

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

jd10
10/15/87

<u>Time</u>	<u>Place</u>
Oct. 22 (Thursday) 10:00 a.m. - 6:00 p.m.	Room 125
Oct. 23 (Friday) 9:00 a.m. - 2:00 p.m. (Meeting will continue without a break for lunch on Friday Oct. 23)	State Capitol Sacramento

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Sacramento

October 22-23, 1987

1. Minutes of September 17-18, 1987, Meeting (sent 10/13/87)

2. Administrative Matters

Schedule for Future Meetings

Memorandum 87-71 (sent 9/25/87)

1987 Legislative Program

Oral Report at meeting

3. Study L-1036 - Probate Attorney's Fees (Policy Issue Determination)

Memorandum 87-49 (sent 10/9/87)
Background Study (attached to Memorandum)

4. Study L-1058 - Filing Fees in Probate

Memorandum 87-87 (enclosed)

5. Study L-706 - Temporary Guardians and Conservators

Memorandum 87-88 (sent 9/25/87)

6. Study L-1027 - Accounts (Review of Comments on Tentative Recommendation)

Memorandum 87-79 (sent 10/9/87)
Tentative Recommendation (attached to Memorandum)

7. Study L-1025 - Litigation Involving Decedent (Review of Comments on Tentative Recommendation)

Memorandum 87-80 (sent 10/07/87)
Staff Draft of Tentative Recommendation (attached to Memorandum)

8. Study L-1048 - Procedure (Review of Comments on Tentative Recommendation)

Memorandum 87-81 (sent 10/02/87)
Tentative Recommendation (attached to Memorandum)

9. Study L-1038 - Abatement (Review of Comments on Tentative Recommendation)

Memorandum 87-82 (sent 10/09/87)
Tentative Recommendation (attached to Memorandum)

10. Study L-1046 - Nonresident Decedent (Draft of Recommendation)

Memorandum 87-72 (to be sent)
Draft of Recommendation (attached to Memorandum)

11. Study L-655 - Inventory and Appraisal (Review of Revised Provisions Before Approval for Printing)

Memorandum 87-73 (sent 09/25/87)
Revised Provisions (attached to Memorandum)

12. Study L-1010 - Opening Estate Administration (Approval of Recommendation for Printing)

Memorandum 87-74 (sent 10/07/87)
Draft of Recommendation (attached to Memorandum)
First Supplement to Memorandum 87-74 (sent 10/13/87)

13. Study L-1029 - Distribution and Discharge (Approval of Recommendation for Printing)

Memorandum 87-86 (sent 10/02/87)

Draft of Recommendation (attached to Memorandum)

14. Study L-940 - Fiduciaries' Wartime Substitution Law (Draft of Tentative Recommendation)

Memorandum 87-78 (sent 10/02/87)

Draft of Tentative Recommendation (attached to Memorandum)

15. Study L-636 - No Contest Clause

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

First Supplement to Memorandum 87-44 (sent 7/30/87)

Second Supplement to Memorandum 87-44 (sent 10/02/87)

MEETING SCHEDULE

Note. The Commission will meet until 2:00 p.m., without a break for lunch, on Fridays.

OCTOBER 1987

22 (Thursday)	10:00 a.m. - 6:00 p.m.	State Capitol, Room 125
23 (Friday)	9:00 a.m. - 2:00 p.m.	Sacramento

NOVEMBER 1987

19 (Thursday)	10:00 a.m. - 6:00 p.m.	San Francisco
20 (Friday)	9:00 a.m. - 2:00 p.m.	

DECEMBER 1987

10 (Thursday)	3:00 p.m. - 7:00 p.m.	San Jose
11 (Friday)	9:00 a.m. - 2:00 p.m.	

PROGRESS ON RECOMMENDATIONS FOR 1988
(September 23, 1987)

<u>Subject</u>	<u>Staff Work Started</u>	<u>Considered by Comm'n</u>	<u>TR Approved</u>	<u>Comments Reviewed</u>	<u>Approved to Print</u>
Public Guardians & Administrators	XXXXXXXXXX XXXXXXXXXX	XXXXXXXXXX XXXXXXXXXX	XXXXXXXXXX XXXXXXXXXX	XXXXXXXXXX XXXXXXXXXX	9/87
Misc. Division 3 Provisions	XXXXXXXXXX XXXXXXXXXX	XXXXXXXXXX XXXXXXXXXX	No TR Sent Out For Comment		9/87
Inventory and Appraisal	XXXXXXXXXX XXXXXXXXXX	XXXXXXXXXX XXXXXXXXXX	XXXXXXXXXX XXXXXXXXXX	5/87	
Opening Estate Administration	XXXXXXXXXX XXXXXXXXXX	XXXXXXXXXX XXXXXXXXXX	XXXXXXXXXX XXXXXXXXXX	9/87	
Nonresident Decedent	XXXXXXXXXX XXXXXXXXXX	XXXXXXXXXX XXXXXXXXXX	XXXXXXXXXX XXXXXXXXXX	9/87	
Distribution and Discharge	XXXXXXXXXX XXXXXXXXXX	XXXXXXXXXX XXXXXXXXXX	XXXXXXXXXX XXXXXXXXXX	9/87	
Litigation Involving Decedent	XXXXXXXXXX XXXXXXXXXX	XXXXXXXXXX XXXXXXXXXX	7/87		
Accounts	XXXXXXXXXX XXXXXXXXXX	XXXXXXXXXX XXXXXXXXXX	7/87		
Rules of Procedure	XXXXXXXXXX XXXXXXXXXX	XXXXXXXXXX XXXXXXXXXX	7/87		
Abatement	XXXXXXXXXX XXXXXXXXXX	XXXXXXXXXX XXXXXXXXXX	7/87		
Interest & Income During Adm'n	XXXXXXXXXX XXXXXXXXXX	XXXXXXXXXX XXXXXXXXXX	9/87		
Fiduciaries War-time Sub. Law	XXXXXXXXXX XXXXXXXXXX	9/87			
Attorney Fees	8/87	scheduled 10/87			
Personal Rep. Fees					
Probate Cleanup Bill	XXXXXXXXXX XXXXXXXXXX	9/87			
Dormant Mineral Interests Act	XXXXXXXXXX XXXXXXXXXX	XXXXXXXXXX XXXXXXXXXX	7/87		
Annual Report	9/87	scheduled 11/87			

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION
OCTOBER 22-23, 1987
SACRAMENTO

A meeting of the California Law Revision Commission was held in Sacramento on October 22-23, 1987.

Commission:

Present:	Ann E. Stodden Chairperson Forrest A. Plant Vice Chairperson	Roger Arnebergh Arthur K. Marshall Edwin K. Marzec (Oct. 22)
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Absent:	Elihu M. Harris Assembly Member Bill Lockyer Senate Member	Bion M. Gregory Legislative Counsel Tim Paone Vaughn R. Walker
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Staff:

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

None

Other Persons:

James D. Devine, State Bar Estate Planning, Trust and Probate Law Section, Monterey
Nancy E. Ferguson, California Probate Referees' Association, Sacramento (Oct. 22)
Albert J. Nicora, California Probate Referees' Association, Oakland (Oct. 22)
Kenneth Petruilis, Beverly Hills Bar Association, Probate, Trust and Estate Planning Section, Beverly Hills
James Quillinan, State Bar Estate Planning, Trust and Probate Law Section, Mountain View
Michael Whalen, Los Angeles County Bar Association, Probate and Trust Law Section, Los Angeles

ADMINISTRATIVE MATTERS

MINUTES OF SEPTEMBER 17-18, 1987, MEETING

The Minutes of the September 17-18, 1987, meeting of the California Law Revision Commission were approved subject to the following corrections:

On page 9, line 7, the word "adapted" was deleted.

On page 19, line 7, the following sentence was added: "The Commission had initially commenced a study of corporate trustee fees at the request of Assembly Member Harris, who is the Assembly's representative on the Commission."

SCHEDULE FOR FUTURE MEETINGS

The Commission adopted the following schedule for future meetings. If there is not sufficient material for a particular meeting to warrant two days of meeting time, the meeting should be scheduled as a one-day meeting for Friday.

MEETING SCHEDULE

NOVEMBER 1987

20 (Friday) 10:00 a.m. - 4:00 p.m. San Francisco

Note. The Commission will meet until 2:00 on the following Fridays without a break for lunch if necessary to complete the agenda.

DECEMBER 1987

10 (Thursday) 10:00 a.m. - 6:00 p.m. San Jose
11 (Friday) 9:00 a.m. - 2:00 p.m.

January 1988

14 (Thursday) 1:30 p.m. - 6:00 p.m. Los Angeles
15 (Friday) 9:00 a.m. - 2:00 p.m.

February 1988

18 (Thursday) 1:30 p.m. - 6:00 p.m. San Francisco
19 (Friday) 9:00 a.m. - 2:00 p.m.

March 1988

10 (Thursday) 1:30 p.m. - 6:00 p.m. Los Angeles
11 (Friday) 9:00 a.m. - 2:00 p.m.

Minutes
October 22-23, 1987

April 1988

14 (Thursday) 1:30 p.m. - 6:00 p.m. Sacramento
15 (Friday) 9:00 a.m. - 2:00 p.m.

May 1988

12 (Thursday) 1:30 p.m. - 6:00 p.m. Los Angeles
13 (Friday) 9:00 a.m. - 2:00 p.m.

June 1988

9 (Thursday) 1:30 p.m. - 6:00 p.m. San Francisco
10 (Friday) 9:00 a.m. - 2:00 p.m.

July 1988

14 (Thursday) 1:30 p.m. - 6:00 p.m. Los Angeles
15 (Friday) 9:00 a.m. - 2:00 p.m.

August 1988

No meeting

September 1988

8 (Thursday) 1:30 p.m. - 6:00 p.m. San Francisco
9 (Friday) 9:00 a.m. - 2:00 p.m.

October 1988

13 (Thursday) 1:30 p.m. - 6:00 p.m. Sacramento
14 (Friday) 9:00 a.m. - 2:00 p.m.

November 1988

17 (Thursday) 1:30 p.m. - 6:00 p.m. San Francisco
18 (Friday) 9:00 a.m. - 2:00 p.m.

December 1988

8 (Thursday) 1:30 p.m. - 6:00 p.m. Los Angeles
9 (Friday) 9:00 a.m. - 2:00 p.m.

FORMAT OF REDRAFTED PROVISIONS

The Commission requested the staff to show changes in a current draft from the immediately preceding draft by strikeout and underscore or some other appropriate means, to the extent this can be done easily and without causing undue confusion.

STUDY L-655 -- INVENTORY AND APPRAISAL

The Commission considered Memorandum 87-73, together with a letter from State Bar Study Team No. 1 (see Exhibit 1 to these Minutes), relating to inventory and appraisal. The Commission approved the redrafted sections for printing with the remainder of the inventory and appraisal statute, subject to the following changes:

§ 8800. Inventory and appraisal required

8800. (a) The personal representative shall file with the court clerk an inventory of property to be administered in the decedent's estate and an appraisal of property in the inventory. An inventory and appraisal may be combined in a single document.

(b) The inventory shall be filed within three months, and the appraisal shall be filed within six months, after letters are first issued to a general personal representative. ~~The appraisal shall be filed within six months after letters are first issued to a general personal representative.~~ The court may allow such further time for filing an inventory or an appraisal as is reasonable under the circumstances of the particular case.

(c) The personal representative may file partial inventories or partial appraisals where appropriate under the circumstances of the particular case, but all inventories and appraisals shall be filed before expiration of the time allowed under subdivision (b).

§ 8801. Supplemental inventory and appraisal

8801. ~~If after expiration of the time allowed under subdivision (b) of Section 8800 for filing an inventory~~ the personal representative acquires knowledge of property to be administered in the decedent's estate that is not included in a prior inventory, the personal representative shall file a supplemental inventory and an appraisal or supplemental appraisal of the property in the manner prescribed for an original inventory and an original appraisal. The supplemental inventory shall be filed within three months, and the supplemental appraisal shall be filed within six months, after the personal representative acquires knowledge of the property. ~~The supplemental appraisal shall be filed within six months after the personal representative acquires knowledge of the property.~~ The court may allow such further time for filing a supplemental inventory or a supplemental appraisal as is reasonable under the circumstances of the particular case.

§ 8804. Failure to timely file inventory or appraisal

8804. If the personal representative refuses or negligently fails or ~~refuses~~ to file an inventory or appraisal within the time allowed under this chapter, upon petition of an interested person:

(a) The court may compel the personal representative to file an inventory or appraisal pursuant to the procedure prescribed in Section 921.

(b) The court may remove the personal representative from office.

(c) The court may impose on the personal representative personal liability for injury to the estate or to an interested person that directly results from the refusal or failure. The liability may include attorney's fees, in the court's discretion. Damages awarded pursuant to this subdivision are a liability on the bond of the personal representative, if any.

Note. The Comment should be revised accordingly.

§ 8850. Contents of inventory

8850. (a) The inventory, including partial and supplemental inventories, shall include all property to be administered in the decedent's estate.

(b) The inventory shall particularly specify the following property:

(1) ~~Debts, bonds, mortgages, deeds of trust, notes, and other security for the payment of money to the decedent,~~ Money owed to the decedent, including debts, bonds, and notes, with the name of each debtor, the date, the sum originally payable, and the endorsements, if any, with their dates. The inventory shall also specify security for the payment of money to the decedent, including mortgages and deeds of trust. If security for the payment of money is real property, the inventory shall include a reference to the place in the records where the security interest is recorded or, if not recorded, a legal description of the real property.

(2) A statement of the interest of the decedent in a partnership ~~in which the decedent was a member,~~ appraised as a single item.

(3) ~~An account of all money~~ All money and other cash items, as defined in Section 8901, of the decedent.

(c) The inventory shall show, to the extent ascertainable by the personal representative, the portions of the property that are community, quasi-community, and separate property of the decedent.

Note. The changes in (b)(2)-(3) have been made by the staff in response to points made that the Commission did not have an opportunity to discuss.

STUDY L-706 — TEMPORARY GUARDIANS AND CONSERVATORS

The Commission considered Memorandum 87-88, relating to appointment of a temporary guardian or conservator pending appointment of a successor guardian or conservator. The Commission approved a clarifying amendment as set out in the memorandum, to be included in 1988 miscellaneous probate legislation.

2250. (a) On or after the filing of a petition for appointment of a guardian or conservator, any person entitled to petition for appointment of the guardian or conservator may file a petition for appointment of:

(1) A temporary guardian of the person or estate or both.

(2) A temporary conservator of the person or estate or both.

(b) The petition shall state facts which establish good cause for appointment of the temporary guardian or temporary conservator. The court, upon such petition or other showing as it may require, may appoint a temporary guardian of the person or estate or both, or a temporary conservator of the person or estate or both, to serve pending the final determination of the court upon the petition for the appointment of the guardian or conservator.

(c) Unless the court for good cause otherwise orders, not less than five days before the appointment of the temporary guardian or temporary conservator, notice of the proposed appointment shall be personally delivered to the proposed ward if 14 years of age or older or to the proposed conservatee. The appointment of the temporary guardian or temporary conservator may be made with or without notice to other persons as the court may require.

(d) One petition may request the appointment of a guardian or conservator and also the appointment of a temporary guardian or conservator or such appointments may be requested in separate petitions.

(e) If the court suspends the powers of the guardian or conservator under Section 2334 or 2654 or under any other provision of this division, the court may appoint a temporary guardian or conservator to exercise those powers until the powers are restored to the guardian or conservator or a new guardian or conservator is appointed.

(f) If for any reason a vacancy occurs in the office of guardian or conservator, the court, on a petition filed under subdivision (a) or on its own motion, may appoint a temporary guardian or conservator to exercise the powers of the guardian or conservator until a new guardian or conservator is appointed.

Comment Subdivision (f) is added to Section 2250 to make clear that a temporary guardian or conservator may be appointed pending the appointment of a successor guardian or conservator to fill a vacancy in the office of guardian or conservator. Subdivision (f) is declaratory of existing law.

STUDY L-1010 — OPENING ESTATE ADMINISTRATION

The Commission considered Memorandum 87-74 and the First Supplement thereto, together with a letter from State Bar Study Team 3 (attached to these Minutes as Exhibit 2), relating to the opening estate administration recommendation. The Commission approved the recommendation for printing and submission to the Legislature, subject to the following change.

§ 8200. Filing of will

The word "filing" in the headline should be changed to "deliver", as well as the word "deposit" in subdivisions (a)(1) and (c).

STUDY L-1025 — LITIGATION INVOLVING DECEDENT

The Commission considered Memorandum 87-80 which reviewed comments received on the *Tentative Recommendation Relating to Litigation Involving Decedent* (July 1987). The Commission also considered comments of the Executive Committee of the State Bar Estate Planning, Trust and Probate Law Section and of the Probate, Trust and Estate Planning Section of the Beverly Hills Bar Association which were distributed at the meeting. (See Exhibits 3 and 4.) The Commission reaffirmed the policy of dealing primarily with questions relating to creditor claims in litigation. Hence, the broader issues raised by several persons who commented on the tentative recommendation, particularly with regard to Code of Civil Procedure Sections 353 and 385, were postponed until this subject can be given fuller consideration.

Probate Code § 550. Action authorized

The following language should be added to the comment to this section: "Subdivision (b) makes clear that this chapter does not preclude the establishment of liability by another procedure. See, e.g., Section 9000 *et seq.* (creditor claims)."

Probate Code § 553. Defenses

Section 553 should be revised substantially as follows in order to make clear that a denial may be made by an answer or otherwise in an action under this chapter:

553. The insurer may deny or otherwise contest its liability by ~~cross-complaint~~ in the action under this chapter or by an independent action ~~against the plaintiff~~. Unless the personal representative is joined as a party, a judgment ~~on the cross-complaint in the action under this chapter~~ or in the independent action does not adjudicate rights by or against the estate.

Probate Code § 554. Damages

Section 554 should be revised as follows to eliminate language that is unnecessary in view of other revisions made in this scheme:

554. ~~(a) Except as provided in subdivision (b),~~ a The damages sought in an action under this chapter shall be within the limits and coverage of the insurance, or recovery of damages outside the limits or coverage of the insurance shall be waived. A judgment in favor of the plaintiff in an action under this chapter is enforceable only from the insurance coverage and not against property in the estate.

~~(b) Subdivision (a) does not apply to the extent that both of the following conditions are satisfied:~~

~~(1) The insurer accepts the defense of the action and makes an appearance on behalf of the decedent.~~

~~(2) The plaintiff files a claim under Section 9354.~~

The staff should do further work on clarifying the law concerning consolidation of an action under this chapter with an action against the personal representative and concerning whether the plaintiff may proceed against the insurance company for the amount of the insurance protection and against the personal representative for the amount of the excess over the insurance protection in the same action or otherwise.

Probate Code § 9103 [AB 708] (amended). Late claims

Subdivision (a)(1) of Section 9103 should be revised to provide that the attorney's knowledge is relevant only as to pending actions or matters in which the attorney is representing the claimant, not as to other situations. The policy is that the knowledge of the attorney is not relevant in circumstances where the attorney should not be expected to be on guard.

Probate Code § 9350. Claim prerequisite to bringing action

The first sentence of the comment should be revised as follows:
"Section 9350 restates former subdivision (c) of Section 9002 (claim

requirement) ~~with the addition of~~ , but makes express the implied requirement implied in former law that the claim was first be rejected in whole or in part."

Liability of Successors

The staff should develop a proposal dealing with the liability of a successor who takes property under the affidavit procedure where probate is later commenced and the creditor fails to make a claim. Either this statute or the affidavit procedure should be revised so that barred creditor claims are not enforceable against successors who take property by affidavit.

STUDY L-1027 — ACCOUNTS

The Commission considered Memorandum 87-79, analyzing comments received on the tentative recommendation relating to accounts. The Commission made the following changes in the recommendation.

§ 10900. Contents of account

The material in subdivision (b) relating to creditor claims should be replaced by a provision along the following lines.

The account shall include a statement of liabilities of the estate. The statement shall include the following information concerning creditor claims:

(1) Whether notice to creditors was given under Section 9050.

(2) Creditor claims filed, including the date of filing the claim, the name of the claimant, and the action taken on the claim.

(3) As to creditor claims not paid or provided for, whether the claim is due and the due date, if the claim is rejected the date notice of rejection was given, whether the creditor has brought an action on the claim, and any property that is security for the claim by mortgage, deed of trust, or other lien.

The Comment should note that the account may, but is not required to, include additional information such as a separate account as to specific gifts, allocation of principal and income, taxable income and distributable net income, and a statement of current value of property in the estate.

§ 10951. Final account

The Comment should refer to the availability of a supplemental account on court order.

§ 10954. Waiver of account

The requirement of creditor waiver should be deleted from the section, and a provision added to the effect that notwithstanding a waiver, a creditor whose interest has not been satisfied may petition for an account under Section 10950.

Subdivision (b)(1) should be revised to read, "If the person entitled to payment or distribution is an adult and competent, by that person ~~the person entitled to payment or distribution.~~"

§ 11000. Notice of hearing

This section should require notice of hearing to be given to creditors who have approved claims that are unpaid in an insolvent estate.

§ 11001. Contest of account

Subdivision (b), providing for an award of litigation expenses, should be revised to make clear that the contestant is personally liable for the expenses. The provision should also be revised to impose personal liability on a personal representative who opposes a contest without reasonable cause and in bad faith.

§ 11002. Hearing on account

Subdivision (a), providing that the personal representative may be examined on oath at the hearing, should be replaced by a provision that corresponds with procedures used at other hearings.

§ 11004. Settlement of claim not properly made or allowed

Subdivision (c) should be revised to recognize that the personal representative may pay a different amount than the "true indebtedness" if necessary to satisfy the claim, and should receive a credit for the payment.

STUDY L-1038 — ABATEMENT

The Commission considered Memorandum 87-82, analyzing comments received on the tentative recommendation relating to abatement. The Commission made the following decisions concerning the recommendation.

§ 21400. Abatement subject to transferor's intent

The Comment to this section was revised as set out in the Note on page 4 of the proposed legislation.

§ 21405. Contribution in case of abatement

The second sentence of subdivision (a) was revised to read, "The personal representative shall reduce the distributee's share by that amount."

STUDY L-1046 — NONRESIDENT DECEDENTS

The Commission considered Memorandum 87-72 which reviewed comments received on the *Tentative Recommendation Relating to Nonresident Decedent* (July 1987). The Commission made the following decisions:

Terminology

In the interest of consistency and precision, the recommendation should use "domiciliary" and "nondomiciliary" in place of "resident" and "nonresident." This will avoid the need to define a nonresident as a nondomiciliary. The Commission also approved use of the terms "sister state" and "foreign nation."

§ 12503. Foreign nation

The comment to this section should note that "state" is defined in Section 74 as "any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States."

§ 12510. Commencement of proceedings

The statute should include a provision giving a priority for appointment in ancillary administration to a personal representative appointed in a sister state or the nominee of the sister state personal representative. The comment to such provision should note that the sister state personal representative must still qualify for appointment in this state.

§ 12511. Venue in case of nondomiciliary

The nonresident decedent venue provision should remain in the general provisions for Division 7 as Section 7052. Section 12511 should be revised to read as follows: "The proper county for ancillary administration under this chapter is the county determined pursuant to Section 7052."

§ 12520. Applicable procedure

This section should be redrafted for clarity. The staff should give further consideration to the question of whether this material should be located with the general provisions on probating wills.

§ 12522. Admission of will admitted to probate in sister state

Wills admitted to probate in sister states should be admitted in this state unless a party objects and shows that the will does not satisfy the full faith and credit standard provided in this section. Subdivision (c) should also be revised as follows: "The determination in the sister state is final ~~and is not subject to revocation.~~" Further consideration should be given to whether this section should be broadened along the lines of Section 3-408 of the Uniform Probate Code, which specifically recognizes final orders of sister state courts determining testacy or the validity or construction of wills.

§ 12523. Admission of will admitted to probate in foreign nation

The burden of satisfying the standards applicable to wills admitted to probate in foreign nations should be placed on the petitioner. Subdivision (c) should be revised as follows: "The determination in the foreign nation is final ~~and is not subject to revocation.~~" In addition, the court should have discretion to refuse recognition if the proceedings in the foreign nation did not comply with basic due process standards. For this purpose, the following standard, drawn from Code of Civil Procedure Section 1713.4(a)(1) (Uniform Foreign Money-Judgments Recognition Act), should be added to this section: "The judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law."

§ 12540. Distribution to sister state personal representative

This section should be revised to provide that, if the estate is insolvent, the court shall order distribution to the sister state personal representative, not to the beneficiaries.

§ 12541. Distribution of real property or its proceeds

This section should be revised to provide that the court may distribute real property to the beneficiaries of the decedent's estate without the need to sell it.

§ 12571. Transfer of property to sister state personal representative

Additional work should be done on the question of the liability of the sister state personal representative who takes property on affidavit.

STUDY L-1048 — RULES OF PROCEDURE IN PROBATE

The Commission considered Memorandum 87-81 and the First Supplement thereto which reviewed comments received on the *Tentative Recommendation Relating to Rules of Procedure in Probate* (July 1987). The Commission made the following decisions:

§ 1021. Verification required

This section should be revised to permit the attorney for a petitioner, other than a petitioner who is a fiduciary, both to sign the petition, objection, or response and to verify the pleadings.

§ 1043. Response or objection

Subdivision (b) of Section 1043 should be revised as follows to make clear that the court must choose one of the two alternatives:

(b) An interested person may appear and make a response or objection orally at the hearing. ~~The court in its discretion may hear and determine the response or objection at the hearing or may grant a continuance for the purpose of making the response or objection in writing.~~ The court in its discretion shall either hear and determine the response or objection at the hearing, or grant a continuance for the purpose of allowing a response or objection to be made in writing.

§ 7241. Stay on appeal

This section should contain a specific cross-reference to the general provision in Code of Civil Procedure Section 917.9 that grants the court discretion to require a bond.

§ 7260. "Transaction" defined

Subdivision (a) of Section 7260, which defines "transaction" for purposes of the article on orders and transactions affecting real property, should be revised to retain the wording of Section 1292 [AB 708]. The statute will then require recording of orders setting apart a homestead, confirming a sale of or making a distribution of real property, or determining any other matter affecting the title to real property.

STUDY L-1058 — FILING FEES IN PROBATE

The Commission considered Memorandum 87-87 relating to filing fees in probate and the report of the Executive Committee of the State Bar Estate Planning, Trust and Probate Law Section which was distributed at the meeting. (See Exhibit 5.) The Commission approved the proposed amendments for inclusion in the 1988 probate clean-up bill. The proposed amendments should be sent to the clerks' association for their review and comment. The Commission also decided that this subject merits further study with a view toward comprehensive legislation revising the statutes governing filing fees in probate.

APPROVED AS SUBMITTED _____

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

Date

Chairperson

Executive Secretary

EXHIBIT 1

R E P O R T

TO: JAMES V. QUILLINAN
D. KEITH BILTER
CHARLES A. COLLIER, JR.
JAMES D. DEVINE
IRWIN D. GOLDRING
JAMES C. OPEL
THE EXECUTIVE COMMITTEE IN GENERAL

FROM: WILLIAM V. SCHMIDT, STUDY TEAM NO. 1

DATE: OCTOBER 13, 1987

SUBJECT: LRC MEMORANDUM 87-73 (Review of Revised Provisions Before Approval for Printing); New Probate Code §§ 8800, 8801, 8804 and 8850

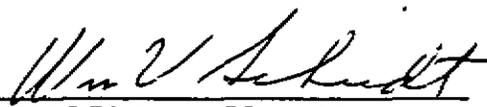
This Memorandum was reviewed by Charles A. Collier, Jr. and William V. Schmidt by telephone on October 12, 1987.

We have no further technical comments on this Memorandum.

Respectfully submitted,

STUDY TEAM NO. 1

By:


WILLIAM V. SCHMIDT,
Captain

§ 8801 - suggest deletion of words "after expiration filing an inventory" in first sentence. If PR files inventory after 2 1/2 months & then discovers new property one week later (before 3 months), then new 3 month period after discovery seemingly does not apply

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

LAW OFFICES OF
LAWLER, FELIX & HALL
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October 19, 1987

James V. Quillinan, Esq.
Diemer, Schneider, Luce & Quillinan
444 Castro Street
Suite 900
Mountain View, California 94041

Re: LRC 87-84
Opening Estate Administration

Dear Jim:

There is little doubt that Team 3 and the Executive Committee as a whole would concur wholeheartedly with the staff recommendation contained in the first supplement (Fee for Depositing Will with Court Clerk).

As you know, a member of Team 3 will undertake a line by line review of the entire memorandum and prepare a technical corrections report directly to the staff subsequent to the forthcoming meeting of the Commission.

Very truly yours,



OSCAR LAWLER
1898-1966
MAX FELIX
1922-1954
JOHN M. HALL
1918-1973

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October 19, 1987

James V. Quillinan, Esq.
Diemer, Schneider, Luce & Quillinan
444 Castro Street
Suite 900
Mountain View, California 94041

Re: LRC 87-80
Litigation Involving Decedent

Dear Jim:

The staff notes to the September 30, 1987 revision of the above memorandum satisfactorily answer all but two of our recent suggestions. The two which still need to be addressed by the Commission are our comment to Section 9103 (the substance of which is accurately stated in the note to the Section) and our comment to the LRC comment to Section 9350.

The LRC comment to Section 9350 is probably accurate. However, it raises a problem not considered by the Executive Committee at the time that Probate Code Section 13106 was adopted.

The problem is that Probate Code Section 13106 will now subject persons taking property pursuant to Section 13100 to liability for a decedent's debts even though there is a later probate and the creditors fail to file claims in or otherwise be paid from the probate estate. If creditors fail to file claims in a probate, the creditors should not be able to recover from persons who took property pursuant to affidavit. This is

particularly true where the creditors would have been paid from the decedent's probate estate without the necessity of contribution from the affidavit non-probate taker. Perhaps this problem can only be resolved by revising Chapter 2 of Division 8. Would you kindly ask the Commission to consider it as a part of clean-up legislation.

Thank you.

Very truly yours,



cc/Anne K. Hilker
Charles G. Schulz
John A. Gromala
D. Keith Bilter
James Opel
Ted Cranston

Valerie Merritt
Leonard W. Pollard II
Charles Collier
Irwin Goldring
James Devine
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*CERTIFIED FAMILY LAW SPECIALIST

CALIFORNIA COMM'N

OCT 19 1987

RECEIVED

October 8, 1987

California Law Revision Commission
4000 Middlefield Road, No. D2
Palo Alto, CA 94303-4739Re: Study L-1015
Litigation Involving Decedent

Commissioners:

Section 550 - Action Authorized

The comment to this section indicates that, if the plaintiff seeks damages in excess of the insurance policy limits, the plaintiff must file a claim and "establish the liability other than under this chapter." The comment should make clear that this procedure would be only for amounts in excess of the insurance coverage, and that the claim for insurance coverage could still proceed under Section 550.

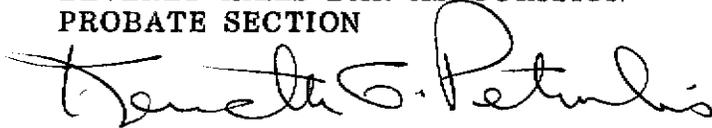
Section 552 - Procedure

This section states, "An action under this chapter shall name as the defendant, 'Estate of (Name of Decedent) Deceased'." This provision is somewhat confusing, wherein it implies that the estate is somehow a defendant. In fact, the intent of the section appears to be to allow suit against the insurance company under the pseudonym "Estate of (Name of Decedent), Deceased." A better phrase might be, perhaps: "an action under this chapter against an insurance company shall not use the name of the insurance company, but, instead, shall use "Estate of (Name of Decedent), Deceased" as a substitute name for the insurance company.

The second sentence and third sentence of the comment appear to be unnecessary, as long as the first sentence adequately describes the fiction involved.

Yours very truly,

LEGISLATIVE COMMITTEE
BEVERLY HILLS BAR ASSOCIATION
PROBATE SECTION

A handwritten signature in cursive script, reading "Kenneth G. Petrulis". The signature is written in black ink and is positioned above the typed name.

KENNETH G. PETRULIS, Chairman

KGP/ar

cc: James J. Stewart
Melinda J. Tooch
Marc B. Hankins
Jeffrey A. Altman
David Gutman
Ralph Palmieri
Phyllis Cardoza

EXHIBIT 5

Minutes.

October 22-23, 1987

R E P O R T

TO: JAMES V. QUILLINAN
D. KEITH BILTER
CHARLES A. COLLIER, JR.
JAMES D. DEVINE
IRWIN D. GOLDRING
JAMES C. OPEL
THE EXECUTIVE COMMITTEE IN GENERAL

FROM: WILLIAM V. SCHMIDT, STUDY TEAM NO. 1

DATE: OCTOBER 19, 1987

SUBJECT: LRC MEMORANDUM 87-87 (Filing Fees in Probate);

This Memorandum and subject matter was discussed at the Executive Committee meeting of the Section in San Francisco on October 17, 1987. Charles Collier presented his report after conferring with Commissioner Ann Stodden and William Schmidt earlier in the week. He stated that there does not seem to be an easy, quick solution to the questions presented in this Memorandum and that he felt that the subject matter of this Memorandum should be the subject of a study by a committee appointed by the chair.

Chuck Collier concluded, as the staff concluded, that pending the outcome of a study by this committee, that the changes proposed by the staff were appropriate as interim and temporary changes to fill those gaps resulting from recent changes in the Probate Code. The Executive Committee agreed with him, adopted his report, and referred the matter to its Probate Administration Committee for a more thorough study.

At this time, therefore, we feel that the proposals made by the staff are satisfactory.

Respectfully submitted,

STUDY TEAM NO. 1 -

By:


WILLIAM V. SCHMIDT,
Captain