings

The staff suggests that the Commission meet starting at 10:00 a.m. on Thursday for future meetings until the backlog of material ready for consideration by the Commission is significantly reduced.

Informing Local Bar Association of Commission Meetings

Memorandum 87-60 (enclosed)

Legislation Possibly Affecting Law Revision Commission

Oral Report at Meeting

3. Study L - Probate Code - Assembly Bill 708 (as amended)

Memorandum 87-41 (sent 6/17/87)
Assembly Bill 708 (as amended) (attached to Memorandum)
Revised Comments (attached to Memorandum)
Memorandum 87-46 (sent 5/28/87)
First Supplement to Memorandum 87-46 (sent 6/05/87)
Memorandum 87-47 (sent 6/05/87)

4. Study L-1038 - Abatement; Interest and Income Accruing During Administration (Review of Staff Draft of Tentative Recommendation)

Memorandum 87-37 (sent 4/20/87)
Draft Statute (attached to Memorandum)
First Supplement to Memorandum 87-37 (sent 5/06/87)
Second Supplement to Memorandum 87-37 (sent 5/20/87)
Third Supplement to Memorandum 87-37 (sent 6/09/87)

5. Study L-636 - No Contest Clause

Memorandum 87-44 (sent 6/2/87)

6. Study L-1027 - Accounts (Review of Staff Draft of Tentative Recommendation)

Memorandum 87-29 (sent 4/27/87)
Draft of Tentative Recommendation (attached to Memorandum)
First Supplement to Memorandum 87-29 (sent 6/2/87)
Second Supplement to Memorandum 87-29 (sent 6/15/87)

7. Study L-1041 - Rules of Procedure (Review of Staff Draft of Tentative Recommendation)

Memorandum 87-42 (sent 6/15/87)
Draft of Tentative Recommendation (attached to Memorandum)
First Supplement to Memorandum 87-42 (sent 6/17/87)

8. Study L-1025 - Litigation Involving Decedent (Review of Staff Draft of Tentative Recommendation)

Memorandum 87-43 (sent 6/15/87)
Draft of Tentative Recommendation (attached to Memorandum)

9. Study H-408 - Uniform Dormant Mineral Interests Act (Review of Staff Draft of Tentative Recommendation)

Memorandum 87-45 (sent 6/09/87)
Draft of Tentative Recommendation (attached to Memorandum)

10. Study L-1011 - Opening Estate Administration (Review of Comments on Tentative Recommendation)

Memorandum 86-201 (sent 1/21/87)
Draft of Tentative Recommendation (attached to Memorandum)
First Supplement to Memorandum 86-201 (sent 3/3/87)
Second Supplement to Memorandum 86-201 (sent 3/28/87)
Third Supplement to Memorandum 86-201 (sent 3/31/87)
Fourth Supplement to Memorandum 86-201 (sent 4/30/87)

11. Study L-1029 - Distribution and Discharge (Review of Comments on Tentative Recommendation)

Memorandum 86-203 (sent 6/2/87)
Draft of Tentative Recommendation (attached to Memorandum)

12. Study L-1046 - Nonresident Decedent (Review of Comments on Tentative Recommendation)

Memorandum 86-204 (sent 6/2/87)
Draft of Tentative Recommendation (attached to Memorandum)

13. Study L-1033 - Determining Class Membership (Review of Comments on Tentative Recommendation)

Memorandum 86-205 (sent 5/20/87)
Draft of Tentative Recommendation (attached to Memorandum)

14. Handbook of Practices and Procedures

Memorandum 87-21 (sent 3/20/87)
Draft of Handbook (attached to Memorandum)

Note. We will start at page 7 (Chapter
Three - Relationship With Legislature)

MEETING SCHEDULE

JUNE 1987

25 (Thursday)	10:00 a.m. - 6:00 p.m.	San Diego
26 (Friday)	9:00 a.m. - 3:00 p.m.	Viscount Hotel 1960 Harbor Island Drive (619) 291-6700

JULY 1987

23 (Thursday)	3:00 p.m. - 7:00 p.m.	Irvine
24 (Friday)	9:00 a.m. - 3:00 p.m.	Airporter Inn Hotel 18700 MacArthur Blvd. (800) 432-7018

SEPTEMBER 1987

17 (Thursday)	3:00 p.m. - 7:00 p.m.	Los Angeles
18 (Friday)	9:00 a.m. - 3:00 p.m.	State Bar Building 818 West 7th (213) 689-6200

OCTOBER 1987

15 (Thursday)	3:00 p.m. - 7:00 p.m.	Sacramento
16 (Friday)	9:00 a.m. - 2:00 p.m.	

NOVEMBER 1987

19 (Thursday)	3:00 p.m. - 7:00 p.m.	San Francisco
20 (Friday)	9:00 a.m. - 3:00 p.m.	

DECEMBER 1987

10 (Thursday)	3:00 p.m. - 7:00 p.m.	Monterey
11 (Friday)	9:00 a.m. - 3:00 p.m.	

The block of sleeping rooms reserved for Commissioners for the June meeting at the Viscount Hotel in San Diego is available only until May 25. Mention the Law Revision Commission when you make your reservation and the room rate should be \$84 for a single or double. The telephone number is (619) 291-6700.

The July meeting has been scheduled for the Airporter Inn Hotel in Irvine which is across from the Orange County Airport. We were unable to find an affordable meeting place in Newport Beach. The room rate at the Airporter is \$70. The telephone number is (800) 432-7018 or (714) 833-2770.

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION
JUNE 25-26, 1987
SAN DIEGO

A meeting of the California Law Revision Commission was held in San Diego on June 25-26, 1987.

Law Revision Commission

Present: Arthur K. Marshall, Chairperson (June 25)
Ann E. Stodden, Vice Chairperson Tim Paone
Roger Arnebergh (June 26) Forrest A. Plant
Edwin K. Marzec

Absent: Elihu M. Harris, Member of Assembly Bion M. Gregory
Bill Lockyer, Member of Senate Vaughn R. Walker

Staff Members

Present: John H. DeMouilly Robert J. Murphy III (June 25)
Nathaniel Sterling Stan G. Ulrich

Consultants Present

None

Other Persons Present

Edward V. Brennan, California Probate Referees' Association,
San Diego (June 26)
Irwin D. Goldring, Executive Committee, State Bar Estate
Planning, Trust and Probate Law Section, Los Angeles
Paulette Leahy, California Bankers Association, San Diego
(June 25)
James C. Opel, Executive Committee, State Bar Estate
Planning, Trust and Probate Law Section, Los Angeles
Kenneth Petrulis, Beverly Hills Bar Association, Probate,
Trust and Estate Planning Section, Beverly Hills
Richard Stack, Los Angeles County Bar Association, Probate,
Trust and Estate Planning Section, Los Angeles

ADMINISTRATIVE MATTERS

MINUTES OF MAY 14-15, 1987, MEETING

The Minutes of the May 14-15, 1987, Meeting were approved as submitted by the staff.

SCHEDULE FOR FUTURE MEETINGS

The Commission determined that future meetings should be scheduled to start at 10:00 a.m. (instead of 3:00 p.m.) on Thursday. This new schedule would apply until the Commission has been able to eliminate the backlog of staff prepared material that is ready for consideration by the Commission.

Future meetings are scheduled as set out below.

JULY 1987

23 (Thursday)	10:00 a.m. - 6:00 p.m.	Irvine
24 (Friday)	9:00 a.m. - 3:00 p.m.	Airporter Inn Hotel 18700 MacArthur Blvd. (800) 432-7018

SEPTEMBER 1987

17 (Thursday)	10:00 a.m. - 6:00 p.m.	Los Angeles
18 (Friday)	9:00 a.m. - 3:00 p.m.	State Bar Building 818 West 7th (213) 689-6200

OCTOBER 1987

15 (Thursday)	10:00 a.m. - 6:00 p.m.	Sacramento
16 (Friday)	9:00 a.m. - 2:00 p.m.	

NOVEMBER 1987

19 (Thursday)	10:00 a.m. - 6:00 p.m.	San Francisco
20 (Friday)	9:00 a.m. - 3:00 p.m.	

DECEMBER 1987

10 (Thursday)	3:00 p.m. - 7:00 p.m.	Monterey
11 (Friday)	9:00 a.m. - 3:00 p.m.	

LEGISLATIVE PROGRAM

The staff made the following report on the 1987 legislative program.

Passed Legislature

Senate Concurrent Resolution 12 (Continues Authority to Study Previously Authorized Topics; Senator Lockyer amended this concurrent resolution to include authorization to study administrative law) (This measure does not require approval by Governor) (Lockyer)

Sent to Governor

Assembly Bill 362 (Urgency Trust Bill) (Harris)

Passed First House

Assembly Bill 708 (Comprehensive Probate Bill) (Harris) (Bill amended on June 15. Bill as amended in June 15 and additional amendments will be considered at June 25-26 meeting of Law Revision Commission; bill will be heard on July 14)

Dead

Assembly Concurrent Resolution 42 (Authorizes Study of Administrative Law) (This measure no longer necessary since authority to study administrative law is included in Senate Concurrent Resolution 12 which has been adopted by Legislature) (Harris)

INFORMING LOCAL BAR ASSOCIATIONS OF COMMISSION MEETINGS

The Commission considered Memorandum 87-60, which set out a draft of a letter that might be sent to the president of the local bar association where the Commission will be meeting informing the association of the meeting.

Commissioner Plant remarked that a significant response of the local bar members to an invitation to attend the Commission meeting might require that a larger meeting room be obtained for the meeting.

The Commission approved the substance of the letter set out in the Memorandum and decided to use the letter for the September meeting and see how it works. The staff should obtain a larger meeting room than usual for the September meeting so that the room can accommodate a number of observers.

STUDY L- PROBATE CODE (ASSEMBLY BILL 708)

The Commission considered Memorandum 87-41 (with the attached copy of Assembly Bill 708 as amended in Senate June 15, 1987 (uncorrected version) and the revised Comments which were attached to the Memorandum), Memorandum 87-46, the First Supplement to Memorandum 87-46, and Memorandum 87-47, and a draft of a provision relating to the affidavit procedure under Probate Code Sections 13100-13115, which was handed out at the meeting.

The Commission approved the amendments to Assembly Bill 708 as those amendments are set out in Exhibit 1 to these Minutes. The Commission approved the revised Comments attached to Memorandum 87-41 and the additional Comments set out in Exhibit 2 to these Minutes.

The Commission reviewed a provision recommended by the staff that would make clear that the affidavit procedure for personal property where the estate does not exceed \$60,000 (Probate Code §§ 13100-13115) does not limit the use of any other procedure. The Commission decided that, instead of the provision recommended by the staff, a provision should be added to the bill to permit the coroner to require payment of the expense of protecting and storing property before the coroner surrenders the property pursuant to the affidavit procedure under Probate Code Sections 13100-13115. The provision approved by the Commission is included in the amendments set out as Exhibit 1 to these Minutes.

STUDY L-636 - NO CONTEST CLAUSE

The Commission considered Memorandum 87-44, relating to no contest clauses. After some discussion, the Commission decided not to take any action on this issue until more members of the Commission are present. The staff should reschedule this Memorandum for discussion at a future meeting.

STUDY L-643 - DAMAGES FOR BREACH OF TRUST

The Commission determined that the staff should review the Commission's prior recommendation concerning limitation of the right to recover punitive damages for breach of trust and prepare a memorandum on this matter for consideration by the Commission.

STUDY L-655 - INVENTORY AND APPRAISAL

Commissioner Marzec reported that he had received a letter from Commissioner Walker regarding a June 5 Wall Street Journal article concerning the NASD's plans for an automated price quotation system for 30,000 over-the-counter stocks. Commission Walker goes on to say (and Commissioner Marzec agrees): "I should think that this service would be more than adequate to provide price data for estate valuation purposes, and that the exception which we carved out at our recent meeting should be broadened from exchange listed stocks to stocks covered by the NASD quotation system." Commissioner Marzec then gave a personal example of his experience under the present system. He submitted an inventory to a probate referee. The inventory included some 600 odd shares of a holding in Switzerland. The probate referee valued the shares at \$622.38. The actual value of the stock was in excess of \$660,000. It was noted that the Commission will be considering for approval for printing at the July meeting the recommendation relating to inventory and appraisal.

STUDY L-1027 -- ACCOUNTS

The Commission considered Memorandum 86-29 and the First and Second Supplements thereto, relating to the staff draft of the accounts tentative recommendation. The Commission made the following decisions concerning the draft.

§ 10900. Duty to account

This section was revised to read, "The personal representative has a duty to account as provided in this part." The staff should review the necessity for this provision at all, in light of other provisions in the Part.

§ 10901. Contents of account

The Commission discussed whether the account should include a report of administration, or vice versa, or whether the account and report of administration should be separate items. The staff was directed to try different approaches, and make a new draft based on the approach that seems to work best.

The portion of the statute relating to the account proper was revised to read:

The account shall include a summary statement, together with supporting schedules, of:

- (1) Property in all inventories.
- (2) Receipts, excluding property listed inventories.
- (3) Gains on sales.
- (4) Other acquisitions of property.
- (5) Disbursements.
- (6) Losses on sales.
- (7) Other dispositions of property.
- (8) Property remaining.

The Comment concerning the report of administration should note that the report would include such matters as the giving of actual notice to known creditors and the investment of funds in interest-bearing accounts.

§ 10902. Production of supporting documents

The request of an interested person for supporting documents under this section should be delivered to the court clerk for transmittal to the personal representative. The Comment should note that this expands the procedure under Section 925 from vouchers to supporting documents generally.

§ 10950. Court ordered account

Subdivision (a) was reorganized to read, "Upon its own motion or upon petition of any interested person, the court may order an account at any time." A sentence should be added to the statute to the effect that the court order shall state the time within which the account is to be filed. The Comment to the section should refer to Section 10954 (waiver of account).

§ 10951. Final account

The Comment to the section should refer to Section 10954 (waiver of account).

§ 10952. Account after authority terminated

The account under this section should be automatic, and not dependent on court order. The time within which an account must be filed under this section should be changed from 90 to 60 days. The Comment to the section should refer to Section 10954 (waiver of account).

§ 10953. Account where personal representative dies or becomes incompetent

Subdivision (b) should refer to the legal representative "of the deceased or incompetent personal representative." The account should be required automatically in this situation, without a petition by the successor personal representative.

The provision in subdivision (c) excusing the attorney from verifying the account was deleted. Reference should be made to the general provision requiring all accounts to be verified.

A provision should be added, to replace the "information or records available" standard, that "The legal representative or attorney shall exercise reasonable diligence in preparing the account."

A provision should be added to that clarifies which estate is to pay what fee to the legal representative or attorney for services in preparing the account on behalf of the deceased, incompetent, or absconding personal representative.

§ 10954. Waiver of account

Subdivision (a) should be "notwithstanding any other provision of this part." The statute should be clear that a report of administration is required even though an account is waived.

Subdivision (d) should be revised to state more precisely the persons whose waiver is necessary. The provision might excuse persons under the virtual representation standards, and might excuse any person whose interest has been satisfied or where adequate provision has been made for satisfaction of the person's interest. The staff should also consider whether creditors whose claims are allowed or approved should be able to require an account; reference might be made to the standards of Section 1004.

§ 11000. Setting an account for settlement

This section was deleted in reliance on general provisions to the same effect.

§ 11001. Notice of hearing

The Comment should refer to the special notice requirements of Sections 1250, 1252, and 1220(e).

§ 11002. Contest of account

Subdivision (a) was tentatively revised to require objections to an account to be in writing, subject to the authority of the court in its discretion to allow a continuance to enable a contestant to satisfy this requirement. This revision should be reviewed in light of whatever general hearing provisions on objections are adopted.

Subdivision (b)(2) should be revised to refer to the value of property "for purposes of distribution" rather than in the inventory and appraisal. The Comment should note this change.

Subdivision (b)(3) should be subject to Section 10590 (Independent Administration of Estates Act).

Subdivision (c) should refer to "commissions" as well as fees and costs. The contestant is liable for these items, which shall be a charge against any interest of the contestant in the estate. The staff should refine the drafting of this concept.

§ 11003. Hearing on account

Subdivision (a) was revised to read, "At the hearing, the personal representative may be examined on oath."

§ 11004. Settlement of claim not paid in full

This section should refer to a claim "settled and paid" for less than its full amount.

§ 11005. Settlement of claim not properly made or allowed

This section should be limited to claims paid within four months after first issuance of letters to a general personal representative. The Comment should note that this codifies existing case law.

§ 11006. Effect of order settling account

The staff should check into whether existing law might not be more limited than this section, and if so, should limit this section accordingly.

**STUDY L-1038 - ABATEMENT; INTEREST AND INCOME
ACCRUING DURING ADMINISTRATION**

The Commission considered Memorandum 87-37, the attached staff draft, and the First, Second, and Third Supplements, concerning abatement, and interest and income accruing during administration. The Commission also considered a report of the Legislative Committee of the

Probate, Trust and Estate Planning Section of the Beverly Hills Bar Association which was handed out at the meeting. A copy of this report is attached to these Minutes as Exhibit 3. The Commission made the following decisions:

Definitions

The definitions at the beginning of the staff draft are phrased in terms of a "devise," but also apply to trusts, deeds, and other instruments (Section 21101). The Commission was concerned about the artificiality of using "devise" more broadly than it is commonly understood. Perhaps there should be one set of definitions for interest and income and another for abatement. Or perhaps the definitions should be general (at the beginning of the Probate Code), be phrased in terms of a "devise" without reference to other donative transfers, and with a substantive provision that definitions of the various devises also apply to other donative transfers. The staff should give this further thought.

Application of interest and income provisions

Chapter 8 (commencing with Section 12000) of Part 10 of Division 7 is drawn to apply to administration of decedents' estates, the same as existing law (Prob. Code §§ 660-665). The staff should consider whether the chapter should be broadened to apply in other cases, such as when trust assets are distributed.

§ 12001. Rate of interest

The Commission thought the rate of interest on judgments (10%) is too high for decedents' estates. Interest should be at the rate on U.S. savings bonds. The savings bond rate is 85% of the five-year Treasury bill rate and changes every six months. For a particular estate, the rate could be that in effect at death.

§ 12002. Earnings on and expenses of specific devise

The Commission wanted to keep the proposed rule charging to the estate the excess of expenses on specifically devised property over earnings from the property for one year after death. However, the proposed rule should be modified so that if the specific devisee is in possession of the property (which may precede distribution), the specific devisee and not the estate would bear the expenses.

The Comment to Section 12002 is inaccurate. The Comment cites Estate of Reichel, 28 Cal. App. 3d 156, 103 Cal. Rptr. 836 (1972), for the proposition that expenses on property specifically devised are borne by the specific devisee, whether or not the property produces income. Reichel stands for the narrower proposition that where the devisee occupies specifically devised property rent free during administration, the devisee is charged with taxes and insurance on the property.

Under existing law, expenses on specifically devised property during administration are charged first to any income from the property, and then to the residue as an expense of administration, subject to the Reichel exception where the devisee occupies the property rent free. McCarroll, 1 California Decedent Administration Supplement § 17.9, at 452 (Cal. Cont. Ed. Bar, June 1985). So Section 12002 more nearly states existing law than the Comment suggests.

§ 12003. Interest on general pecuniary devise

Section 12003 was revised to provide that interest on a general pecuniary devise, including one in trust, commences one year after death. State Bar Team 4 thought this might cause a decrease of the marital deduction. Team 4 suggested that the staff consider adding a new subdivision (d) to Section 21522 (AB 708) to say that a general pecuniary devise, including one in trust, intended to qualify for the marital deduction bears a pro rata share of income after the date of the gift.

§ 21400. Purposes for which abatement made

The introductory clause of subdivision (a) of Section 21400 was revised to read: "Except as provided in Sections 6562 and 6573 and in Division 10 (commencing with Section 20100), shares of beneficiaries abate as provided in this part for all purposes" With this revision, the Commission approved Section 21400.

§ 21401. Order of abatement

Section 21401 states an abatement preference for the testator's spouse or kindred. Traditionally, "kindred" meant blood relatives. A proposed conforming revision to Section 6152 would broaden the term "kindred" to include adopted persons and, to a limited degree, stepchildren and foster children for the purpose of abatement. Concern was expressed that it is misleading to use "kindred" in Section 21401 in a sense broader than its traditional meaning. Perhaps the abatement preference should be couched in terms of those who may take from the

transferor by intestate succession. The staff should give further thought to this provision.

Except as noted above, the Commission approved the staff draft. The staff should revise the draft consistent with the Commission's decisions, and bring it back to the Commission for review.

STUDY L-1048 - RULES OF PROCEDURE

The Commission began its consideration of Memorandum 87-42 and the staff draft of a Tentative Recommendation Relating to Rules of Procedure. The Commission also considered the First Supplement to Memorandum 87-42. The Commission approved Sections 1000-1049 and 7000-7220 in the draft recommendation subject to the following decisions:

§ 1000. General rules of practice

The comment to this section should refer to the rulemaking power of the courts as provided in Section 1002. The staff should also review the new discovery act to see if there is any problem in its application to probate proceedings.

§ 1001. Actions in chambers

This section should be deleted. The question of which matters may be disposed of in chambers should be left in Code of Civil Procedure Section 166. The staff will review Section 166 to see if it needs to be amended to add any references to probate matters that may be determined in chambers.

§ 1004. Appointment of guardian ad litem

Since this section applies to the entire Probate Code, subdivision (a) should be revised to refer to trustees, guardians, and conservators, in addition to personal representatives, or to refer generally to fiduciaries.

§ 1005. Lis pendens

The comment to this section should note that it refers to a proceeding that "affects the title to or the right to possession of real property" and omits the word "concerning" that appears in Code of Civil Procedure Section 409. Thus, this section provides a more restrictive rule concerning lis pendens in probate proceedings than would otherwise be applicable through the incorporation of general civil practice rules by draft Section 1000. The general provisions for expunging lis pendens

should be reviewed to see if they work in probate proceedings. The comment to this section should note that the general provisions for withdrawing lis pendens apply pursuant to draft Section 1000.

§ 1020. Petitions, reports, accounts

This section should be revised as follows:

1020. ~~Except as otherwise specifically provided in this code,~~ a A petition, report, or account shall be in writing, signed by the person filing the petition, report, or account, and filed with the court clerk.

Any known exceptions to this general provision should be noted in the comment.

§ 1021. Verification required

This section should be revised as follows:

1021. (a) ~~Except as otherwise specifically provided in this code,~~ all All of the following shall be verified:

(1) A petition, report, or account filed pursuant to this code.

(2) An objection or response filed pursuant to this code to a petition, report, or account.

(b) The verification of a petition shall be made by the petitioner or, if there are two or more parties joining in the petition, by any of them. The verification of a report or account shall be made by the person who has the duty to make the report or account. The verification of an objection or response shall be made by the objector or respondent.

Any known exceptions to the general verification requirement in subdivision (a) should be noted in the comment.

A provision should be added permitting an attorney to verify where the petitioner is not in the county or otherwise is unavailable. This provision should be parallel to the rule in Code of Civil Procedure Section 446.

§ 1043. Response or objection

This section should be revised to provide that a response or objection may be made in writing at or before the hearing. In addition, a response or objection may be made orally at the hearing and the court has discretion to hear and determine the matter at the hearing or to grant a continuance so that the response or objection can be made in writing.

§ 7000. Passage of decedent's property

§ 7001. Limitations on passage of property

§ 7002. Property subject to administration

The staff should reorganize and redraft Sections 7000-7002 for clarity. The comment to Section 7001 should note other statutes that limit the passage of property, such as the probate homestead, family allowance, exempt property, and abatement.

§ 7050. Jurisdiction in superior court

The staff should reconsider this section and bring back a redraft at the next meeting. The staff should also consider whether subdivision (b) relating to concurrent jurisdiction is needed in light of the expansion of the procedure for determining conflicting claims to property (see Sections 9860-9868 in AB 708) and the rules governing suits on rejected creditor claims. The staff should consider whether it would be best to rely on these procedures rather than the general language set out in draft Section 7050(b). If it is retained, subdivision (b) should refer to the superior court "having jurisdiction of the estate."

§ 7051. Venue

Subdivision (a) of this section should be revised to refer consistently to the county of the decedent's domicile instead of the county in which the decedent resided. Subdivision (b) should be revised to provide for venue in cases involving nondomiciliaries in the following order: (1) the county where the decedent died if the decedent had real property in that county, (2) any county where real property of the decedent is located if the decedent died in a county where the decedent did not own any real property or died outside California, or (3) any county where personal property is located if the decedent had no real property in California.

§ 7070. Grounds for transfer

This section should be revised as follows:

7070. The court or judge shall order a proceeding under this division transferred to another county if there is no judge of the court in which the proceeding is pending who is qualified to act. This section does not apply if a judge qualified to act is assigned by the chairman of the Judicial Council to sit in the county and hear the proceeding.

§ 7200. Trial by jury

The wording of this provision making clear that there is no right to a jury trial in estate administration unless it is specifically provided should be reviewed to make sure that it correctly describes the type of proceedings within its scope.

Effect of orders, appearance in proceeding, right to appeal

The Commission discussed the general issue of who should be able to appeal from an order made in estate administration proceedings. The suggestion was made that a person who has received notice and who has not objected or appeared in the proceeding should not be able to seek review of an order. On the other hand, it was suggested that potentially interested persons should not have to file an appearance just in order to protect the right to appeal, particularly where they have no objection before the order is issued. The staff should review this area of the law to see if it would be practical to draft clarifying rules.

STUDY L-3010 - CHANGE IN CORPORATE TRUSTEES

Paulette Leahy, representing the California Bankers Association, advised the Commission that the Association will provide a statement for the July Commission meeting concerning the principles that should be adopted to deal with the problem of certain corporate trustees substantially increasing the trustees compensation for smaller trust estates. The Association will provide its views to the Executive Committee of the Estate Planning, Trust and Probate Section of the State Bar and the Los Angeles County Bar Committee and the Beverly Hills Bar Association Committee so that those Committees can provide a statement of their views concerning the matter at the July meeting of the Commission.

At the July meeting, the Commission plans to make its basic policy decisions concerning this matter so that the staff can prepare a draft of a Tentative Recommendation for consideration by the Commission at the September meeting. The Commission plans to approve a Tentative Recommendation at the September meeting for distribution to interested persons and organizations for review and comment. The Comments will be considered at the November meeting, and the Commission plans to make

any needed revisions in the Tentative Recommendation at the November meeting and approve a Recommendation for printing at that meeting. The Commission plans to have proposed legislation prepared for introduction by Assembly Member Harris early in December 1987.

The Commission requested the staff to review the Commission's prior recommendation concerning limitation of the right to recover punitive damages for breach of trust (see discussion of Study L-643 in these Minutes) with a view possibly to including provisions dealing with that matter in the legislation dealing with change in corporate trustees. This would be appropriate to include in a legislative measure dealing with the fee problem.

APPROVED AS SUBMITTED _____

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

Date

Chairperson

Executive Secretary

EXHIBIT 1

Minutes
June 25-26, 1987
jd355 06/24/87

AMENDMENTS TO ASSEMBLY BILL 708 AS AMENDED IN SENATE JUNE 15, 1987
(AS CORRECTED 6-17-87)

AMENDMENT 1

In line 10 of the title, after "13101," insert:
13114, 13152,

AMENDMENT 2

In line 10 of the title, strike out "and 16304" and insert:
16304, and 20114.5

AMENDMENT 3

In line 15 of the title, after "of," insert:
Chapter 8 (commencing with Section 573) and

AMENDMENT 4

On page 22, between lines 32 and 33, insert:
SEC. 35.5. Chapter 8 (commencing with Section 573) is added to
Division 3 of the Probate Code, to read:

CHAPTER 8. SURVIVAL OF ACTIONS

573. (a) Except as provided in this section, no cause of action is lost by reason of the death of any person, but may be maintained by or against the person's personal representative.

(b) In an action brought under this section against a personal representative, all damages may be awarded which might have been recovered against the decedent had the decedent lived except damages awardable under Section 3294 of the Civil Code or other damages imposed primarily for the sake of example and by way of punishing the defendant.

(c) Where a person having a cause of action dies before judgment, the damages recoverable by his or her personal representative are

limited to the loss or damage the decedent sustained or incurred prior to death, including any penalties or punitive or exemplary damages that the decedent would have been entitled to recover had the decedent lived but not including any damages for pain, suffering, or disfigurement.

(d) This section applies where a loss or damage occurs simultaneously with or after the death of a person who would have been liable for the loss or damage if his or her death had not preceded or occurred simultaneously with the loss or damage.

(e) Nothing in this section shall be construed as affecting the assignability of causes of action.

AMENDMENT 5

On page 49, line 15, strike out "(a)" and insert:

(b)

AMENDMENT 6

On page 81, line 7, strike out "If the" and insert:

Not later than 90 days after the date letters are first issued to a general personal representative, the general personal representative shall give the Director of Health Services notice of the decedent's death in the manner provided in Section 215 if the general

AMENDMENT 7

On page 81, strike out lines 12 to 18, inclusive, and insert:

Institutions Code. The director

AMENDMENT 8

On page 97, line 34, strike out "Where" and insert:

(a) Subject to subdivision (b), where

AMENDMENT 9

On page 97, after line 40, insert:

(b) Where it is to the advantage of the estate, the amount of cash that is reasonably necessary for orderly administration of the estate may be deposited in a checking account that does not earn interest which is maintained in a department of the corporation or association of which the trust company is a part.

AMENDMENT 10

On page 100, line 13, strike out "payment of an amount" and insert:
periodic payments

AMENDMENT 11

On page 111, strike out lines 3 to 30, inclusive.

AMENDMENT 12

On page 112, line 4, strike out "RENEWAL OR" and insert:
RENEWAL, OR

AMENDMENT 13

On page 176, line 6, strike out "payment of an amount" and insert:
periodic payments

AMENDMENT 14

On page 197, between lines 3 and 4, insert:

SEC. 94.1. Section 13114 of the Probate Code is amended to read:

13114. (a) A public administrator who has taken charge of the estate of a decedent as provided in Section 1140 may refuse to pay money or deliver property pursuant to this chapter if payment of the costs and fees described in Section 1144.5, subject to the dollar limitations specified in that section, has not first been made or adequately assured to the satisfaction of the public administrator.

(b) A coroner who has property found upon the body of a decedent, or who has taken charge of property of the decedent pursuant to Section 27491.3 of the Government Code, may refuse to pay or deliver the property pursuant to this chapter if payment of the reasonable costs of holding or safeguarding the property has not first been made or adequately assured to the satisfaction of the coroner.

SEC. 94.5. Section 13152 of the Probate Code is amended to read:

13152. (a) The petition shall be verified by each petitioner, shall contain a request that the court make an order under this chapter determining that the particular item of property described in the petition is property passing to the petitioner and that no

administration of the decedent's estate is necessary, and shall state all of the following:

(1) The facts necessary to determine that the petition is filed in the proper county.

(2) The gross value of the decedent's real and personal property in California, excluding the property described in Section 13050, as shown by the inventory and appraisal attached to the petition, does not exceed sixty thousand dollars (\$60,000).

(3) A description of the particular item of property in this state which the petitioner alleges is property of the decedent passing to the petitioner.

(4) The facts upon which the petitioner bases the allegation that the described real property is property passing to the petitioner.

(5) A statement that no proceeding is being or has been conducted in this state for administration of the decedent's estate.

(6) Whether estate proceedings for the decedent have been commenced in any other jurisdiction and, if so, where those proceedings are pending or were conducted.

(7) The names, addresses, relationships, and ages of the heirs and devisees of the decedent, the names and addresses of all persons named as executors of the will of decedent, and, if the personal representative is the trustee of a trust that is a devisee under the will of the decedent, the names and addresses of all persons interested in the trust, as determined in cases of future interests pursuant to paragraph (1), (2), or (3) of subdivision (a) of Section 15804, so far as known to any petitioner.

(b) There shall be attached to the petition an inventory and appraisal in the form set forth in Section 600 of the decedent's real and personal property in this state, excluding the property described in Section 13050. The inventory and appraisal shall be made by a probate referee selected by the petitioner from those probate referees appointed by the Controller under Section 1305 to appraise property in the county where the real property is located. The appraisal shall be made as set forth in Chapter 9 (commencing with Section 600) of Division 3. The petitioner may appraise the assets which a personal representative could appraise under paragraph (1) of subdivision (a) of Section 605.

(c) If the petitioner bases his or her claim to the described particular item of property upon the will of the decedent, a copy of the will shall be attached to the petition.

~~This section shall only become operative if Assembly Bill No. 2652 of the 1985-86 Regular Session is enacted and adds a Section 15804 to this code, in which case this section shall become operative on July 1, 1987.~~

AMENDMENT 15

On page 200, between lines 30 and 31, insert:

SEC. 100.5. Section 20114.5 of the Probate Code, as added by Assembly Bill No. 362 of the 1987-88 Regular Session, is amended to read:

20114.5. (a) As used in this section: ~~(1)~~

(1) A reference to Section 4981 of the Internal Revenue Code means Section 4981 as enacted by Section 1133(a) of the Tax Reform Act of 1986 (Public Law 99-514), ~~(2)~~, or as subsequently amended.

(2) "Excess retirement accumulation" has the meaning given it in Section 4981(d)(3) of the Internal Revenue Code.

(b) If the federal estate tax is increased under Section 4981(d) of the Internal Revenue Code, the amount of the increase shall be a charge against the persons who receive the excess retirement accumulation that gives rise to the increase, and shall be equitably prorated among all persons who receive interests in qualified employer plans and individual retirement plans to which the excess retirement accumulation is attributable.

AMENDMENT 16

On page 202, strike out lines 9 to 14, inclusive, and insert:

21501. (a) This part applies to a distribution made on or after January 1, 1988, whether the transferor died before, on, or after that date.

(b) A distribution made on or after January 1, 1983, and before January 1, 1988, is governed by the applicable law in effect before January 1, 1988.

AMENDMENT 17

On page 208, line 14, strike out "Seciton" and insert:
Section

AMENDMENT 18

On page 208, line 22, after "(28)" insert:
Section 94.1 (amending Section 13114 to the Probate Code).
(29) Section 94.5 (amending Section 13152 of the Probate Code).
(30)

AMENDMENT 19

On page 208, line 24, strike out "(29)" and insert:
(31)

AMENDMENT 20

On page 208, line 26, strike out "(30)" and insert:
(32)

AMENDMENT 21

On page 208, between lines 27 and 28, insert:
(33) Section 100.5 (amending Section 20114.5 of the Probate Code).

AMENDMENT 22

On page 208, line 28, strike out "(31)" and insert:
(34)

EXHIBIT 2

Minutes
June 25-26, 1987
jd355 06/24/87

ADDITIONAL COMMENTS TO SECTIONS IN ASSEMBLY BILL 708

§ 573 (repealed). Survival of actions

Comment. Former Section 573 is restated in new Section 573 without substantive change.

§ 573 (added). Survival of actions

Comment. Section 573 restates former Section 573 without substantive change. See also Section 58 ("personal representative" defined).

§ 13152 (amended). Contents of petition; inventory and appraisalment

Comment. Section 13152 is amended to recognize that the petitioner (rather than the court) selects the probate referee. This is because the inventory and appraisalment must be attached to the petition when filed, but most--if not all--courts will not designate a probate referee until after a petition is filed. The new sentence added to Section 13152 is the same as the last sentence of Section 13103 (affidavit procedure for collection or transfer of personal property) and subdivision (c) of Section 13200 (affidavit procedure for real property of less than \$10,000 in value).

§ 21501. Application of part

Comment. Subdivision (a) of Section 21501 provides a special transitional rule for this part. Subdivision (b) preserves the effect of the first sentence of subdivision (a) of former Section 1031.

§ 21502. Effect of instrument on application of part

Comment. Subdivision (a) of Section 21502 restates the second sentence of subdivision (a) of former Section 1031 without substantive change. Subdivision (b) restates subdivision (b) of former Section 1031 without substantive change.

This part applies to trusts as well as wills. Section 21101 (division applicable to wills, trusts, and other instruments). Cf. former Section 15005 (law applicable to marital deduction gifts in trust).

Phyllis Cardoza
Independent Legal Assistant

1100 Glendon Avenue, Suite 1529
Los Angeles, California 90024
(213) 879-4174
(213) 208-6087

June 22, 1987.

BY EXPRESS MAIL

Robert J. Murphy III, Esq.
Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303 - 4739

Re: Study L - 1038, Abatement; Interest and Income Accruing
during Administration

Dear Bob:

Enclosed are the comments of our Committee regarding the above study,
which we hope you will consider at the meeting of Thursday and Friday,
June 25 - 26, 1987 in San Diego.

Our chair, Ken Petrulis will attend that meeting on behalf of the
Committee.

Sincerely,



PHYLLIS CARDOZA, Vice Chair
Legislative Committee
Probate Trust and Estate Planning Section
Beverly Hills Bar Association

cc: Kenneth G. Petrulis, Esq.
Enc.
PC:lc

June 19, 1987

BEVERLY HILLS BAR ASSOCIATION
PROBATE TRUST AND ESTATE PLANNING SECTION
LEGISLATIVE COMMITTEE
Kenneth G. Petrulis, Esq., Chair
and Phyllis Cardoza, ILA, Vice Chair

CALIFORNIA LAW REVISION COMMISSION
Study L-1038 - Abatement; Interest and Income Accruing
During Administration
Memorandum 87-37 dated 4/20/87
First Supplement dated 5/6/87
Second Supplement dated 5/19/87
Third Supplement dated 6/8/87

DIVISION 1. PRELIMINARY PROVISIONS AND DEFINITIONS
PART 2. DEFINITIONS

We are now satisfied that the different types of devises are well defined.

DIVISION 7. ADMINISTRATION OF ESTATES OF DECEDENTS
PART 10. DISTRIBUTION OF ESTATE
CHAPTER 8. INTEREST AND INCOME ACCRUING DURING ADMINISTRATION

§12000. Transferor's intention controls

The title of this section contradicts the provisions of the statute, which apply "where the intention of the transferor is not indicated by the instrument."

§12002. Earnings on and expenses of specific devise

We would amend Subparagraph (b) to read as follows:

If the earnings on specifically devised property are not sufficient to pay expenses attributable to the property, including taxes on the property, the excess expenses shall be borne by the specific devisee to the extent of the reasonable value of the use of the property given to the specific devisee. Otherwise, the expenses shall be paid out of the estate for one year after the testator's death or until the property is distributed to the devisee, whichever occurs first. Thereafter, the expenses shall be borne by the devisee.

*Deletions lined through; additions underlined.

LRC Study L-1038 - Abatement; Interest and Income Accruing
During Administration, cont.

§12002. Earnings on and expenses of specific devise, cont.

The suggested revision appropriately charges persons who have possession or use of the property, while protecting devisees who are denied the use or enjoyment of the property because of the needs of the estate.

§12003. Interest on general pecuniary devise

When Interest Begins

We feel that early distribution of specific bequests should be encouraged. However, it is virtually impossible to distribute pecuniary bequests earlier than six months from date of death. On the other hand, one year is too long. Thus, we suggest the devise should bear interest from six months after date of death. This would allocate the interest more fairly between the specific and residuary devisees.

Conflict with §16304

The conflict between this section and §16304 suggested by Professor Halbach (First Supplement) does not exist because of the limitation of §12000 (provisions of chapter apply only where intention not indicated in will). If the present language in §12000 does not clear up the conflict, a note in the comment would take care of it by affirming that a trust mentioned in the will by incorporation is also subject to §12000.

Therefore, if the trust indicates that interest starts at date of death, the trust controls

Sec. _____, Transitional provision

We agree with the deletion of former §12007(a) so that the provisions regarding interest and income during administration are prospective rather than retroactive.

BEVERLY HILLS BAR ASSOCIATION
PROBATE TRUST AND ESTATE PLANNING SECTION
LEGISLATIVE COMMITTEE
June 15, 1987
Page 3

LRC Study L-1038 - Abatement; Interest and Income Accruing
During Administration, cont.

DIVISION 11. CONSTRUCTION OF WILLS, TRUSTS, AND OTHER INSTRUMENTS
PART 1. GENERAL PROVISIONS
CHAPTER 1. SCOPE AND DEFINITIONS

§21102. Transferor's intention controls

The title of this section contradicts the provisions of the statute, which apply "where the intention of the transferor is not indicated by the instrument."

Also, to what does Part 5 (commencing with Section 21500) refer?

DIVISION 11. CONSTRUCTION OF WILLS, TRUSTS, AND OTHER INSTRUMENTS
PART 4. ABATEMENT

§21400. Purposes for which abatement made

Has the Commission considered state and federal estate taxes in subsection (a)?

See Estate of Cochran (1973), 30 CA3d 892; 106 CR 700. In that case, the will directed that estate taxes be paid out of the residue, but the residue was not sufficient to do so after specific devises, debts, fees and expenses of administration. The Court ruled that to the extent of the remaining unpaid death taxes, the nonresiduary gift beneficiaries are subject to prorated tax burdens as though no tax allocation clause appeared in the will.

See also Estate of Nesbitt (1958), 158 CA2d 630, 323 P2d 474.

Sec. _____, Transitional provision

We agree that the provisions regarding abatement apply only to deaths after the operative date.