

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

jd10
12/03/87

Time
Dec. 10 (Thursday) 10:30 a.m. - 5:00 p.m.

Place
Radisson Hotel
1471 North 4th St.
San Jose, CA 95112
(408) 298-0100

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

San Jose

December 10, 1987

1. Minutes of November 20, 1987, Meeting (sent 12/02/87)

2. Study L-1046 - Nondomiciliary Decedent (Approval of Recommendation for Printing)

Memorandum 87-96 (sent 11/06/87)
Draft of Recommendation (attached to Memorandum)
First Supplement to Memorandum 87-96 (sent 12/02/87)

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

Memorandum 87-86 (sent 10/02/87)
Draft of Recommendation (attached to Memorandum)
First Supplement to Memorandum 87-86 (sent 10/28/87)
Second Supplement to Memorandum 87-86 (sent 11/30/87)

4. Study L-1024 - Interest and Income Accruing During Administration (Approval of Recommendation for Printing)

Memorandum 87-104 (sent 11/30/87)
Draft of Recommendation (attached to Memorandum)

5. Study L-2008 - Cleanup Bill for AB 708

Memorandum 87-97 (sent 11/03/87)
First Supplement to Memorandum 87-97 (sent 11/06/87)
Second Supplement to Memorandum 87-97 (sent 11/06/87)
Third Supplement to Memorandum 87-97 (sent 11/13/87)
Fourth Supplement to Memorandum 87-97 (sent 11/30/87)

6. Study L-2007 - Conforming Changes for Repeal of Division 3

Memorandum 87-98 (enclosed)

7. 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)
First Supplement to Memorandum 87-78 (sent 11/09/87)

8. Study L-1060 - Multiple Party Accounts (Review of Staff Draft of Tentative Recommendation)

Memorandum 87-90 (sent 11/25/87)
Draft of Tentative Recommendation (attached to Memorandum)

9. Administrative Matters

Handbook of Practices and Procedures
Memorandum 87-103 (sent 12/02/87)

Topics and Priorities for 1988 and Thereafter
Memorandum 87-101 (sent 11/25/87)
First Supplement to Memorandum 87-101 (sent 12/02/87)
Second Supplement to Memorandum 87-101 (enclosed)

MEETING SCHEDULE

DECEMBER 1987

10 (Thursday) 10:30 a.m. - 5:00 p.m. Radisson Hotel
1471 North 4th Street
San Jose, CA 95112
(408) 298-0100

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.

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)
9 (Friday)

1:30 p.m. - 6:00 p.m.
9:00 a.m. - 2:00 p.m.

Los Angeles

STATUS OF COMMISSION STUDIES

(as of November 23, 1987)

STUDY	SUBJECT	Staff Work	Comm'n Review	Approve TR	Review Comment	Approve to Print
L-636	No Contest Clause	•••	[1/88]			
L-655	Inventory & Appraisal	•••	•••	•••	5/87	10/87
L-706	Temporary Guard'n & Cons'r	9/87	10/87	No TR Sent		10/87
L-940	Fiduciary's Wartime Subst'n	•••	9/87	[12/87]		
L-1010	Opening Estate Admin.	•••	•••	•••	9/87	10/87
L-1024	Interest & Income	•••	•••	9/87	11/87	
L-1025	Litigation with Decedents	•••	•••	7/87	10/87	11/87
L-1027	Accounts	•••	•••	7/87	10/87	11/87
L-1029	Distribution & Discharge	•••	•••	•••	9/87	
L-1036	Probate Attorneys' Fees	8/87	[1/88]			
L-1038	Abatement	•••	•••	7/87	10/87	11/87
L-1040	Public Guardians & Admins	•••	•••	•••	•••	9/87
L-1046	Nondomiciliary Decedents	•••	•••	•••	9/87	
L-1048	Rules of Procedure	•••	•••	7/87	10/87	11/87
L-1055	Personal Rep's Fees	10/87	[1/88]			
L-1058	Filing Fees in Probate	9/87	9/87	No TR Sent		10/87
L-1060	Multiple Party Accounts	•••	[12/87]			
L-2006	Misc Provisions in Div. 3	•••	•••	No TR Sent		9/87
L-2007	Conforming Changes Div. 3	10/87	[12/87]			
L-2008	Probate Cleanup Bill	•••	9/87	No TR Sent		
	Annual Report	9/87	11/87	No TR Sent		11/87

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION
DECEMBER 10, 1987
SAN JOSE

A meeting of the California Law Revision Commission was held at the Radisson Hotel on December 10, 1987.

Commission:

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

Staff:

Present:	John H. DeMouilly Nathaniel Sterling	Stan G. Ulrich 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
Richard Kinyon, San Francisco
William W. Penaluna, California Probate Referees' Association, San Mateo
Kenneth Petrusis, Beverly Hills Bar Association, Probate, Trust and Estate Planning Section, Los Angeles
Gloria S. Pitzer, Los Angeles County Bar Association, Los Angeles
James Quillinan, State Bar Estate Planning, Trust and Probate Law Section, Mountain View
Gerald L. Scott, California Probate Referees' Association, San Jose

The Commission met as a subcommittee and took the following actions, subject to ratification by the full Commission at the next meeting.

ADMINISTRATIVE MATTERS

MINUTES OF November 20, 1987, MEETING

The Minutes of the November 20, 1987, meeting of the California Law Revision Commission were approved subject to the following corrections:

On page 2, concerning the Annual Report for 1987, the words "without change" were revised to read "with any changes needed to reflect the recommendations the Commission decides to submit to the Legislature in 1988."

On page 9, line 3, relating to verification of an account by the personal representative's attorney or legal representative on information and belief, "shall" should be "may."

HANDBOOK OF COMMISSION PRACTICES AND PROCEDURES

The Commission considered Memorandum 87-103 and the attached staff draft of the Handbook of Commission Practices and Procedures.

The draft was approved with the following revisions:

(1) On page 9 of the staff draft, under the heading "ACCEPTANCE OF AMENDMENTS AFTER INTRODUCTION IN LEGISLATURE":

(a) The first sentence was revised to read:

The legislative member of the Commission carrying the bill and the Executive Secretary are authorized to amend a Commission bill prior to or at the time of the hearing on the bill ~~to eliminate an objection to the bill~~ where the amendment is a technical or nonpolicy amendment or where the failure to make the amendment would jeopardize the enactment of the bill.

(b) The following additional sentence was added following the third sentence:

In addition, whenever possible, an amendment that involves a policy decision of the Commission should be checked out with the Chairperson or Vice Chairperson by telephone prior to making the amendment.

(2) A copy of Management Memo 87-07 should be attached to Appedix

7.

STUDY L — TRANSITIONAL PROVISIONS FOR 1988 PROBATE LEGISLATION

The Commission discussed the question of the operative date and transitional provisions applicable to the Commission's recommended 1988 probate legislation. The staff reported that it plans to provide the Commission with a memorandum on this matter for consideration at the January 1988 meeting, and requested the Commission's guidance on the general approach to be taken. The Commission expressed the general philosophy that there should be one operative date for the whole statute and the statute should apply thereafter to all proceedings, whether commenced before or after the operative date. However, exceptions may be required. For example, a petition filed under old law probably also should be heard and resolved under old law. There may be other procedural problems that will require use of old law in a pending proceeding. An effort should be made to keep the statute simple, however, and to avoid elaborate transitional provisions that would make a patchwork of application of the 1988 legislation.

STUDY L-1024 — INTEREST AND INCOME ACCRUING DURING ADMINISTRATION

The Commission considered Memorandum 87-104, relating to interest and income accruing during administration. The Commission approved the recommendation for printing and submission to the Legislature, subject to the following changes.

§ 12003. Interest on general pecuniary devise

The introductory clause of subdivision (a) was deleted, as was subdivision (b), with the effect that interest on a general pecuniary devise that is a marital deduction gift would not begin to run until one year after the decedent's death.

§ 16314. Interest on trust distributions

This section should be revised to limit its application to distributions under a trust that are "general pecuniary gifts." The Comment should cross-refer to the definition of pecuniary gift in Section 21120.

STUDY L-1029 — DISTRIBUTION AND DISCHARGE

The Commission considered Memorandum 87-86 and the First and Second Supplements thereto relating to distribution and discharge. The Commission approved the recommendation for printing and submission to the Legislature, subject to the following changes.

§ 11640. Petition and order

The phrase, "or if the estate is insolvent," was added at the end of line 1 of subdivision (a).

§ 11702. Responsive pleading

Subdivision (b) of this section was revised to read:

(b) If a person fails timely to file a written statement:

(1) The case is at issue notwithstanding the failure, ~~and no entry of default is necessary. The case and may~~ proceed on the petition and written statements filed by the time of the hearing, and no further pleadings by other persons are necessary.

(2) The person may not participate further in the proceeding for determination of persons entitled to distribution, but the person's interest in ~~the proceeding or~~ the estate is not otherwise affected.

(3) The person is bound by the decision in the proceeding.

§ 11800. "Deceased distributee" defined

§ 11801. Distribution despite death of distributee

The staff should review the interrelation of the survival provisions in these two sections and should try to devise a more clear provision governing survival requirements in a will, either by definition or by substantive provision or otherwise.

§ 11850. When deposit with county treasurer authorized

The Comment to this section should note that deposit with the county treasurer is permissive and that distribution to a minor may be made also under the Uniform Transfers to Minors Act or any other statutorily authorized means.

§ 11852. Receipt by county treasurer

The Comment to this section or another appropriate section of this chapter should note that funds deposited in the county treasury do not bear interest for the benefit of the distributee, citing case law that establishes this principal.

§ 11954. Referees

This section should refer specifically to the Code of Civil Procedure provisions governing partition actions.

STUDY L-1046 - NONDOMICILIARY DECEDENTS

The Commission considered Memorandum 87-96 and the First Supplement thereto relating to nondomiciliary decedents. The Commission approved the recommendation for printing subject to the following decisions:

§ 12513. Preference for appointment as local personal representative

This section providing a preference for appointment as a local personal representative should be limited to sister state personal representatives. The comment to this section should also be revised to point out that the preference does not apply to foreign nation personal representatives.

§ 12520. Applicable procedure

The phrase "in ancillary administration" used in this section and elsewhere should be revised to read "in an ancillary administration proceeding." The comment to this section should note that if a nondomiciliary decedent's will has not been offered for probate or has been denied probate in another state, a petition for probate may be filed under the general provisions (§ 8000 *et seq.*) and the will may be admitted if it satisfies the requirements of Section 6113 (choice of law as to execution of will).

§ 12525. Appointment of personal representative

This section requiring appointment of a personal representative should be deleted. It is unnecessary in view of Section 12530 which applies the general provisions relating to probate administration to ancillary administration proceedings.

§ 12541. Distribution of real property or its proceeds

This section should be revised as follows:

12541. If necessary to make distribution pursuant to this article, ~~the court may direct that~~ real property in the nondomiciliary decedent's estate may be sold and the court may order the proceeds to be distributed to the sister state personal representative. The sale shall be made in the same manner as other sales of real property of a decedent.

The comment should contain a cross-reference to the Independent Administration of Estates Act.

§ 12570. Collection of personal property of small estate without ancillary administration

The comment to this section should note that nondomiciliary beneficiaries may use the affidavit procedure for real property even though the sister state personal representative is precluded from doing so.

Code of Civil procedure § 1913. Sister state judicial records

This section should be amended as follows:

1913. The (a) Subject to subdivision (b), the effect of a judicial record of a sister state is the same in this state as in the state where it was made, except that it can only be enforced here in this state by an action or special proceeding, and except also that the,

(b) The authority of a guardian, conservator, or committee, or of an executor or administrator, does not extend beyond the jurisdiction of the government under which such person was invested with authority, except to the extent expressly authorized by statute.

STUDY L-2007 — CONFORMING CHANGES FOR REPEAL OF DIVISION 3

The Commission considered Memorandum 87-98, together with a letter from State Bar Study Team No. 1 (attached to these Minutes as Exhibit 1), relating to conforming changes for the repeal of Division 3 of the Probate Code. The Commission approved the draft for inclusion in the 1988 probate legislation, subject to the following changes.

Probate Code § 6112

The reference to "the person who prepared the will" was deleted from subdivision (d). This matter should be raised in connection with the Commission's broader consideration of all aspects of no contest clauses.

Welfare & Institutions Code § 6254

The entire phrase, "in accordance with the provisions of Section 1663 of the Probate Code of the State of California" should be struck out in the text of the bill.

STUDY L-2008 -- CLEANUP BILL FOR AB 708

The Commission considered Memorandum 87-97 and the First through Fourth Supplements to Memorandum 87-97, relating to the cleanup bill for AB 708. The Commission approved the bill subject to the following decisions. The staff will add any other necessary provisions it discovers before the bill is printed, and the Commission will review the bill as it is printed with any additions.

Application of Marital Deduction Gift Legislation to Estate Trusts

In the draft revision of Section 21521, the words "of this chapter" should be deleted.

Priority of State and Federal Claims

The draft amendment to Section 11401 should be deleted from the bill. The staff should prepare a new draft to deal with the problem of priority of state and federal claims. In preparing the new draft, the staff should consider the possibility of replacing the term "debt" with the phrase "debt, expense of administration, or charge against the estate", which might or might not be defined in Section 11401. The staff should also consider the possibility of reorganizing the priority section as a means of dealing with the problem.

Fiduciary Duties of Agents

The Comment to Civil Section 2322 should be revised as follows:

Comment. Subdivision (c) of Section 2322 is amended to clarify the application of trustees' duties to agents acting under general authority. See Prob. Code §§ 16002 (duty of loyalty), 16004 (duty to avoid conflict of interest), 16005 (duty not to undertake adverse trust), 16009 (duty to keep property separate and identified). This is a nonsubstantive revision intended to make more specific the technical revision implemented in the 1986 legislation that enacted the Trust Law. See 1986 Cal. Stat. ch. 820, § 9. The purpose of this and the earlier amendment is to provide appropriate cross-references to the law that superseded the repealed sections concerning trustees' duties. Neither amendment is intended to change the law relating to the duties of agents.

Minutes
December 10, 1987

APPROVED AS SUBMITTED _____

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

Date

Chairperson

Executive Secretary

6/213/007072-0093/15

Minutes

December 10, 1987

EXHIBIT 1

R E P O R T

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

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

DATE: DECEMBER 9, 1987

SUBJECT: LRC MEMORANDUM 87-98 (Conforming Changes for
Repeal of Division 3)

The work of Study Team No. 1 on this memorandum was done by Charles A. Collier, Jr. and William V. Schmidt who conferred by telephone on December 9, 1987. Each of them checked the sections as well as they were able to do so. Some of these sections contained cross-references to new sections which were not in the 1987 Probate Code or AB 708 as chaptered or in other reference material that was readily available to them. However, they did their work to the best of their ability and they believe that all of the technical references to section numbers and to terminology are correct.

They point out that there is one new policy question which should be considered. That question is presented on page 17 which adds a new subsection (d) to Probate Code Section 6112. The concept expressed in this new subsection (d) comes from existing Probate Code Section 372.5. The concept is that a provision in a will benefiting a witness to

6/213/007072-0093/15

a will may be attacked or contested without a no contest clause applying to such an attack or contest. This contest is expanded, however, in a new proposed subsection (d) to apply to a person who prepared the will as well as to a witness to the will. We want to call this to the attention of the Commission as it is new law and presents the question of policy unlike the balance of the memorandum which deals with technical changes. Study Team No. 1 has no objection to the new proposed law but feels it should be called to the attention of the committee.

Respectfully submitted,

STUDY TEAM NO. 1

By:



William V. Schmidt,

Captain