

<p><i>DATE & TIME:</i></p> <ul style="list-style-type: none"> • August 31 (Thursday) 1:30 pm - 6:00 pm • September 1 (Friday) 9:00 am - 2:00 pm 	<p><i>PLACE:</i></p> <ul style="list-style-type: none"> • Sacramento State Capitol Room 125
<p><i>NOTE:</i> Changes may be made in this Agenda. For meeting information, please call (415) 494-1335.</p>	

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

THURSDAY, AUGUST 31, 1989

1. MINUTES OF JULY 13, 1989, COMMISSION MEETING (sent 7/24/89)

2. ADMINISTRATIVE MATTERS

Schedule for Future Meetings

Memorandum 89-60 (sent 7/28/89)

Communications from Interested Persons

3. 1989 LEGISLATIVE PROGRAM

Handout at Meeting

4. STUDY F-1000 - FAMILY RELATIONS CODE

Method of Procedure

Memorandum 89-65 (sent 7/28/89)

5. STUDY L - NEW PROBATE CODE

AB 759 (as amended May 30, 1989) (sent 6/8/89)

Bring your copy to the meeting

6. STUDY L-1029 - MARITAL DEDUCTION GIFTS

Qualified Domestic Trust--Draft of Tentative Recommendation
Memorandum 89-52 (sent 5/26/89; another copy sent 8/14/89)
First Supplement to Memorandum 89-52 (to be sent)

7. STUDY L-3022 - ACCESS TO SAFE DEPOSIT BOX

Draft of Tentative Recommendation
Memorandum 89-70 (enclosed)

8. STUDY L-1062 - PRIORITY FOR APPOINTMENT AS ADMINISTRATOR

Priority of Public Administrator
Memorandum 89-43 (sent 4/5/89; another copy sent 7/19/89)
First Supplement to Memorandum 89-43 (to be sent)

9. STUDY L-1040 - PUBLIC ADMINISTRATORS

Property Deposited with County Treasurer
Memorandum 89-67 (sent 7/24/89)
First Supplement to Memorandum 89-67 (sent 8/14/89)

10. STUDY L-700 - GUARDIANSHIP/CONSERVATORSHIP LAW

Limitation Period for Action Against Surety
Memorandum 89-44 (sent 7/19/89)

Disposition of Assets on Death of Ward or Conservatee
Memorandum 89-63 (sent 7/19/89)

11. STUDY L-400 - RIGHTS AND DISABILITIES OF INCOMPETENT PERSONS

Notice in Community Property Proceeding Where Spouse Lacks Legal Capacity
Memorandum 89-62 (sent 7/19/89)

12. STUDY L-3004 - RIGHTS OF ESTRANGED SPOUSE

Memorandum 89-59 (sent 7/19/89)

13. STUDY L-1037 - ESTATE MANAGEMENT

Sale of Decedent's Interest in Tenancy in Common; Enforcement of Liability on Bond
Memorandum 89-30 (sent 7/19/89)

14. Study L-1061 - BROKERS' COMMISSIONS

Limited Exclusive Listing Contract
Memorandum 89-68 (sent 7/28/89)

15. STUDY L-1025 - PRESENTATION OF CLAIMS

Notice to Creditors--Draft of Bill for 1990
Memorandum 89-71 (sent 7/24/89)
First Supplement to Memorandum 89-71 (sent 7/24/89)

Claim Requirement for Specific Performance
Memorandum 89-58 (sent 7/19/89)

16. STUDY L-3015 - DISTRIBUTION OF PROPERTY IN ESTATE

Effect of Contingent and Disputed Debts
Memorandum 89-57 (sent 7/19/89)

17. STUDY L-1030 - AFFIDAVIT PROCEDURE FOR COLLECTION OR TRANSFER OF
PERSONAL PROPERTY

Consent by Personal Representative to Collection
Memorandum 89-29 (sent 7/19/89)
First Supplement to Memorandum 89-29 (sent 7/28/89)

Summary Collection in Small Estates (Cameron letter)
Memorandum 89-33 (sent 7/19/89)

18. STUDY L-608 - DISPOSAL OF ESTATE PLANNING DOCUMENTS

Transfer to Person Other Than Secretary of State
Memorandum 89-72 (enclosed)

19. STUDY L - MISCELLANEOUS PROBATE ISSUES

Memorandum 89-56 (sent 7/19/89)
Memorandum 89-66 (sent 7/19/89)

FRIDAY, SEPTEMBER 1, 1989

20. STUDY H-111 - ASSIGNMENT AND SUBLEASE

Memorandum 89-6 (Residential Tenancies) (sent 12/14/88; another
copy sent 8/14/89)
Consultant's Report (attached to memorandum)

Memorandum 89-7 (Tenant Remedies) (sent 12/14/88; another
copy sent 8/14/89)
Background Study (attached to memorandum)

Memorandum 89-8 (Landlord Remedies) (sent 12/15/88; another
copy sent 8/14/89)
Background Study (attached to memorandum)

Memorandum 89-9 (Rule in Dumpor's Case) (sent 12/14/88; another
copy sent 8/14/89)
Background Study (attached to memorandum)

Memorandum 89-11 (Use Restrictions) (sent 12/14/88; another
copy sent 8/14/89)
Background Study (attached to memorandum)

MEETING SCHEDULE

August-September 1989

Aug. 31 (Thurs.)	1:30 p.m. - 6:00 p.m.	Sacramento
Sept. 1 (Fri.)	9:00 a.m. - 2:00 p.m.	

October 1989

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

November-December 1989

Nov. 30 (Thurs.)	1:30 p.m. - 6:00 p.m.	San Francisco
Dec. 1 (Fri.)	9:00 a.m. - 2:00 p.m.	

STATUS OF COMMISSION STUDIES

(as of August 17, 1989)

STUDY	SUBJECT	Staff Work	Comm'n Review	Approve TR	Review Comment	Approve to Print
F-641 /L-3020	Limitations on Disposition of Community Property	4/88	9/88	[10/89]		
H-111	Assignment & Sublease --related issues	12/88	[9/89]			
L-1029	Marital Deduction Gifts --qualified domestic trust	5/89	[9/89]			
L-3005	Anti-Lapse & Other Rules	1/88	5/88			
L-3007	In-Law Inheritance	2/88	12/88	7/89	[10/89]	
L-3012	Uniform Management of Institutional Funds Act	8/88	12/88	2/89	7/89	7/89
L-3013	Uniform Statutory Rule Against Perpetuities	5/89	[2/90]			
L-3019	Statutory Short Form Power of Attorney	5/89	7/89	7/89	[10/89]	
L-3022	Access to Safe Deposit Box	6/89	7/89	[9/89]		
N	Administrative Law	[11/89]				

[date] = scheduled

SCHEDULE FOR WORK ON NEW PROBATE CODE Rev. June 1, 1989

PROJECT	SCHEDULED	COMPLETED
Introduction of bill	March 10, 1989	Feb. 22, 1989 AB 759 (Friedman)
Staff review of bill completed and draft prepared for amendments to bill	April 30, 1989	April 27, 1989
Amendments sent to Legislative Counsel	May 1, 1989	April 28, 1989
Bill amended and reprinted	June 1, 1989	May 30, 1989
Staff prepares draft of official Comments	July 1, 1989	Aug. 17, 1989
Review of bill, as amended, completed by staff, Bar, and other interested persons	Sept. 1, 1989	
Review of official Comments completed by staff, Bar, and other interested persons	Sept. 1, 1989	
Commission approves substantive amendments to bill	Oct. meeting	
Draft of Comments checked by staff and Comments sent to printer for printing	Nov. 1, 1989	
Commission approves bill as amended and any additional amendments	January 1990 meeting	
Report containing revised and new Comments approved by Commission	January 1990 meeting	
Bill passes Assembly	January 1990	
Bill amended in Senate to make any needed additional amendments	February 1990	
Legislative Committees approve Report containing new and revised Comments	April 1990	
Bill passes Senate; Assembly Concurrence in amendments; Bill sent to Governor	May 1990	

STATUS OF 1989 COMMISSION BILLS

(as of August 17, 1989)

Legislative Program:

AB 156 (Judiciary/Friedman): Urgency probate bill
 AB 157 (Judiciary/Isenberg): Misc. creditor remedies
 AB 158 (Friedman): General probate bill
 AB 625 (Harris): Statutory authority of GLRC
 AB 831 (Harris): Trustees' fees

SB 536 (Beverly): Assignment and sublease
 SB 985 (Beverly): Multiple-party accounts
 SCR 11 (Lockyer): Continuing authority to study topics
Other Measure of Interest:
 ACR 30 (Speier): Study Family Relations Law

BILL STATUS		AB 156	AB 157	AB 158	AB 625	AB 831	SB 536	SB 985	SCR 11	ACR 30 Not LRC
Introduced		12/19/88	12/19/88	12/19/88	2/14/89	2/22/89	2/17/89	3/7/89	12/19/88	2/15/89
Last Amended		5/04/89	5/16/89	6/23/89		6/1/89	5/03/89	6/19/89		4/5/89
First House	Policy Committee	Feb 8	May 25	May 3	Mar 29	May 31	May 16	May 25	Feb 7	Apr 13
	Fiscal Committee	----	Jun 14	----	Apr 20	----	----	----	Feb 27	May 18
	Passed House	Feb 23	Jun 22	May 15	Apr 27	Jun 8	May 26	Jun 8	Mar 2	May 25
Second House	Policy Committee	Apr 25	[Aug 22]	[Aug 22]	Jun 14	[Aug 22]	[Aug 23]	Jul 19	Mar 29	Jun 14
	Fiscal Committee	----	----	----	Jun 28	----	----	----	Apr 20	Jun 28
	Passed House	May 11			Jul 6				Apr 27	Jul 6
Concurrence		May 15			----				----	----
Governor	Received	May 17			Jul 7				----	----
	Approved	May 25			Jul 14				----	----
Chapered by Secretary of State	Date	May 25			Jul 17				May 1	Jul 7
	Ch. #	21			152				Res 35	Res 70

----: not applicable []: scheduled

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION
AUGUST 31-SEPTEMBER 1, 1989
SACRAMENTO

A meeting of the California Law Revision Commission was held in Sacramento on August 31 and September 1, 1989.

Commission:

Present:	Forrest A. Plant Chairperson	Bion M. Gregory Legislative Counsel
	Edwin K. Marzec Vice Chairperson/ Chairperson	Arthur K. Marshall Vaughn R. Walker
	Roger Arnebergh Vice Chairperson	

Absent:	Elihu M. Harris Assembly Member	Tim Paone Ann E. Stodden
	Bill Lockyer Senate Member	

Staff:

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

William G. Coskran, Landlord and Tenant Law (Sept. 1)
Edward C. Halbach, Jr., Probate Law (Aug. 31)

Other Persons:

Jonathan Ferdon, San Francisco Public Administrator/Public Guardian,
San Francisco (Aug. 31)
Ricardo Hernandez, San Francisco Public Administrator/Public
Guardian, San Francisco (Aug. 31)
Douglas Kaplan, California Public Guardian/Administrators
Association, Yolo County (Aug. 31)
Howard Lind, State Bar Commercial and Industrial Development
Subsection, Oakland (Sept. 1)
Michele K. McCabe, San Francisco Public Administrator/Public
Guardian, San Francisco (Aug. 31)
Terry Ross, Executive Committee, State Bar Estate Planning, Trust
and Probate Law Section, Mill Valley (Aug. 31)
Gary V. Waits, Private Investigator, Gary V. Waits Investigations,
Pixley (Aug. 31)

Norma J. Waits, Private Investigator, Gary V. Waits Investigations,
Pixley (Aug. 31)
Shirley Yawitz, California Probate Referees Association, San
Francisco

MINUTES OF JULY 13, 1989, MEETING

The Commission approved the Minutes of the July 13, 1989,
Commission meeting as submitted by the staff.

ADMINISTRATIVE MATTERS

NEW OFFICERS

At the beginning of the meeting on Friday, September 1, the new
Chairperson Marzec and Vice Chairperson Arnebergh assumed their
offices. Chairperson Marzec presented former Chairperson Plant a gavel
plaque, expressing the Commission's thanks for Mr. Plant's service as
chairperson, and Mr. Plant expressed his appreciation for the
recognition.

BUDGET FOR 1990-91 FISCAL YEAR

The Commission considered Memorandum 89-91 and the attached draft
of the budget for the 1990-91 fiscal year.

The Commission determined that a budget change proposal (discussed
below) should be submitted to request additional money to comply with
the Legislature's directive in ACR 30 to study family relations law.
Subject to the budget change proposal, the budget for 1990-91 was
approved as submitted by the staff.

The Commission directed that a budget change proposal should be
submitted to the Department of Finance to request additional money to
permit the Commission to do the family relations law study at the same
time the administrative law study is being conducted (as required by
ACR 30). The Commission directed that the budget change proposal
request the following:

(1) Addition of one entry-level legal position to the staff,
effective July 1, 1990.

(2) Addition of \$20,000 to the Operating Expense and Equipment category to cover anticipated expenses of the family relations study, to be allocated as follows:

General expense	\$ 1,000
Printing	5,000
Postage	2,000
In-State Travel	1,000
Consultant and Professional Services External	11,000

The staff reported that expenditures during 1988-89 greatly exceeded budgeted amounts in the categories of printing (which includes the cost of xeroxing) and postage. In part, the excessive expenditures in these categories are the result of sending tentative recommendations and meeting materials to persons who do not review them and send comments to the Commission. Since this material is distributed free of charge to persons who assist the Commission by providing comments, the staff is seeking to reduce the volume of material by limiting free distribution to persons who actually submit comments or review the material for organizations that submit comments. Material will continue to be sent free to libraries open to the public. Arrangements will be made to permit the materials to be purchased at cost by persons who do not desire to submit comments. The Commission expressed concern that the procedure recommended by the staff would not sufficiently reduce expenses to keep the amounts expended within the amount budgeted. Also, additional amounts should be requested by a budget change proposal to cover, in addition to other expenses, the expense of sending out for comment tentative recommendations relating to the family relations study.

RELATIONSHIP WITH RESEARCH CONSULTANTS

The Commission considered the issues raised in Memorandum 89-74 concerning activities of research consultants and made the following decisions:

(1) Involvement in Litigation by Commission Consultant. A consultant who is or becomes involved in litigation related to the subject for which the consultant is doing research for the Commission

should inform the Commission of the matter. It is not the policy of the Commission to forbid or interfere with activities of the consultant in the area of the consultant's expertise. The Commission recognizes that the consultant's active involvement in an area of the law may be the reason the consultant was selected in the first place. However, the Commission is also aware of the potential for embarrassment of the Commission if a consultant's involvement in litigation is not kept separate from research conducted for and recommendations made to the Commission. Thus, if a consultant becomes involved in litigation, whether on the side of a party or as amicus, the consultant should make clear, when the question arises, that he or she is acting independently of the Commission and that the consultant's views do not represent the views of the Commission.

(2) Advisory Committee to Commission Consultant. Although the Commission may wish to establish formal or informal advisory committees, the practice of delegating this authority to a consultant was not approved. The Commission expressed the concern that it would be powerless to select or oversee any advisory committee operating under a consultant and that misunderstandings could arise. While the consultant is free to seek the views of other experts in the field when appropriate, and may be encouraged to do so, the Commission does not believe that the Commission's imprimatur should be put on such a group.

The staff was directed to prepare statements of these policies for inclusion in the Commission's Handbook of Practices and Procedures.

1989 LEGISLATIVE PROGRAM

The staff made the report on the 1989 Legislative Program attached to these Minutes as Exhibit 1.

SCHEDULE FOR FUTURE MEETINGS

The Commission considered Memorandum 89-60, relating to the schedule for future Commission meetings. The Commission adopted the following schedule.

October 1989

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

November-December 1989

Nov. 30 (Thurs.) 1:30 p.m. - 6:00 p.m. San Francisco
Dec. 1 (Fri.) 9:00 a.m. - 2:00 p.m.

January 1990

Jan. 11 (Thurs.) 1:30 p.m. - 6:00 p.m. San Jose
Jan. 12 (Fri.) 9:00 a.m. - 2:00 p.m.

February 1990

Feb. 15 (Thurs.) 1:30 p.m. - 6:00 p.m. Sacramento
Feb. 16 (Fri.) 9:00 a.m. - 2:00 p.m.

March 1990

Mar. 8 (Thurs.) 1:30 p.m. - 6:00 p.m. Santa Barbara
Mar. 9 (Fri.) 9:00 a.m. - 2:00 p.m.

April 1990

Apr. 26 (Thurs.) 1:30 p.m. - 6:00 p.m. Sacramento
Apr. 27 (Fri.) 9:00 a.m. - 2:00 p.m.

May-June 1990

May 31 (Thurs.) 1:30 p.m. - 6:00 p.m. San Francisco
June 1 (Fri.) 9:00 a.m. - 2:00 p.m.

July 1990

July 26 (Thurs.) 1:30 p.m. - 6:00 p.m. San Diego
July 27 (Fri.) 9:00 a.m. - 2:00 p.m.

August 1990

No Meeting

September 1990

Sep. 13 (Thurs.) 1:30 p.m. - 6:00 p.m. Monterey
Sep. 14 (Fri.) 9:00 a.m. - 2:00 p.m.

October 1990

Oct. 11 (Thurs.) 1:30 p.m. - 6:00 p.m. Los Angeles
Oct. 12 (Fri.) 9:00 a.m. - 2:00 p.m.

November-December 1990

Nov. 29 (Thurs.) 1:30 p.m. - 6:00 p.m. Palm Springs
Nov. 30 (Fri.) 9:00 a.m. - 2:00 p.m.

STUDY F-1000 - FAMILY RELATIONS LAW

The Commission considered Memorandum 89-65 relating to the method of procedure on the family relations law project mandated by Assembly Concurrent Resolution 30. The Commission discussed whether to create an advisory committee of experts and what matters might properly be included in the study. The Commission decided that it was too early to

consider setting up a formal advisory committee. In addition, the Commission decided that more information was needed on the purpose of this study. The Commission directed the staff to seek the views of persons involved in passage of ACR 30 (which directs the Commission study) and other persons who were involved in preparation of the Report of the California Child Victim Witness Judicial Advisory Committee (which recommended the Commission study), and invite them to attend the next meeting to assist the Commission in learning the intended scope of the study. For the next meeting, the staff should also assemble a list of experts and interested persons who might be willing to assist the Commission in this study. However, it is premature to solicit the views of such persons as to the scope of the study.

STUDY H-111 - ASSIGNMENT AND SUBLEASE

SB 536 (BEVERLY)

The Assistant Executive Secretary reported that SB 536, which embodies the Commission's commercial lease law assignment and sublease bill, was amended by the Assembly Judiciary Committee as follows:

Civil Code § 1995.250. Express standards and conditions for landlord's consent

1995.250. A restriction on transfer of a tenant's interest in a lease may require the landlord's consent for transfer subject to any express standard or condition for giving or withholding consent, including, but not limited to, any either of the following:

(a) The landlord's consent may not be unreasonably withheld.

(b) The landlord's consent may be withheld subject to express standards or conditions.

~~(c) The landlord has absolute discretion to give or withhold consent, including the right to unreasonably withhold consent.~~

Comment. Section 1995.250 is a specific application of the broad latitude provided in this chapter for the parties to a lease to contract for express restrictions on transfer of the tenant's interest in the lease. Such restrictions are valid subject to general principles governing freedom of contract, including the adhesion contract doctrine, where applicable. See Section 1995.210 and Comment thereto (right to transfer absent a restriction). It should be noted that an unreasonable restriction on transfer precludes the

landlord's use of the remedy provided in Section 1951.4 (continuation of lease after breach and abandonment). See Section 1951.4 and Comment thereto.

The meaning of "unreasonably withheld" under subdivision (a) is a question of fact that must be determined under the circumstances of the particular case, applying an objective standard of commercial reasonableness as developed by case law.

Subdivision (b) makes clear that the lease may condition the landlord's consent in any manner. Standards and conditions for the landlord's consent may include, for example, a provision that, if the lessee receives consideration for the transfer in excess of the rent under the lease, the landlord may recover some or all of the consideration as a condition for consent. Cf. Section 1995.240 (transfer restriction subject to standards and conditions).

~~Subdivision (c) settles the question raised in Kendall v. Ernest Pestana, Inc., 40 Cal. 3d 488, 220 Cal. Rptr. 818, 709 P.2d 837 (1985), of the validity of a clause granting absolute discretion over assignment or sublease to the landlord. 40 Cal. 3d at 499 n. 14. A lease clause of the type described in subdivision (c) is not invalid as a restraint on alienation, and its exercise by the landlord is not a violation of the law governing good faith and fair dealing.~~

The author of the bill must know whether the Commission is willing to accept this amendment; if not, the author has agreed with the Judiciary Committee to have the bill referred to a conference committee for further work.

After hearing the views of its consultant--Professor Coskran--and of State Bar member Howard Lind, and after discussing the alternatives, the Commission instructed the staff to inform the author that the Commission would prefer to have the bill pass without referral to a conference committee.

RESIDENTIAL TENANCIES

The Commission considered Memorandum 89-6 and the report prepared by Professor Coskran relating to application of the assignment and sublease rules to residential tenancies. The Commission discussed the fact that the need for a residential tenant to assign or sublet is ordinarily not as great as that of a commercial tenant because of the relatively short term of a residential lease and the relatively low values involved. The Commission also discussed the fact that these

general observations may not apply in rent control jurisdictions. The Commission noted that the assignment and sublease rules developed in SB 536 allow a landlord to preclude assignment, but if the lease requires the landlord's consent without further standards, the rules benefit a tenant by imposing a reasonableness requirement. The Commission directed the staff to prepare for the Commission's consideration at the October meeting a draft of a tentative recommendation to extend the commercial assignment and sublease rules to residential tenancies.

TENANT REMEDIES

The Commission considered Memorandum 89-7 and the background study prepared by Professor Coskran relating to the tenant's remedies for the landlord's wrongful refusal to permit the tenant to assign or sublet. The Commission approved the concept that a landlord's consent requirement in a lease is a covenant, breach of which should entitle the tenant to contract damages. In addition, the landlord's covenant should be mutually dependent with the tenant's covenants, so that breach by the landlord excuses performance by the tenant. The statute and Comment should elaborate this relationship. The staff should prepare a draft for Commission review. The statute should not, however, address the issue of tort damages for the landlord's breach.

LANDLORD REMEDIES

The Commission considered Memorandum 89-8 and the background study prepared by Professor Coskran relating to the landlord's remedies for the tenant's wrongful assignment or sublease. The Commission decided to codify the right of a landlord who has negotiated a lock-in remedy to invalidate a wrongful assignment or sublease and keep the lease in effect with continued liability for rent. The law should also be clarified that the landlord may either terminate the lease for breach or waive the right to terminate, but still be entitled to damages caused by the breach; the usual rules on contract damages would apply. An assignee (as opposed to a subtenant, with whom the landlord has no privity of estate or contract) should be liable for damages as well as the assignor, consistent with general contract liability rules applicable to assignees; this would benefit an assignee since it would

encourage the landlord not to terminate the lease for wrongful assignment but to allow the assignment to stand and see whether any damages result, and would act as a disincentive to litigation. This rule would apply notwithstanding a subsequent assignment by the assignee.

RULE IN DUMPOR'S CASE

The Commission considered Memorandum 89-9 and the background study prepared by Professor Coskran relating to the Rule In Dumpor's Case. The Commission adopted the staff draft in the memorandum to overrule the Rule.

USE RESTRICTIONS

The Commission did not consider Memorandum 89-11 or the background study prepared by Professor Coskran relating to use restrictions. The Commission directed to staff to schedule this matter for discussion at the October meeting.

STUDY L - NEW PROBATE CODE

The Executive Secretary discussed the status of AB 759, which embodies the Commission's prospective recommendation for a new Probate Code. The Executive Secretary indicated that the bill needs to clear the Assembly in January 1990; it is anticipated that this will occur, and that any further revisions recommended by the Commission will be made in the Senate.

The Commission did not consider Memorandum 89-56 or 89-66, in which the staff recommended miscellaneous technical and substantive revisions in the recodified Probate Code. Nonetheless, the Commission authorized the staff to include the proposed revisions in the tentative recommendation on miscellaneous probate issues in order to elicit comments on the staff proposals.

STUDY L-400 - NOTICE IN COMMUNITY PROPERTY PROCEEDING
WHERE SPOUSE LACKS LEGAL CAPACITY

The Commission considered Memorandum 89-62 concerning notice in community property proceeding where spouse lacks legal capacity. The Commission decided to amend Section 3131 of the Probate Code as follows:

3131. (a) At least 15 days before the hearing on the petition, the petitioner shall cause a notice of the time and place of the hearing and a copy of the petition to be served upon any nonpetitioning spouse not alleged to lack legal capacity for the proposed transaction.

(b) Service under subdivision (a) shall be made in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such other manner as may be authorized by the court. If the person to be served is outside this state, service may also be made in the manner provided in Section 415.40 of the Code of Civil Procedure.

(c) At least 15 days before the hearing on the petition, the petitioner shall mail a notice of the time and place of the hearing on the petition, accompanied by a copy of the petition, to the adult relatives named in the petition at the addresses set forth in the petition.

Comment. Subdivision (c) of Section 3131 is amended to delete the requirement that a copy of the petition be mailed with the notice of the time and place of the hearing to relatives of the spouse alleged to lack legal capacity. This is to afford greater privacy to the other spouse.

The staff should include this in the Tentative Recommendation on miscellaneous probate issues, and send it out for comment.

STUDY L-700 - GUARDIANSHIP-CONSERVATORSHIP

LIMITATION PERIOD FOR ACTION AGAINST SURETY

The Commission considered Memorandum 89-44 concerning the limitation period for an action against the surety in guardianship or conservatorship proceedings. The Commission decided to revise Section 2333 of the Probate Code as follows:

2333. (a) In case of a breach of a condition of the bond, an action may be brought against the sureties on the bond for the use and benefit of the ward or conservatee or of any person interested in the estate.

(b) ~~Except as provided in subdivision (c),~~ no action may be maintained against the sureties on the bond unless commenced within four years from the discharge or removal of

the guardian or conservator or within four years from the date the order surcharging the guardian or conservator becomes final, whichever is later.

~~(e) If at the time of the discharge or removal of the guardian or conservator or when the order of surcharge becomes final any person entitled to bring the action is under any legal disability to sue, such person may commence the action within four years after the disability is removed.~~

Comment. Section 2333 is amended to delete subdivision (c) to make it consistent with the rule for decedents' estates. See Section 8488.

The staff should include this in the Tentative Recommendation on miscellaneous probate issues, and send it out for comment.

DISPOSITION OF ASSETS ON DEATH OF WARD OR CONSERVATEE

The Commission considered Memorandum 89-63 concerning disposition of assets on the death of a ward or conservatee. The Commission decided to amend Section 2631 of the Probate Code as follows:

2631. (a) Upon the death of the ward or conservatee, the guardian or conservator may contract for and pay a reasonable sum for the expenses of the last illness and the disposition of the remains of the deceased ward or conservatee, and for unpaid ~~court~~ approved court-approved attorney's fees, and may pay the unpaid expenses of the guardianship or conservatorship accruing before or after the death of the ward or conservatee, in full or in part, to the extent reasonable, from any ~~assets of the deceased ward or conservatee, other than real property or any interest therein, which are~~ personal property of the deceased ward or conservatee which is under the control of the guardian or conservator.

(b) If payment of expenses under subdivision (a) cannot be made in full and the total market value of the remaining estate of the decedent does not exceed ~~ten thousand dollars~~ (\$10,000) the amount determined under Section 13100, the guardian or conservator may petition the court for an order permitting the guardian or conservator to liquidate the decedent's estate. The guardian or conservator may petition even though there is a will of the decedent in existence if the will does not appoint an executor or if the named executor refuses to act. No notice of the petition need be given. If the order is granted, the guardian or conservator may sell personal property of the decedent, withdraw money of the decedent in an account in a financial institution, and collect a debt, claim, or insurance proceeds owed to the decedent or the decedent's estate, and a person having possession or control shall pay or deliver the money or property to the guardian or conservator.

(c) When a claim for expenses is presented to the guardian or conservator, the guardian or conservator shall endorse thereon an allowance or rejection, with the date thereof. If the claim is allowed, it shall be presented to the court and the court shall in like manner endorse thereon an allowance or rejection. If the claim is approved by the court, the claim shall be filed with the clerk within 30 days thereafter.

(d) After payment of expenses, the guardian or conservator may transfer any remaining assets as provided in Division 8 (commencing with Section 13000). For this purpose, the value of the property of the deceased ward or conservatee shall be determined after the deduction of the expenses so paid.

Comment. Section 2631 is amended to substitute a reference to Section 13100 (limit for use of affidavit procedure for collection or transfer of personal property) for the \$10,000 limit formerly found in subdivision (b). If the guardian or conservator pays expenses from assets of the ward or conservatee which are the subject of a specific gift by will, the gift is not thereby adeemed, and the rules of abatement set forth in Sections 21400-21406 apply. See Estate of Mason, 62 Cal. 2d 213, 397 P.2d 1005, 42 Cal. Rptr. 13 (1965).

The staff should include this in the Tentative Recommendation on miscellaneous probate issues, and send it out for comment.

STUDY L-1025 - NOTICE TO CREDITORS

DRAFT OF BILL FOR 1990

The Commission considered Memorandum 89-71 and the First Supplement thereto, together with a letter from the State Bar (Exhibit 2), relating to notice to creditors. The Commission directed the staff to prepare a preliminary part for the draft bill along the lines of the Commission's previous recommendation on this matter, and to circulate the package for comment as a new tentative recommendation.

CLAIM REQUIREMENT FOR SPECIFIC PERFORMANCE

The Commission also considered Memorandum 89-58, together with the State Bar letter (Exhibit 2), relating to a claim requirement for specific performance. The Commission decided not to study this matter.

STUDY L-1029 - MARITAL DEDUCTION GIFTS

The Commission considered Memorandum 89-52, relating to qualified domestic trusts. The staff reported that it understands the State Bar team reviewing this matter suggests that the Commission hold off on it because there is remedial federal legislation pending. The Commission decided to circulate for comment the tentative recommendation attached to the memorandum, since it is not clear at this time that the federal legislation will be enacted. The Commission will review the status of the federal legislation at the time it reviews comments on the tentative recommendation.

The tentative recommendation that is circulated for comment should be revised so that the Comment to Section 21524 cross refers to the procedures in Section 15660 of the Trust Law for filling a vacancy in the office of trustee.

STUDY L-1034 - STATEMENT OF DUTIES OF PERSONAL REPRESENTATIVE

The Commission considered the suggestion of the Office of the Public Administrator and Public Guardian of the City and County of San Francisco set out in their letter of August 29, 1989 (not discussed in a staff memo), that the public administrator be exempted from the statutory requirement that the personal representative file an acknowledgement of receipt of a statement of duties and liabilities of the office (Prob. Code § 8404). The Commission approved this suggestion. The staff should include this in the Tentative Recommendation on miscellaneous probate issues, and send it out for comment.

STUDY L-1037 - SALE OF DECEDENT'S INTEREST IN COTENANCY;
ENFORCEMENT OF LIABILITY ON BOND

The Commission considered Memorandum 89-30 concerning sale of a decedent's interest in cotenancy and enforcement of liability on the bond. The Commission also considered a letter from William Schmidt of August 14, 1989, for Team 1 of the State Bar Estate Planning, Trust and Probate Law Section (Exhibit 2). The Commission made the following decisions:

New Section 10006 should be added to the Probate Code, to read:

10006. If property in the estate to be sold is an undivided interest in a cotenancy, the cotenants may file in the estate proceeding written consent to have their interests sold pursuant to this chapter. Thereafter, the court's orders made pursuant to this chapter are as binding on the consenting cotenants as on the personal representative.

Comment. Section 10006 is new and is to facilitate estate sales of decedent's interest in a joint tenancy or tenancy in common. Section 10006 is consistent with existing practice. See 1 California Decedent Estate Practice § 6.19 (Cal. Cont. Ed. Bar 1989) (probate court may by stipulation consider any matter in connection with and in aid of proceeding).

The staff should include this in the Tentative Recommendation on miscellaneous probate issues, and send it out for comment.

The Commission decided to add the following to the Comment to Probate Code Section 8487:

The Bond and Undertaking Law permits the beneficiary to enforce liability on the bond either by motion in the probate court or by separate civil action. Code Civ. Proc. §§ 996.430, 996.440. Ordinarily, liability on the bond may not be enforced until the personal representative has made a final accounting, the probate court has made an order surcharging the personal representative, and the order has become final. *Alexandrou v. Alexander*, 37 Cal. App. 3d 306, 311, 112 Cal Rptr. 307 (1974). However, this is not necessary where the personal representative dies or is removed before final accounting, or where the amount of liability is ascertainable without accounting. *Id.* See also Section 8488 (limitation period for action against sureties on personal representative's bond is four years after discharge).

STUDY L-1040 - PUBLIC ADMINISTRATORS

The Commission considered Memorandum 89-67 and the First Supplement thereto, relating to property deposited with the county treasurer by the public administrator. The Commission also heard an oral presentation by Gary V. Waits, Investigator, and a response by representatives of public administrators. A copy of statistical data provided by Mr. Waits is attached as Exhibit 3 (sample investigative reports provided by Mr. Waits are confidential and are not attached); a copy of a letter to the Commission from the San Francisco Public Administrator is attached as Exhibit 4.

Mr. Waits indicated there are three problems in the law that provides for deposit of estates less than \$60,000 with the county treasurer--(1) the public administrator has a conflict of interest in searching for heirs, (2) the county treasurers of many small counties are not equipped to handle claims, and (3) some small estates increase in value after the deposit. Mr. Waits' suggested cure is to have the State Controller, for a fee, publicize and handle claims for a period of five years, after which time the property would escheat to the county.

Mr. Kaplan, speaking on behalf of the State Public Administrators Association, indicated that the public administrators agree with the staff that the procedures should be clarified along the lines indicated in the memoranda. He also indicated that the escheat to the county provides a significant source of revenue for small counties that the counties would not want to lose.

The Commission decided to circulate for comment as a tentative recommendation the proposal set out in the First Supplement to Memorandum 89-67--incorporating the general Government Code procedure for unclaimed property held by the county treasurer and adding a provision for publicity by the state controller of unclaimed estates over \$10,000. Comments should be solicited from the state controller and county treasurers, as well as from other interested persons.

STUDY L-1061 - BROKERS' COMMISSIONS FOR SALE OF ESTATE PROPERTY

The Commission considered Memorandum 89-68 and the First Supplement thereto relating to brokers' commissions for sale of estate property. The Commission approved the draft statute attached to the First Supplement dealing with situations where the personal representative makes an exclusive listing contract to sell estate property and the contract provides that no commission is due to the exclusive listing broker if the property is sold to a particular person named in the contract. The policy should be to apply the normal rules in Probate Code Sections 10160-10167 where sale is made to the person named in the contract, except that the commission that would otherwise be due to the broker holding the contract is not paid, and thus benefits the estate.

The Commission considered the issue whether a special rule should apply where the broker holding the contract produces the bidder whose bid is returned to the court for confirmation and the property is then sold to the person named in the contract on an overbid. The Commission decided against providing an exception to the general policy of denying compensation to the broker holding the contract where property is sold to the person named in the contract.

STUDY L-1062 - PRIORITY FOR APPOINTMENT AS ADMINISTRATOR

The Commission considered Memorandum 89-43 concerning priority for appointment as administrator. The Commission also considered the letter from Jonathan Ferdon, Associate Attorney in the Office of the Public Administrator and Public Guardian for the City and County of San Francisco (Exhibit 4), and a letter from Anne Hilker of August 11, 1989, for Team 3 of the State Bar Estate Planning, Trust and Probate Law Section (Exhibit 2).

The Commission decided to limit the priority for appointment as administrator given to a conservator or guardian of the estate of the decedent to the case where the conservator or guardian is not a private professional conservator or guardian and has filed a first account, or

where the court in its discretion determines that there is good cause to give the conservator or guardian priority. The Commission asked the staff to prepare a Tentative Recommendation and to bring it back to the Commission at a future meeting.

STUDY L-3004 - RIGHTS OF ESTRANGED SPOUSE

The Commission considered Memorandum 89-59 relating to the rights of an estranged spouse in probate. The Commission decided not to study this matter.

STUDY L-3015 - EFFECT OF CONTINGENT AND DISPUTED DEBTS

The Commission considered Memorandum 89-57, together with a letter from the State Bar (Exhibit 2), relating to the effect of contingent and disputed debts on distribution and closing the estate. The Commission directed the staff to prepare a draft dealing with this matter along the lines outlined in Ken Klug's letter attached to the memorandum.

STUDY L-3022 - ACCESS TO SAFE DEPOSIT BOX

The Commission considered Memorandum 89-70 and the attached staff draft of a *Tentative Recommendation relating to Access to Decedent's Safe Deposit Box*. The Commission also considered two letters handed out at the meeting, copies of which are attached to these Minutes:

(1) Letter from attorney Richard Stack of August 29, 1989 (Exhibit 5).

(2) Letter from Jonathan Ferdon, Associate Attorney in the Office of the Public Administrator and Public Guardian for the City and County of San Francisco (Exhibit 4).

The Commission made the following decisions:

(1) The statute should permit death to be established by a death certificate (Health & Safety Code §§ 10200-10275), or a written statement of death from the coroner, treating physician, or hospital or institution where decedent died.

(2) The statute should require a bank officer or employee to supervise the opening of decedent's safe deposit box, take custody of the original will, make necessary photocopies, forward the original will to the county clerk, and permit the person gaining entry to remove burial instructions.

(3) Any person who establishes his or her identity should be permitted access to decedent's safe deposit box for this limited purpose. The Comment should note that this includes the public administrator.

The staff should revise the draft consistent with the foregoing, and send it out as a Tentative Recommendation for comment.

APPROVED AS SUBMITTED _____

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

Date

Chairperson

Executive Secretary

NS40
8/29/891989 LEGISLATIVE PROGRAM
CALIFORNIA LAW REVISION COMMISSIONAB 156 (Judiciary/Friedman): Urgency Probate Bill*Enacted, 1989 Stats. Ch. 21, operative July 1, 1989.*

After the bill passed the Senate and while a hearing was pending in the Senate Judiciary Committee, the California Bankers Association sent a letter of opposition to the provision of the bill governing the liability of the personal representative for a bad faith failure to give notice to creditors. As was reported at the last meeting, the problem provision was deleted in an effort to facilitate passage of the bill on an urgency basis. That provision has now been moved into AB 158, and passage in the Senate is pending. See discussion below.

At the hearing, the Senate Judiciary Committee did not approve the portion of the bill relating to notice to creditors because the committee was concerned that the proposed 1-year statute of limitations for all creditors, running from the date of death, was too short. The Commission has decided to resubmit this recommendation to the Legislature in 1990 without change.

AB 157 (Judiciary/Isenberg): Miscellaneous Creditor Remedies*Passed Assembly; pending in Senate appropriations committee.*

The Commission recommendations were combined with other technical amendments in a single bill on civil procedure authored by the Assembly Judiciary Committee. If any provision of the bill was objected to during the legislative process, the Committee directed that the provision be dropped out of the bill. The California Land Title Association objected to the Commission recommendation to clarify the law that when a debtor transfers property subject to a lien and the lienholder seeks enforcement against the transferee, the transferee may not claim the debtor's exemptions. This recommendation was therefore dropped out of the bill.

AB 158 (Friedman): General Probate Bill*Passed Assembly; passage in Senate pending.*

As this bill passed the Assembly, it included the Commission's recommendation on attorneys fees and personal representative compensation in probate. However, while a hearing was pending in the Senate Judiciary Committee, the author received word of opposition from some probate judges and decided he would rather not be the author of the attorneys fees provisions. He removed the provisions from the bill, indicating that he needed to give the matter more study and that he might be willing to author a bill that keeps the existing fee schedule, allows the personal representative to negotiate a lower fee, and discloses to the personal representative the right to negotiate. This was the substance of the Commission's tentative recommendation on this matter. For further discussion of attorneys fees, see AB 831 below.

While the hearing in the Senate Judiciary Committee was still pending, the Los Angeles County Bar Association sent a letter of opposition to the 120-hour and no contest clause recommendations. At its July meeting the Commission worked out a compromise agreement among

the Los Angeles County Bar Association, the State Bar Association, and the California Bankers Association to revise the no contest clause recommendation, add provisions on liability of the personal representative for a bad faith failure to give notice to creditors, and leave the 120-hour recommendation intact. This compromise was amended into the bill.

Shortly before the hearing in the Senate Judiciary Committee, the California Association of Realtors sent a letter of opposition to the provision that would preclude a broker from receiving a commission on an estate sale if the broker is the purchaser or has a financial interest in the purchaser. The committee approved the bill over the opposition of CAR.

AB 625 (Harris): Statutory Authority of California Law Revision Commission

Enacted Stats. 1989, Ch. 152, operative January 1, 1990.

AB 831 (Harris): Trustees' Fees

Passed Assembly; held in Senate Judiciary Committee for further hearing in January 1990.

As presently amended, this bill deals only with trustees' fees. It passed the Assembly in a form reflecting agreement between the Commission and the California Bankers Association, and is without opposition in the Senate.

While the hearing on the bill in the Senate Judiciary Committee was pending, Assembly Member Harris agreed to amend into the bill the Commission's recommendation on probate attorneys fees and personal representative compensation, if the Senate Judiciary Committee found the Commission's recommendation acceptable. The proposed amendments were supported by the State Bar, the Beverly Hills Bar, HALT, CalJustice, Consumer Action, and a number of other consumer groups. The proposed amendments were opposed by the Attorneys Probate Association of San Francisco and a number of probate judges.

Present at the hearing were representatives of the Commission, the State Bar, and HALT; no one appeared in opposition. Notwithstanding this situation, the committee chairman, Senator Lockyer, was quite concerned about the impact of the agreed fee scheme on small estates, as was Senator Petris; Senator Keene also expressed an interest in this matter. Their concern was that the statutory fee schedule helps hold down fees that could unduly impact small estates, and they were afraid that the cost of administering a small estate would rise on an agreed fee basis. They were not impressed by the fact that the fee schedule is deceptive since extraordinary fees may be added to the schedule, nor were they swayed by the argument that judicial resources are consumed in administering the existing fee scheme even though there may be no dispute over fees. They suggested they might like to see a scheme that keeps the existing fee schedule, allows the personal representative to negotiate a lower fee, and discloses to the personal representative the right to negotiate. This was also the suggestion of Assemblyman Friedman. See discussion of AB 158, above. The Committee members were suspicious of bar support for this recommendation and were not convinced that the consumers necessarily know what's in their best interest on this matter.

The Committee members indicated they were subject to persuasion on the issue, and would like to see the data the Commission has on attorneys fees in other states that have moved from a fee schedule to an agreed fee system. They also requested further input from consumer organizations on the issue. Based on the assurance that the Committee would give further serious consideration to the merits of the recommendation, Assemblyman Harris asked that the bill be held in committee, trustees' fees and all, until a further hearing on the attorneys fees issue could be held in January.

SB 536 (Beverly): Assignment and Sublease

Passed Senate; passage in Assembly pending.

The Assembly Judiciary Committee was unwilling to approve the portion of the Commission's recommendation that validates a lease clause requiring the landlord's consent for an assignment or sublease and giving the landlord absolute discretion whether or not to consent. The Committee approved the bill after deleting the offending provision, which would leave the enforceability of such a clause to court decision. The Committee's approval is subject to the condition that the Commission review this change, and if the Commission finds the change unacceptable, the author may not drop the bill but must send it to a conference committee.

SB 985 (Beverly): Multiple-Party Accounts

Passed Senate and Assembly; concurrence in Senate pending.

SCR 11 (Lockyer): Continuing Authority to Study Topics

Enacted, 1989 Res. Ch. 35, operative May 1, 1989.

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

CA LAW REV. COMM'N

AUG 29 1989

RECEIVED

Chair
IRWIN D. GOLDRING, Los Angeles
Vice-Chair
JAMES V. QUILLINAN, Mountain View

Advisors
KATHRYN A. BALLSUN, Los Angeles
D. KEITH BILTER, San Francisco
HERMIONE K. BROWN, Los Angeles
LLOYD W. HOMER, Campbell
KENNETH M. KLUG, Fresno
JAY ROSS MacMAHON, San Rafael
LEONARD W. POLLARD, II, San Diego
WILLIAM V. SCHMIDT, Costa Mesa
ANN E. STODDEN, Los Angeles
JAMES A. WILLETT, Sacramento
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Technical Advisor
MATTHEW S. RAE, Jr., Los Angeles

Section Administrator
PRES ZABLAN SOBERON, San Francisco



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Executive Committee
CLARK R. BYAM, Pasadena
MICHAEL G. DESMARAIS, San Jose
ANDREW S. GARR, Los Angeles
IRWIN D. GOLDRING, Los Angeles
JOHN A. GROMALA, Eureka
LYNN P. HART, San Francisco
ANNE K. HILKER, Los Angeles
WILLIAM L. HOISINGTON, San Francisco
BEATRICE LAIDLAY-LAWSON, Los Angeles
VALERIE J. MERRITT, Los Angeles
BARBARA J. MILLER, Oakland
JAMES V. QUILLINAN, Mountain View
BRUCE S. ROSS, Los Angeles
STERLING L. ROSS, JR., Mill Valley
MICHAEL V. VOLLMER, Irvine

August 28, 1989

REPLY TO:

444 Castro St., #900
Mtn. View, CA 94041

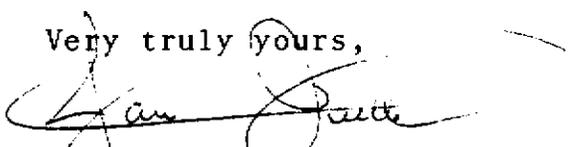
John H. DeMouilly
Executive Director
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303

Re: LRC Memos 89-43, 89-57, 89-71, 89-29, 89-30, & 89-62

Dear John:

I have enclosed copies of Bill Schmidt's (Team 1) reports on Memos 89-29, 89-30 & 89-62 and copies of Team 3's (Anne Hilker) reports on Memos 89-43, 89-58 and 89-71. The reports have been reviewed by the Executive Committee and represent the positions of the Section. The reports are to assist in the technical and substantive review of those sections involved.

Very truly yours,


James V. Quillinan
Attorney at Law

JVQ/h1
Encls.

cc: Valerie Merritt Mike Vollmer
Terry Ross Irv Goldring

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

Chair
IRWIN D. GOLDRING, *Los Angeles*
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BRUCE S. ROSS, *Los Angeles*
STERLING L. ROSS, JR., *Mill Valley*
MICHAEL V. VOLLMER, *Irvine*

REPLY TO: Anne K. Hilker

August 11, 1989

(213) 229-7458

C 87015-00454

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

Re: LRC Memos 89-43, 89-57, 89-58 and 89-71 and
First Supp.

Dear Jim:

The following are Team 3's comments on the above memos.

1. Memorandum 89-43: This considers a proposal by the California Association of Public Administrators, et al. to limit the priority of a conservator for appointment as administrator of the conservatee's estate to cases where the conservator has filed the first account with the court. The issue presented is whether the limitation suggested would truly result in excluding conservators of questionable ability or experience from winding up the deceased conservatee's estate. Team 3 supports the current statutory scheme without change, but would not oppose the change should the Commission decide to adopt it.

James V. Quillinan, Esq.
August 11, 1989
Page 2

2. Memorandum 89-57: This deals with methods of settling estates with outstanding contingent or disputed debts. The Memorandum proposes adoption of the approach drafted by Ken Klug. His proposals have been reviewed and endorsed in total by the Executive Committee.

3. Memorandum 89-58: This proposes a special class of claim for specific performance of obligations. Team 3 believes that current law works adequately in this area. Further, we wish to avoid creation of a further class of creditors that could lead only to additional complexity in estate administration.

4. Memorandum 89-71 and First Supplement: Team 3 wholeheartedly approves of resubmission of the notice to creditors recommendation for 1990, together with the amendment contained in the first supplement.

Best regards.

Sincerely,

Anne K. Hilker
Captain, Team 3

AKH:cat:3209m

cc: Irwin D. Goldring, Esq.
Valerie J. Merritt, Esq.
Michael V. Vollmer, Esq.
Sterling L. Ross, Jr., Esq.

WILLIAM V. SCHMIDT

ATTORNEY AT LAW
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5030 CAMPUS DRIVE
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August 14, 1989

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

Re: LRC Memos 89-29, 89-30 & 89-62

Dear Jim:

I understand that you and Terry Ross will be attending the LRC meeting in Sacramento later this month, and I am, therefore, sending him a copy of this letter. This letter represents the report of Study Team #1 on each of the above-numbered memos as a result of each of them having been discussed and voted upon at the Executive Committee of the Section on August 12, 1989 in San Francisco.

LRC Memorandum 89-29 and its First Supplement -- Affidavit Procedure for Collection or Transfer of Personal Property.

This is the proposal by Dick Kinyon that we have discussed before. The First Supplement concerns the letter from Jeffrey A. Dennis-Strathmeyer. His letter refers to the appointment of a special administrator which, under current law, would seemingly preclude the availability of the affidavit procedure under Section 13101.

Our section voted to support the proposal by Dick Kinyon basically for the reasons stated in his letter. We liked the solution stated in the last paragraph of his letter, but we think it could be expanded in the best interest of all of the possible parties concerned. We believe that it should be available in those cases where an administration had been conducted in California, but it is now closed and no provision

James V. Quillinan, Esq.
August 14, 1989
Page 2

was made for the distribution of the personal property sought to be collected by the affidavit. Something along this line should be a permissible alternative for the statement now required by Code Section 13101(a)(4).

We would also like to see a personal representative who is willing to consent in writing to the collection of the personal property pursuant to the affidavit or declaration, give advice of his proposed action in so consenting. If no objection is made to such, the personal representative should then be able to consent and the affiant or declarant should be able to so state in his affidavit or declaration as another alternative to this statement required by subsection (a)(4).

Hopefully, the three alternatives would cover most of the situations involving a special administrator. It seems to us that a special administrator may very well be limited by his special powers which may not include the giving of such written consent. However, special administration for limited purposes is often followed by general administration, and, if it is not, the estate may well shortly thereafter be closed with no provision made for the distribution of the property in question. It, therefore, seems to us that the two alternative statements to the statement presently required by (a)(4) would ultimately cover most situations where a special administrator was appointed.

The members of our section present at the August 12 meeting, which included Commissioner Barbara Miller, unanimously felt that Mr. Kinyon's proposal was worthwhile and should be pursued with those rough modifications described above.

LRC Memorandum 89-30 -- Sale of Decedent's Interest
in Co-Tenancy; Enforcement of Liability and Bond.

The section opposes the proposed new Probate Code Section 10006 allowing co-tenants to file written consent either to have their interest sold or to have the court make a partition under the provisions of the Probate Code. Some members of our section seriously question whether the court would have jurisdiction to do either of these acts, even if such written consent was filed. Other members of this section did not feel that the problem expressed in Mr. Blanchard's letter was a practical problem. Many members of this section, including

James V. Quillinan, Esq.
August 14, 1989
Page 3

Commissioner Barbara Miller, have had experience with the sale of a fractional interest. In such situations the judge may well inquire whether the remaining fractional interest is also available for sale on the same terms and conditions. Sometimes the other co-tenant is in court and is agreeable to selling his interest at a corresponding or proportional price to the price for which the estate's interest is eventually sold.

We are concerned generally that such new law is really not needed and could cause undesirable and unexpected problems. Under these circumstances we simply do not feel there is a great need for the proposed change, and we oppose it.

In regard to the enforcement of liability on bond, we agree with the staff that its proposed addition to the comment is sufficient.

LRC Memo 89-62 -- Notice in Community Property
Proceeding Where Spouse Lacks Legal Capacity.

Our section supports the staff's proposal to amend the section to delete the requirement of sending a copy of the petition to the adult relatives named in the petition.

Please feel free to contact me if you have any questions. I trust your vacation was enjoyable.

Very truly yours,


WILLIAM V. SCHMIDT

WVS/dk

cc: Irwin D. Goldring, Esq.
Richard S. Kinyon, Esq.
Sterling L. Ross, Jr., Esq.
Michael J. Vollmer, Esq.

Memorandum

Amy Stewart
Executive Office, Rm 100

Date : June 23, 1989

Place :

From : Thomas F. Holland, Chief
STATE CONTROLLER'S OFFICE
Division of Unclaimed Property



Subject: Analysis of new estates received in May and the status of the Estates of Deceased Persons Account within the Unclaimed Property Fund as of May 31, 1989.

I.	<u>COUNTY</u>	<u>NO. OF ACCCOUNTS</u>	<u>AMOUNT</u>
	Contra Costa	1	\$ 35,339
	El Dorado	1	38,309
	Fresno	1	8,015
	Los Angeles	8	509,974
	Marin	1	1,500
	Napa	1	2,284
	Orange	1	13,381
	San Francisco	<u>1</u>	<u>1,466</u>
		15	\$ 610,268

Estates Monthly Report
 for May
 June 23, 1989
 Page 2

II. Estates with balances of \$1,000 or more

<u>COUNTY</u>	<u>DECEDENT</u>	<u>AMOUNT</u>	<u>E#</u>
Contra Costa	Flaherty, Vera M	35,339	66822
El Dorado	Burnett Mack T.	38,309	66816
Fresno	Quiros, Mucio	8,014	66817
Los Angeles	Bergerson, Blanch	1,603	66812
	Evans, Mary C. Miller	22,800	66814
	Feyer, Martha Allison	6,531	66821
	Gonzalez, Proceso	8,476	66813
	Lauder, Harold Florie	2,051	66820
	Rennow, Avis	8,000	66818
	Scrimes, Etta	2,077	66811
	Winnes, Rudy Alfred	458,432	66819
Marin	Kueber, Edythe Denton	1,500	66815
Napa	Fernandez, Dorothy	2,283	66823
Orange	Melton, John Buford	13,381	66824
San Francisco	Willetts, Philip L.	1,466	66810

Public Administrator
Public Guardian



Immediate Action Code:

Bureau: P/A-P/G

File No.: _____

Direct Dial: 415/554-1163

Attn.: J. Ferdon

PA/PG/PG:
Ricardo Hernandez

August 29, 1989

Counsel:
Lou Aronian

Asst. PA:
John J. Nerney

Asst. PG:
Michele McCabe

LAW REV. COMMITTEE

AUG 30 1989

RECEIVED

Nathaniel Sterling
Administrative Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

RE: Memorandum 89-43, Priority for Appointment as Administrator; Memorandum 89-67, Property Deposited With County Treasurer; and Memorandum 89-70, Access to Decedent's Safe Deposit Box

Dear Mr. Sterling:

I am sorry to be so late with my letter concerning Memorandum 89-43, but the materials were only received the other day.

The Public Administrator of San Francisco basically agrees with the position of the California Association of Public Administrators, Public Guardians, and Public Conservators as expressed by Mr. Kaplan in his letter of March 30, 1989.

The Public Administrator of San Francisco, however, would prefer that no conservator, whether it be a temporary conservator or a conservator with full powers, be granted priority over a public administrator if they have not had their first account approved by the court. This office disagrees with Mr. Murphy's analysis dated April 5, 1989, in which he states that a guardian or conservator must file a final account to be discharged and said account would be reviewed for any errors, mistakes or misappropriations.

Our position is that many times these final accounts of the former conservator may balance, but the court, in its review of said accounting, may not have the time or staff to question the various items of an account and, very often, there is no family within the second degree who will receive a copy of the account for review. If the conservator is allowed to succeed him or herself as the adminis-

Nathaniel Sterling
August 29, 1989
Page 2

trator of the estate, there would be no review of the final account by any independent party. These final accounts, many times, are not complete accounts in that the conservator has died before all assets are collected and the inventory filed.

We feel very strongly, therefore, that a code section similar to § 8462 (regarding the priority of relatives of a predeceased spouse) be enacted which would explain and regulate the priority of a conservator over a public administrator.

The Public Administrator of San Francisco has some concern as to Memorandum 89-67, Property Deposited With the County Treasurer. The Public Administrator agrees with Mr. Sterling's analysis dated July 24, 1989 and believes his recommendation is sufficient protection for the possible beneficiaries of an unclaimed estate.

The Public Administrator believes that turning the matter over to the State Controller or State Treasurer would only complicate the matter. The only people who would benefit from this would appear to be the heir investigators who would have an easier job in obtaining the names of the unclaimed property estates in order to solicit possible heirs.

Since the decedents resided and very often did their business in the county of their death, publication in the local newspaper of county-wide circulation would seem to be more than adequate notice.

As to Memorandum 89-70, it is our experience that to require a death certificate to obtain entry to a safe deposit box may not be practical, particularly if burial instructions are involved. Very often a death certificate is not issued until the funeral has occurred, therefore, to require the close family member to have the safe deposit key and a death certificate in order to obtain burial instructions and the will may not be feasible.

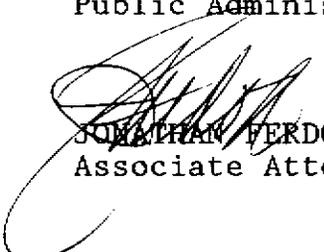
One last item the Public Administrator would request the Commission to review is Code § 8404, Statement of Duties and Responsibilities of Personal Representative. The Public Administrator would request the Commission to include the Public Administrators among the exempted parties.

Nathaniel Sterling
August 29, 1989
Page 3

Thank you for your attention to these matters. It is anticipated that Ricardo Hernandez, the Public Administrator/Public Guardian of San Francisco, and myself will attend the Commission's meeting in Sacramento on Thursday and be available for any questions the Commissioners may have.

Very truly yours,

RICARDO HERNANDEZ
Public Administrator/Public Guardian



JONATHAN FERDON
Associate Attorney

JF:nfl

Enclosure

Tuesday, June 6, 1989

Audit of Conservator Alleges Kickbacks, Financial Abuses

By RONALD L. SOBLE, Times Staff Writer

Responding to a state auditor's allegations of kickbacks and double-dealing, a Superior Court judge on Monday ordered the Los Angeles County public guardian's office to temporarily assume control of Planned Protective Services Inc. of Los Angeles, one of California's largest conservatorship firms.

"I have never seen such over-reaching," Assistant County Counsel Wilcox R. Stoddard told Judge Martha Goldin. "We have economic abuse of the elderly and the incapacitated."

Marshal A. Oldman, an attorney for Planned Protective Services, said after the hearing that the judge's decision may spell doom for the firm. "If it doesn't go out of business, it will be a considerably smaller company than it is today," he said.

Earlier, Oldman told the court that the firm's dilemma resulted from "problems of management."

Statement Disputed

But Oldman's explanation was sharply disputed by Delia Salinas, 53, of Encino, who told a reporter after the hearing that the firm could not account for the \$100,000 estate of her late mother, who had been a Planned Protective Services conservatee.

Salinas was not able to testify before Goldin, who said that she would get an opportunity if the case goes to trial.

Planned Protective Services is one of the state's few nonprofit firms engaged in the conservatorship business—most are privately held, for-profit operations. The firm has managed 134 conservatorships.

Such companies are, in effect, caretakers for the estates of the

elderly or the infirm. The companies may have court-approved control over an individual's entire personal finances, medical care, or both. They are supervised by the state attorney general's Office of Charitable Trusts.

A charitable trust auditor, Harold G. Statz, alleged in a sworn declaration that an audit covering the years 1986-88 had shown that Planned Protective Services had engaged in a variety of wrongful acts.

The allegations included:

- **Kickbacks:** "PPS has received substantial donations from banks and real estate agents that do business with PPS," Statz said. "The largest such donations, totaling \$223,809 . . . came from Western Bank, where PPS keeps a large amount of client funds in non-interest-bearing checking accounts."

Western Bank's chief executive, Hugh Smith, confirmed that Planned Protective Services was one of his bank's accounts, but said that he had not read Statz's allegations. "We make donations to a lot of organizations who bank with us," he said.

- **Double billing:** Statz said that according to the county's probate commissioner, Ann Stodden, the conservator firm receives fees from both conservatorship estates and hospitals covering the same expenses. "Therefore, PPS may be paid twice for the same cost, once by a hospital and again out of the patient's conservatorship estate," Statz alleged.

- **Murky accounting and records:** Planned Protective Services' accounting records "do not provide any audit trail" breaking out how conservatorship funds are used.

Please see AUDIT, Page 4

AUDIT

Continued from Page 3

Statz alleged, nor do the firm's records give "a true statement" of its financial condition.

To all of these allegations, Planned Protective Services' attorney Oldman said there was "nothing evil" about the 20-year-old company's operations. "It is a charity," he said.

The firm's officials, including its chief executive, John M. Mills, urged the court to appoint a receiver who could reorganize the firm and put it on its feet again.

But Judge Goldin rejected the proposal, declaring that the attorney general's auditor had made "very serious allegations."

Another hearing on the case was set for next month.

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August 29, 1989

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BY FEDERAL EXPRESS

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

Re: **California Law Revision Commission
Memorandum 89-70
Access to Decedent's Safe Deposit Box**

Dear Bob:

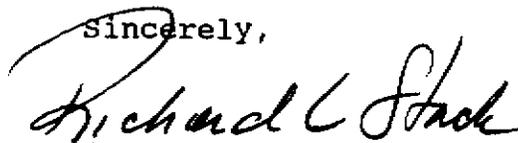
I just received the draft of the Tentative Recommendation regarding the above, and noted that it is on the agenda for the meeting set for August 31 - September 1, 1989 in Sacramento.

Although I am immediate past Chair of the Los Angeles County Bar Association Probate and Trust Law Section, I am writing you on behalf of my law firm. Sandy Rae and I have both experienced the problem of a financial institution refusing access to a safe deposit box when we are searching for the Will of a decedent. I agree completely that a statute is needed on this point for conformity. Proposed Probate Code §331 would be useful, but I believe it needs improvement.

I do not see the point of limiting access to close family members. The relationship to the deceased is irrelevant, and there can be no harm to the estate of the deceased since the section prescribes that the original of the Will be filed with the Clerk of the Superior Court. Presumably, nothing else would be removed from the safe deposit box (except burial instructions) until estate administration is commenced. It is not uncommon for a decedent to die without close family members, or for close family members to be in other states. As proposed, Probate Code §331 would even preclude the person named to serve as Executor from obtaining access to the safe deposit box unless he or she was a close family member. I am unaware of any compelling reason why the estates of decedents without close family members should be treated differently.

Except as noted in this letter, I am in support of the Tentative Recommendation.

Sincerely,


Richard L. Stack

-16-

RLS:lqc