

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

adl
04/29/88

Time

May 5 (Thursday) 1:30 p.m. - 6:00 p.m.
May 6 (Friday) 9:00 a.m. - 4:00 p.m.

Place

Sacramento
State Capitol, Room 127

Revised FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Sacramento

May 5-6, 1988

THURSDAY, MAY 5

1. Minutes of March 10-11, 1988, Commission Meeting (sent 3/29/88)

Correction of Minutes

Memorandum 88-39 (sent 4/15/88)

2. Administrative Matters

Extend Scheduled Meeting Hours If Necessary

Consultant to Study Uniform Rule Against Perpetuities Act

Memorandum 88-17 (sent 1/26/88)

Study of Issues Involved in Nonprobate Transfers

Memorandum 88-25 (sent 2/26/88)

Communications from Interested Persons

3. Recommended 1988 Legislation

Status of 1988 Commission Bills

Handout at Meeting

Study L-2008 - AB 2779 (Urgency Bill)

Amended Bill (April 4 version) (sent 4/28/88)

Amended Bill (later version) (to be sent)

Study L-2009 - AB 2841 (1988 Probate Legislation)

Memorandum 88-31 (sent 4/19/88)
Amended Bill (March 15 version) (sent 3/23/88)
Amended Bill (April 19 version) (sent 4/26/88)
First Supplement to Memorandum 88-31 (sent 4/19/88)
Second Supplement to Memorandum 88-31 (sent 4/28/88)
Third Supplement to Memorandum 88-31 (sent 4/28/88)

ACR 42 (Shifting Attorneys' Fees--Study Authorization)

Memorandum 88-24 (sent 2/22/88)

4. Study L-1036/1055 - Personal Representative and Attorney Fees in Probate

Statutory Scheme Generally

Memorandum 88-41 (to be sent)

Disclosure Requirement

Memorandum 88-33 (sent 3/29/99)
First Supplement to Memorandum 88-33 (sent 4/4/88)
Second Supplement to Memorandum 88-33 (sent 4/15/88)
Third Supplement to Memorandum 88-33 (sent 4/26/88)

Compensation Provisions

Memorandum 88-32 (sent 4/6/88)
First Supplement to Memorandum 88-32 (sent 4/28/88)

5. Study L-3005 - Anti-Lapse and Vesting in Donative Transfers

Memorandum 88-16 (sent 3/23/88)
Background Studies (attached to Memorandum)
First Supplement to Memorandum 88-16 (sent 4/25/88)

6. Study L-1060 - Multiple-Party Accounts

Memorandum 88-6 (sent 1/26/88)
Draft of Tentative Recommendation (attached to Memorandum)
First Supplement to Memorandum 88-6 (sent 4/26/88)

FRIDAY, MAY 6

7. Study L-3010 - Fees of Corporate Trustees

Memorandum 88-36 (sent 3/29/88)
Background Studies (attached to memorandum)
First Supplement to Memorandum 88-36 (sent 4/28/88)

8. Study H-111 - Commercial Lease Law (Assignment and Sublease)

Memorandum 88-35 (sent 4/12/88)

Background Study (attached to memorandum)

First Supplement to Memorandum 88-35 (sent 4/28/88)

9. Continuation of Matters Not Completed Thursday, May 5

MEETING SCHEDULE

May 1988

5 (Thursday)	1:30 p.m. - 6:00 p.m.	State Capitol, Room 127
6 (Friday)	9:00 a.m. - 4:00 p.m.	Sacramento

July 1988

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

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

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

December 1988

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

STATUS OF 1988 COMMISSION BILLS

(as of April 27, 1988)

Legislative Program:

AB 2779 (Harris): Urgency probate bill

AB 2841 (Harris): Major probate bill

ACR 42 (Harris): Attorney's fees study authorization

SCR 62 (Lockyer): Continuing authority to study topics

BILL STATUS		AB 2779	AB 2841	ACR 42	SCR 62	
Introduced		Jan 13	Jan 26	Jan 20 [‡]	Jan 14	
First House	Policy Committee	Mar 2	Mar 2	4/9/87	Mar 7	
	Fiscal Committee	****	Mar 23	5/7/87	Mar 16	
	Passed House	Mar 10	Apr 4	5/14/87	Mar 24	
Second House	Policy Committee	Apr 19	[May 24]	Mar 7	[May 18]	
	Fiscal Committee	****		Mar 16		
	Passed House			Mar 24		
Concurrence				Apr 4		
Governor	Received			****		
	Approved			****		
Chaptered by Secretary of State	Date			Apr 6		
	Ch. #			Res 20		

‡: ACR 42 introduced in 1987 and amended January 20, 1988,
as attorney's fee study authorization

****: not applicable

[]: date scheduled

STATUS OF COMMISSION STUDIES

(as of April 27, 1988)

STUDY	SUBJECT	Staff Work	Comm'n Review	Approve TR	Review Comment	Approve to Print
D-1000	Creditors' Remedies -- Miscellaneous Matters	2/88				
F-641	Limit Dispos Commun Prop	4/88				
H-111	Commercial Leases -- Assignment & Sublease	2/88	3/88			
L-1	New Probate Code	2/88				
L-612	Simultaneous Death	2/88				
L-636	No Contest Clause	1987	1/88			
L-1036	Probate Attorneys' Fees	8/87	1/88	[5/88]		
L-1055	Personal Rep's Fees	10/87	3/88	[5/88]		
L-1060	Multiple Party Accounts	1987	1/88	[5/88]		
L-3005	Anti-Lapse & Other Rules	1/88	[5/88]			
L-3007	Ancestral Property Doctrine	2/88				
L-3010	Fees of Corporate Trustees	3/88	[5/88]			
L-3012	Unif Manage Instit Funds					
	1988 Annual Report					

[date] = scheduled

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION
MAY 5-6, 1988
SACRAMENTO

A meeting of the California Law Revision Commission was held in Sacramento on May 5-6, 1988.

Commission:

Present:	Ann E. Stodden Chairperson Roger Arnebergh Bion M. Gregory Legislative Counsel	Edwin K. Marzec (May 6) Forrest A. Plant Vice Chairperson
Absent:	Elihu M. Harris Assembly Member Bill Lockyer Senate Member	Arthur K. Marshall Tim Paone Vaughn R. Walker

Staff:

Present:	John H. DeMouilly Nathaniel Sterling	Stan G. Ulrich Robert J. Murphy III Steve Zimmerman (May 6)
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Consultants:

William G. Coskran, Landlord and Tenant Law (May 6)
Susan French, Property and Probate Law (May 5)

Other Persons:

Scott Boone, California Bankers Association, Sanwa Bank of California, Pasadena (May 6)
Lorcan Bowden, Mechanics Bank, Richmond (May 6)
Charles Collier, State Bar Estate Planning, Trust and Probate Law Section, Los Angeles (May 5)
Ronald P. Denitz, Tishman West Management Corporation, Los Angeles, (May 6)
Garrett Elmore, Burlingame (May 5)
Nancy E. Ferguson, California Probate Referees' Association, Sacramento
Robert Friedberger, Bank of Stockton, Stockton (May 6)
Michael Harrington, California Bankers Association, San Francisco
Ed Hulett, Bank of California, Sacramento (May 6)
David W. Lauer, California Bankers Association, Wells Fargo Bank, San Francisco (May 6)
Paulette Leahy, California Bankers Association, San Diego

David E. Lich, Legislative Committee, Beverly Hills Bar Association, Probate, Trust and Estate Planning Section, Los Angeles
Howard Lind, State Bar Commercial and Industrial Development, Northern California, Oakland (May 6)
Albert J. Nicora, California Probate Referees' Association, Oakland (May 5)
L. Bruce Norman, California Bankers Association, Los Angeles
Morton A. Pactor, Bank of California, San Francisco (May 6)
William W. Penaluna, California Probate Referees' Association, San Mateo (May 5)
G. Sinclair Price, California First Bank, San Diego
M. J. Pritchett, Orrick, Herrington & Sutcliffe, San Francisco (May 6)
James Quillinan, State Bar Estate Planning, Trust and Probate Law Section, Mountain View
Phillip J. Salamy, Department of General Services, Sacramento (May 6)
James R. Scannell, Public Administrator and Public Guardian, San Francisco (May 5)
Richard Stack, Los Angeles County Bar Association, Probate, Trust and Estate Planning Section, Los Angeles (May 5)
Lauren Upson, California Bankers Association, Bank of America, San Francisco (May 6)
Stan Wieg, California Bankers Association, Sacramento (May 6)
Jonathan A. Wright, California Bankers Association, Union Bank, Los Angeles (May 6)
Shirley Yawitz, California Probate Referees' Association, San Francisco

ADMINISTRATIVE MATTERS

APPROVAL OF MINUTES OF MARCH 10-11, 1988, COMMISSION MEETING

The Commission considered the draft Minutes of the March 10-11, 1988, meeting in Los Angeles, together with Memorandum 88-39. The Commission approved the Minutes, except that in connection with "Recording of Commission Meetings", at the bottom of page 2 of the Minutes, the Commission noted that the matter is governed by Government Code Section 11124.1.

APPROVAL OF CONSULTANT CONTRACT ON UNIFORM RULE AGAINST PERPETUITIES ACT

The Commission considered Memorandum 88-17, relating to a consultant to study the Uniform Rule Against Perpetuities Act. The Commission authorized the Executive Secretary to make a contract with Charles A. Collier, Jr., of Los Angeles, to prepare a study on the

Uniform Rule Against Perpetuities Act. Mr. Collier is an expert on the Uniform Act, having served on the drafting committee for the Uniform Act in connection with his work with the American Bar Association. The study would show how enactment of the Uniform Act would change existing California law and would give the Commission his view on whether California should enact the Uniform Act. The Executive Secretary was authorized to execute the contract on behalf of the Commission. The contract would cover the period beginning on May 15, 1988, and ending on June 1, 1990. The contract would provide for the preparation of the background study and for attending meetings with the Commission's staff, Commission meetings, and legislative hearings, when requested to do so by the Commission through its Executive Secretary. The contract would provide no payment for preparing the background study but would provide that the consultant is entitled to a payment for attending a staff or Commission meeting or legislative hearing. The payment would be \$100 for each day of attendance at the meeting or hearing and, in addition, an amount to cover the expense of attending the meeting equal to the amount that a member of the Commission would receive for like attendance. Authorized expenditures under the contract are not to exceed \$1,000.

APPROVAL OF CONSULTANT CONTRACT ON COMMERCIAL LEASE LAW

The Commission authorized the Executive Secretary to make a contract with Professor William G. Coskran, Loyola School of Law, to provide expert advice and information to the Commission's staff and at Law Revision Commission meetings on the subject of commercial lease law. Professor Coskran has served as an expert consultant on this matter previously, having prepared a background study for the Commission. The Executive Secretary was authorized to execute the contract on behalf of the Commission. The contract would cover the period beginning on May 15, 1988, and ending on June 1, 1990. The contract would provide that the consultant is entitled to a payment for attending a staff or Commission meeting or legislative hearing. The payment would be \$100 for each day of attendance at the meeting or hearing and, in addition, an amount to cover the expense of attending

the meeting equal to the amount that a member of the Commission would receive for like attendance. Authorized expenditures under the contract are not to exceed \$1,000.

1988 LEGISLATIVE PROGRAM

The Executive Secretary made the following report on the status of the 1988 Commission bills.

Adopted or Enacted

Res. ch. 20, Statutes of 1988 (SCR 62) - Authorizes Commission to study the shifting of attorney fees between parties to civil actions (the Executive Secretary noted that there is a State Bar Committee ready to work with the Commission on this study--see Memorandum 88-24)

Passed Both Houses; Concurrence in Second House Amendments Pending

AB 2779 - Urgency probate cleanup bill

Passed First House; Set for Hearing by Policy Committee in Second House

AB 2841 - General probate bill (amendments to be considered at May meeting of Commission) (set for hearing by Senate Judiciary Committee on May 24)

SCR 62 - Authorizes Commission to continue study of previously authorized topics (set for hearing by Assembly Judiciary Committee on May 18)

STUDY H-111 - ASSIGNMENT AND SUBLEASE

The Commission considered Memorandum 88-35 and the First Supplement thereto, together with the consultant's background study, relating to assignment and sublease problems in commercial lease law. The Commission made the following initial policy decisions.

(1) The freedom of the parties to negotiate and contract concerning restrictions on leasehold transfers should be preserved unless there is a compelling public policy reason to interfere. This is a principal that will underlie the statute, but will not be

codified. The principal may or may not be expressly stated in the preliminary part of the recommendation that describes the Commission's recommendations and the reasons that support them.

(2) Disclosure of restrictions should be encouraged in order to provide clear expectations for the parties. Again, this is part of the philosophy that will shape the specific provisions of the Commission's recommendation.

(3) A tenant may freely transfer unless the lease imposes a restriction. This codifies existing California law.

(4) Restrictions on leasehold transfers are permitted but strictly construed. Ambiguities are construed in favor of transferability.

(5) The Commission approved the rule of Kendall v. Ernest Pestana, Inc. that a lease clause that requires the landlord's consent to a leasehold transfer by a tenant, but that does not contain an express standard governing the landlord's consent, is impliedly subject to a reasonableness standard. This rule should be applied to both assignments and subleases and should be applied prospectively but not retroactively. There are a number of possible trigger times for prospective application--e.g., the date of the new statute, the date of the Kendall case, or the date of Cohen v. Ratinoff (a clear Court of Appeal precursor of the Kendall case). The staff should provide the Commission with an analysis of this aspect, including potential constitutional problems in limiting retroactivity of Kendall.

STUDY L - NONPROBATE TRANSFERS

The Commission considered Memorandum 88-25, relating to issues involved in nonprobate transfers. Mr. Quillinan, of the Executive Committee of the State Bar Estate Planning, Trust and Probate Law Section, indicated that Bar has a special group actively working on the matter of creditor rights against nonprobate assets generally. The Commission decided to continue deferring study of this matter while the Bar is actively working on it.

**STUDY L-1055/1036 - FEES OF PROBATE ATTORNEY AND
PERSONAL REPRESENTATIVE; DISCLOSURE REQUIREMENT**

The Commission considered Memorandum 88-41 and First Supplement; Memorandum 88-33 and First, Second, and Third Supplements; Memorandum 88-32, attached staff draft concerning compensation of personal representative and estate attorney, and First Supplement; and a letter from attorney Richard Stack for the Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association, a copy of which is attached to these Minutes as Exhibit 1. The Commission disapproved proposed Section 10810 in the staff draft attached to Memo 88-32. The Commission and State Bar thought the drafting approach in Memo 88-41 is better than the draft in Memo 88-32.

The Commission asked the staff to redraft the attorneys' fee provisions to give less emphasis to the negotiability of the fee and more emphasis to the statutory percentage. The attorney should be entitled to the statutory fee unless the attorney agrees to accept a lower fee. There should be a provision in the statute like the second sentence of proposed Section 10822 in Memo 88-41 to make clear that the personal representative has no duty to negotiate a fee lower than the statutory fee.

The required contents of the contract between estate attorney and personal representative should be in the Probate Code. The general contract requirement in Section 6148 of the Business and Professions Code should make a cross-reference to the Probate Code contract requirement.

The Commission asked the staff to prepare a revised draft more in line with the suggestions of the State Bar, and to bring a draft back for consideration at a future meeting.

STUDY L-1060 - MULTIPLE-PARTY ACCOUNTS

The Commission considered Memorandum 88-6 and attached *Tentative Recommendation Relating to Multiple-Party Accounts*, and First Supplement. The Commission disapproved the *Tentative Recommendation*. The Commission decided not to submit a recommendation on this subject to the Legislature.

STUDY L-2008 - AB 2779 (URGENCY BILL)

The Commission reviewed the amended versions of AB 2779 and made no further changes in the bill.

Commissioner Stodden will suggest to the Judicial Council that the form for notice to creditors of administration of an estate should have a court caption, if the Council has not already done this. A caption might also be added to the statutory version of the form in AB 2841.

STUDY L-2009 - AB 2841 (1988 PROBATE LEGISLATION)

The Commission considered AB 2841 in its latest amended versions, together with the portion of Memorandum 88-31 relating to probate referees, and the Second Supplement to Memorandum 88-31, relating to the case of Tulsa Professional Collection Services v. Pope (No. 86-1961, April 19, 1988). The portion of Memorandum 88-31 concerning other problems on the bill, the First and Third Supplements to Memorandum 88-31, and a number of related letters distributed at the meeting, were not considered.

Probate Referees. The Commission reviewed Assembly Member Harris' response to the Commission's request to remove the probate referee provisions from AB 2841. After considerable discussion of the problems posed by the amendments made to AB 2841 at the request of the probate referees, the Commission concluded that it would be better to not enact AB 2841 at all than to enact it with the amendments in it. Among the factors that influenced this decision are:

(1) The \$250 cap on the commission for appraising publicly traded stock was a key element in the initial Commission recommendation to keep the system of probate referee appraisals in estate administration. A number of Commissioners were convinced that the system was of marginal value but that on balance it would be worth preserving if there were a limit on the amount the estate would have to pay for an appraisal of property of this type.

(2) The provision for designation of a probate referee to receive notice of a waiver petition would turn the referee system from a cooperative to an adversarial one. There is no assurance that the ability of a referee to oppose a waiver petition would not be abused. If the referees believe this concept is a good and important one, they should sponsor their own legislation on it and not encumber the Commission's recommendations.

(3) Splitting the inventory and appraisal serves an important function in expeditious estate administration by encouraging prompt filing of inventories and settling disputes involving inventories, while still allowing delay in filing appraisals where the estate is complex or involves difficult tax issues. Moreover, the probate referees did not give the Commission prior notice that this recommendation was a problem to them, even though they participated in meetings where the details of the recommendation were worked out.

(4) There are other problems on the probate referee portions of the bill, including problems raised by the State Controller, that need to be addressed before the bill can be enacted.

(5) It is important to the integrity of this, as well as future, Commission recommendations, that the Commission take a firm stand on amendments that the Commission believes would substantially undermine the Commission's recommendation.

(6) The bill can be introduced again next session, either with an urgency clause or a normal January 1 operative date, thereby delaying the implementation of the Commission's recommendations by only six months, at the most.

For these reasons, the Commission decided unanimously to withdraw its support of AB 2841 and to request Assembly Member Harris to drop the bill, which is one of the options suggested by him in his letter to the Commission. The Commission plans to split the probate referee provisions out into a separate bill, to have the two bills printed as preprint bills during the Fall, and to introduce the two bills when the Legislature convenes during the first week in December. The Commission anticipates that the bills will be in shape at that time to move expeditiously through the legislative process.

This decision is subject to reconsideration at a special Commission meeting set for May 20, 1988, in Los Angeles, at the request of the probate referees. The meeting will be held, however, only if the probate referees come to the meeting prepared to make substantial concessions on the points at issue and with authority to bind their association to any agreements made.

Tulsa Case. The Commission agreed that in light of the Tulsa case, the new statute requiring notice to creditors appears to be constitutionally defective. The Commission considered a few possible approaches to curing the defects, including adjusting the late claim statute and changing the burden of proof, but decided that this problem must be approached carefully. However, until the Commission comes up with a curative statute, practitioners should be alerted to the fact that the claims of reasonably ascertainable creditors may not be cut off by published notice and that the new statute requiring actual notice to "known" creditors does not go far enough. This should be done by revising Section 9053 to read:

(c) Nothing in this chapter imposes a duty on the personal representative or attorney for the personal representative to make a search for creditors of the decedent that are not reasonably ascertainable.

The Comment should refer to the Tulsa case. This provision should be added to AB 2841, operative January 1, 1989, or if the Commission's decision to drop AB 2841 is final, the bill could be used for this provision only. The Commission will continue to work on this problem to develop a more thorough solution for the next legislative session.

STUDY L-3005 - ANTI LAPSE AND VESTING IN DONATIVE TRANSFERS

The Commission considered Memorandum 88-16, the First Supplement thereto, and two background studies by Professor Susan French relating to antilapse and vesting in donative transfers. Professor French presented an overview of the problems arising when beneficiaries predecease a donor. It was also noted that the Joint Editorial Board of the Uniform Probate Code is working in this area. The Commission asked Professor French to suggest specific proposals for Commission consideration pending completion of the work of the Joint Editorial Board.

STUDY L-3010 - FEES OF CORPORATE TRUSTEES

The Commission considered Memorandum 88-36 and the First and Second Supplements relating to corporate trustees' fees. The Commission also heard the views of interested persons, including trust officers from several banks and representatives of the California Bankers Association. The alternative legislative schemes were discussed in general terms. The Commission tentatively rejected the approaches of permitting transfer of a trust to another corporate trustee on the direction of the other cotrustees or requiring prior court approval of any increase in fees. The Commission also requested information on statutory fee schedules in New York.

APPROVED AS SUBMITTED _____

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

Date

Chairperson

Executive Secretary

EXHIBIT 1

Minutes
May 5-6, 1988

MATTHEW S. RAE, JR.
RICHARD L. STACK
WM. JOHN KENNEDY
JOHN L. FLOWERS
THOMAS M. BANKS
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WRITER'S DIRECT DIAL NUMBER

May 2, 1988

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FEDERAL EXPRESS

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

CA LAW REV. COMM'N

MAY 03 1988

RECEIVED

Re: May 1988 Meeting

Dear John:

I am the Vice Chairman of the Executive Committee of the Probate and Trust Law Section of the Los Angeles Bar Association. As I have not had the opportunity to review the following comments with the members of the Executive Committee, they are offered by me in my capacity as a practitioner with experience in probate and trust law matters.

Memorandum 88-33. Attorneys' Fees in Probate
(Disclosure Requirement).

I have no objection to modifying the law to make clear the need in probate matters to reduce employment agreements to writing. Such agreements should contain adequate language to apprise the client of the basis for attorney compensation. I am at odds, however, with the language included in proposed B & P Section 6148.5.

The statutory fee system in California has served both the public and attorneys satisfactorily for many years and is the principal means by which attorneys are compensated in this area of law. In a high percentage of cases it leads to compensation which is fair to all involved. The language employed in the proposed section does not reflect any of the foregoing. Somehow,

Mr. John H. DeMouilly
Executive Director
May 2, 1988
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the system of compensation is being changed from a statutory fee system to one of negotiated fees with a statutory fee cap. I suggest that a more appropriate statement for inclusion in fee agreements would be:

"The attorney is entitled to a fee for ordinary services determined by a formula set forth in the Probate Code based on the value of the assets subject to probate administration plus receipts and gain on sales, less losses on sales. This statutory fee is three percent (3%) of the first \$100,000, two percent (2%) of the next \$900,000, one percent (1%) of the next \$9,000,000, one-half of one percent of the next \$15,000,000, and a reasonable fee fixed by the court on the excess over \$25,000,000. The attorney and client may, but are not obligated to, negotiate a fee which does not exceed the statutory fee for ordinary services. The attorney is also entitled to an additional fee for extraordinary services including, but not limited to, litigation, tax work, and sales of assets. This extraordinary fee will be an amount that the court determines is just and reasonable for the services performed."

I believe that the emphasis should remain on the statutory fee as the standard of compensation with negotiated fees available as a "safety valve" for the system. The language proposed above also tells the client what the statutory fee is. Further, I see no purpose to advising a client that the client can negotiate a lower fee for extraordinary services. An attorney is entitled to a "reasonable" fee for such services as ordered by the Court. Why should an attorney tell a client that the parties could negotiate something less than a reasonable fee for the attorney?

I have today read the comments of Valerie Merritt in her letter of April 18, 1988. Except as the foregoing departs from her letter, I am in agreement with her.

Mr. John H. DeMouilly
Executive Director
May 2, 1988
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Memorandum 88-32. Personal Representative and
Attorney Fees in Probate.

I support the proposal to clarify the circumstances under which a personal representative may employ others, including a member of the State Bar, to perform services for the estate.

As respecting proposed §10804, why not expand this to include compensation paid to an accountant or bookkeeper for the preparation of an accounting? In my experience, personal representatives commonly find it necessary to retain an accountant to prepare tax returns and the accounting if one is necessary. It is difficult to rationalize why the personal representative can pay from estate funds tax preparation services but not accounting work.

My comments in the first part of this letter and those of Valerie J. Merritt in her letter of April 18, 1988 should be considered in your review of proposed §§10810 through 10812. I believe the draft does not reflect the commission's decision to leave substantially unchanged compensation for attorneys in probate administration and should be rewritten.

The comments to several proposed sections, and especially the comment to §10821, are informative but unnecessarily long in my opinion.

Sincerely,



Richard L. Stack

RLS:lgc