

<p><b>DATE &amp; TIME:</b></p> <ul style="list-style-type: none"> <li>• March 8 (Thursday) 1:30 pm - 6:00 pm</li> <li>• March 9 (Friday) 9:00 am - 2:00 pm</li> </ul>	<p><b>PLACE:</b></p> <ul style="list-style-type: none"> <li>• Santa Barbara Four Seasons Biltmore 1260 Channel Drive Santa Barbara 93108 (805) 969-2261</li> </ul>
<p><b>NOTE:</b> Changes may be made in this agenda, or the meeting may be rescheduled, on short notice. IF YOU PLAN TO ATTEND THE MEETING, PLEASE CALL (415) 494-1335 AND YOU WILL BE NOTIFIED OF LATE CHANGES.</p>	

**FINAL AGENDA**

*for meeting of*

**CALIFORNIA LAW REVISION COMMISSION**

1. MINUTES OF JANUARY 11-12, 1990, COMMISSION MEETING (sent 1/22/90)
  
2. ADMINISTRATIVE MATTERS
  - 1990 Legislative Program  
Oral report at meeting (Measures introduced at request of Commission are listed on green page attached)  
Memorandum 90-39 (NS) - SB 1855 (notice to creditors) (enclosed)
  
  - Study F-1000 - Family Relations Law  
Oral report on progress
  
  - Communications from Interested Persons
  
  - [More Administrative Matters at Agenda Item # 8]
  
3. STUDY L-1061 - AGREEMENT TO SPLIT BROKERS' COMMISSIONS  
 Memorandum 90-14 (SGU) (sent 12/15/89; another copy sent 1/22/90)
  
4. STUDY L-3012 - UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT  
 Memorandum 90-21 (SGU) (sent 2/15/90)  
 Draft of Recommendation (attached to Memorandum)  
 First Supplement to Memorandum 90-21 (sent 2/22/90)

5. STUDY L-3023 - UNIFORM TOD SECURITY REGISTRATION

Comments on Tentative Recommendation

Memorandum 90-26 (JHD) (sent 1/22/90)

First Supplement to Memorandum 90-26 (to be sent)

Senate Bill 1870 (sent 2/9/90)

6. STUDY F-641/L-3020 - DISPOSITION OF COMMUNITY PROPERTY

Donative Transfers and Revocation of Consent

Memorandum 89-106 (NS) (sent 11/07/89; another copy sent 1/22/90)

First Supplement to Memorandum 89-106 (to be sent)

Special 7. STUDY L-3013 - UNIFORM STATUTORY RULE AGAINST PERPETUITIES

Order of

Business

Thursday

4:00 pm

Memorandum 90-22 (SGU) (sent 2/1/90)

Exhibits to Memorandum 90-22

USRAP Pamphlet (Commissioners only)

First Supplement to Memorandum 90-22 (sent 2/27/90)

Second Supplement to Memorandum 90-22 (sent 2/27/90)

Third Supplement to Memorandum 90-22 (enclosed)

Special 8. MORE ADMINISTRATIVE MATTERS

Order of

Business

Friday

9:00 am

Priorities, Schedule for Work, and New Topic Suggestions

Memorandum 90-19 (NS) (sent 2/6/90)

First Supplement to Memorandum 90-19 (sent 2/22/90)

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

Debts that are Contingent, Disputed, or Not Due

Memorandum 89-78 (NS) (sent 9/25/89; another copy sent 1/22/90)

Draft of Tentative Recommendation (attached to memorandum)

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

Study L-1030 - Collection by Affidavit Despite Probate

Memorandum 89-79 (RJM) (sent 9/14/89; another copy sent 1/22/90)

First Supplement to Memorandum 89-79 (sent 9/26/89; another copy sent 1/22/90)

Study L-1030 - Collection of Life Insurance Proceeds by Affidavit

Second Supplement to Memorandum 89-79 (NS) (sent 11/17/89; another copy sent 1/22/90)

Study L-1030 - Summary Collection in Small Estates (Cameron letter)

Memorandum 89-33 (RJM) (sent 7/19/89; another copy sent 1/22/90)

First Supplement to Memorandum 89-33 (sent 9/8/89; another copy sent 1/22/90)

Study L-3026 - Affidavit Procedure for Substitution of Parties  
Memorandum 89-86 (SGU) (sent 9/26/89; another copy sent 1/22/90)  
Draft of Tentative Recommendation (attached to memorandum)  
First Supplement to Memorandum 89-86 (sent 12/27/89; another copy  
sent 1/22/90)

11. STUDY L-3025 - TOD REGISTRATION FOR VEHICLES AND VESSELS

Memorandum 89-85 (RJM) (sent 9/14/89; another copy sent 1/22/90)  
Draft of Tentative Recommendation (attached to memorandum)  
First Supplement to Memorandum 89-85 (sent 12/17/89; another copy  
sent 1/22/90)

12. STUDY L - NEW PROBATE CODE--SUGGESTIONS FOR SUBSTANTIVE REVISION

Study L-644 - Recognition of Trustees' Powers  
Memorandum 90-1 (SGU) (sent 12/15/89; another copy sent 1/22/90)  
First Supplement to Memorandum 90-1 (sent 1/22/90)

Study L-700 - Legal Counsel in Conservatorship Proceedings  
Memorandum 90-16 (RJM) (sent 12/15/89; another copy sent 1/22/90)

Study L-1025 - Creditor Claims  
Memorandum 90-7 (NS) (sent 12/12/89; another copy sent 1/22/90)

Study L-1028 - Independent Administration of Estates Act  
Memorandum 90-11 (NS) (sent 12/12/89; another copy sent 1/22/90)

Study L-1040 - Appointment of Public Administrator  
Memorandum 90-12 (NS) (sent 12/12/89; another copy sent 1/22/90)

Study L-1041 - Bond of Nonresident Personal Representative  
Memorandum 90-13 (NS) (sent 12/12/89; another copy sent 1/22/90)

Study L-3033 - Notice at County Seat (Probate Code §§ 1215, 1220)  
Memorandum 90-27 (SGU) (sent 2/6/90)

Study L-645 - Jurisdiction of Superior Court in Trust Matters  
~~Memorandum 90-29 (SGU) (sent 2/6/90)~~

13. STUDY L-3031 - ACCEPTANCE OF FIDUCIARY RESPONSIBILITY BY AGENT UNDER  
POWER OF ATTORNEY

Memorandum 90-30 (RJM) (sent 1/22/90)

14. STUDY L-3034 - GIFTS IN VIEW OF DEATH

Memorandum 90-31 (RJM) (sent 2/1/90)  
First Supplement to Memorandum 90-31 (sent 2/15/90)

15. STUDY L-3030 - CUSTODIANSHIPS UNDER UNIFORM TRANSFERS TO MINORS ACT  
Memorandum 90-17 (JHD) (sent 12/15/89; another copy sent 1/22/90)
  
16. STUDY M-100 - STATUTES OF LIMITATIONS FOR FELONIES  
Correction of Comments  
Memorandum 90-32 (NS) (sent 2/15/90)
  
17. STUDY L-3035 - INFORMATION FOR FIDUCIARIES CONCERNING DUTIES  
Memorandum 90-33 (RJM) (sent 2/16/90)
  
18. STUDY L-3002 - MOVING CIVIL CODE PROVISIONS TO THE PROBATE CODE  
Memorandum 90-34 (SGU) (sent 2/16/90)

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1990 LEGISLATIVE PROGRAM  
Measures Introduced at Request of Law Revision Commission

Passed One House

Assembly Bill 759 (Friedman) New Probate Code

Prior to passing the Assembly, this bill was amended to delete the chapter that provided that the attorney fees would be reasonable rather than be determined by a statutory schedule fees. This leaves the issue of attorney fees to be dealt with in Assembly Bill 831. The bill will be further amended to make technical amendments and to provide that the bill will not become operative unless Assembly Bill 831 is enacted. TO BE SET FOR HEARING AS SOON AS POSSIBLE.

Assembly Bill 831 (Harris) Trustees Fees and Attorney Fees

This bill would effectuate the Commission recommendations concerning trustees fees and attorney fees. AARP has requested that hearing of bill be delayed until AARP has an opportunity to develop its plans to obtain enactment of the bill. This bill must be enacted after Assembly Bill 759 (new Probate Code).

Approved by Policy Committee in First House

Assembly Bill 2589 (Sher) In-law Inheritance - Approved by  
Assembly Judiciary Committee on February 21.

Set for Hearing in First House

Senate Bill 1774 (Lockyer) Urgency Probate Bill - This bill would effectuate the Commission's Recommendation Relating to Disposition of Small Estate by Public Administrator and would make a technical correction relating to the operative date of a 1989 enactment. SET FOR HEARING BY SENATE JUDICIARY COMMITTEE ON MARCH 20.

Senate Bill 1775 (Lockyer) Comprehensive Probate Bill - This bill would effectuate six Commission recommendations:

- (1) *Survival Requirement for Beneficiary of Statutory Will.*
- (2) *Execution of Modification of Lease Without Court Order.*
- (3) *Access to Decedent's Safe Deposit Box.*
- (4) *Limitation Period for Action Against Surety in Guardianship or Conservatorship Proceeding.*
- (5) *Court-Authorized Medical Treatment.*
- (6) *Priority of Conservator or Guardian for Appointment as Administrator.*

SET FOR HEARING BY SENATE JUDICIARY COMMITTEE ON MARCH 20.

Senate Bill 1777 (Beverly) Uniform Statutory Powers of Attorney Bill -  
This bill effectuates two recommendations, one proposing the  
Uniform Statutory Powers of Attorney Act and the other relating to  
springing powers of attorney. SET FOR HEARING BY SENATE JUDICIARY  
COMMITTEE ON MARCH 6.

Senate Bill 1855 (Beverly) Creditors of Decedent SET FOR HEARING ON  
APRIL 3 BY SENATE JUDICIARY COMMITTEE

Senate Concurrent Resolution 76 (Lockyer) Resolution to Continue  
Authority to Study Previously Authorized Topics SET FOR HEARING  
BY SENATE JUDICIARY COMMITTEE ON MARCH 6.

#### Introduced

Senate Bill 1870 (Beverly) Uniform TOD Security Registration Bill -  
This bill will not be set for hearing until the Commission has  
reviewed at the March meeting the comments received on the  
Commission's Tentative Recommendation.

#### To Be Introduced

Senate Bill XXXX (Morgan) Uniform Management of Institutional Funds Act  
The Commission directed that the staff draft of the Uniform  
Management of Institutional Funds Act be introduced at the 1990  
session. The Commission will review a staff draft of a  
Recommendation at its March meeting.

MEETING SCHEDULE

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. San Jose  
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 1990

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

December 1990 No Meeting

MINUTES OF MEETING  
of  
CALIFORNIA LAW REVISION COMMISSION  
MARCH 8-9, 1990  
SANTA BARBARA

A meeting of the California Law Revision Commission was held in Santa Barbara on March 8-9, 1990.

Commission:

Present:	Edwin K. Marzec Chairperson	Arthur K. Marshall
	Roger Arnebergh Vice Chairperson	Forrest A. Plant
	Bion M. Gregory Legislative Counsel (Mar. 8)	Ann E. Stodden
Absent:	Elihu M. Harris Assembly Member	Bill Lockyer Senate Member

Staff:

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

Charles A. Collier, Jr., Probate Law (Mar. 8)

Other Persons:

Joseph S. Avila, Attorney and Probate Referee, Los Angeles Central Court, Los Angeles  
Camille Cadoo, Legislative Committee, Beverly Hills Bar Association, Beverly Hills  
Irwin D. Goldring, Executive Committee, State Bar Estate Planning, Trust and Probate Law Section, Los Angeles  
Robert E. Griffin, Associate Executive Director, Cal Poly Foundation, San Luis Obispo (Mar. 8)  
Jim Krochka, Executive Committee, Los Angeles County Bar Association, Los Angeles (Mar. 9)  
Valerie J. Merritt, Executive Committee, State Bar Estate Planning, Trust and Probate Law Section, Los Angeles  
Jack A. Rameson III, Executive Committee, Probate Section, Los Angeles County Bar Association, Los Angeles  
Daniel A. Wingerd, The Common Fund, Redlands (Mar. 8)

ADMINISTRATIVE MATTERS

APPROVAL OF MINUTES OF JANUARY 11-12, 1990, MEETING

The Commission approved the Minutes of the January 11-12, 1990, Commission meeting as submitted by the staff.

MEETING SCHEDULE

In order to increase meeting time, the Commission scheduled the Thursday portion of each meeting to commence at 10:00 am, for the remainder of 1990. The staff should try to arrange for sandwiches to be brought in to the meeting at noon, if possible, in order to minimize time spent going to lunch. San Francisco meetings should be held at the State Bar building, if possible. Sacramento meetings should continue to be held at the State Capitol, but sandwiches will not be brought in; a short lunch may be taken in the Capitol cafeteria. If, for any meeting, it becomes apparent that the added meeting time will not be necessary, the staff should cancel the Thursday morning portion of the meeting as far in advance as possible.

The staff should investigate the availability of meeting space at Stanford Law School for the September meeting scheduled for San Jose.

1990 LEGISLATIVE PROGRAM

The Executive Secretary made the following report on the 1990 Legislative Program.

1990 LEGISLATIVE PROGRAM

Measures Introduced at Request of Law Revision Commission

Passed One House

Assembly Bill 759 (Friedman) New Probate Code

Prior to passing the Assembly, this bill was amended to delete the chapter that provided that the attorney fees would be reasonable rather than be determined by a statutory schedule fees. This leaves the issue of attorney fees to be dealt with in Assembly Bill 831. The bill will be further amended to make technical amendments and to provide that the bill will not become operative unless Assembly Bill 831 is enacted. State Bar Section supports. SET FOR HEARING BY SENATE JUDICIARY COMMITTEE ON MARCH 20.

Assembly Bill 831 (Harris) Trustees Fees and Attorney Fees

This bill would effectuate the Commission recommendations concerning trustees fees and attorney fees. AARP has requested

that hearing of bill be delayed until AARP has an opportunity to develop its plans to obtain enactment of the bill. State Bar Section supports. This bill must be enacted after Assembly Bill 759 (new Probate Code).

Approved by Policy Committee in First House

Assembly Bill 2589 (Sher) In-law Inheritance - State Bar no position.

Approved by Assembly Judiciary Committee on February 21 with technical amendment.

Set for Hearing in First House

Senate Bill 1774 (Lockyer) Urgency Probate Bill - This bill would effectuate the Commission's Recommendation Relating to Disposition of Small Estate by Public Administrator and would make a technical correction relating to the operative date of a 1989 enactment. State Bar Section supports. SET FOR HEARING BY SENATE JUDICIARY COMMITTEE ON MARCH 20.

Senate Bill 1775 (Lockyer) Comprehensive Probate Bill - This bill would effectuate six Commission recommendations:

- (1) *Survival Requirement for Beneficiary of Statutory Will.*
- (2) *Execution or Modification of Lease Without Court Order.*
- (3) *Access to Decedent's Safe Deposit Box.*
- (4) *Limitation Period for Action Against Surety in Guardianship or Conservatorship Proceeding.*
- (5) *Court-Authorized Medical Treatment.*
- (6) *Priority of Conservator or Guardian for Appointment as Administrator.*

State Bar Section opposes (statutory will provision). SET FOR HEARING BY SENATE JUDICIARY COMMITTEE ON MARCH 20.

Senate Bill 1855 (Beverly) Creditors of Decedent State Bar Section supports. SET FOR HEARING ON APRIL 3 BY SENATE JUDICIARY COMMITTEE

Senate Concurrent Resolution 76 (Lockyer) Resolution to Continue Authority to Study Previously Authorized Topics WAS SET FOR HEARING BY SENATE JUDICIARY COMMITTEE ON MARCH 6.

Introduced

Senate Bill 1777 (Beverly) Uniform Statutory Powers of Attorney Bill - This bill effectuates two recommendations, one proposing the Uniform Statutory Powers of Attorney Act and the other relating to springing powers of attorney. State Bar Section supports. WILL BE SET FOR HEARING AFTER PROBLEMS WITH CALIFORNIA BANKERS ASSOCIATION HAVE BEEN WORKED OUT.

Senate Bill 1870 (Beverly) Uniform TOD Security Registration Bill - This bill will not be set for hearing until the Commission has reviewed at the March meeting the comments received on the Commission's Tentative Recommendation. State Bar Section opposes.

Senate Bill 2649 (Morgan) Uniform Management of Institutional Funds Act  
The Commission will review a staff draft of a Recommendation at its March meeting.

#### PRIORITIES, SCHEDULE FOR WORK, AND NEW TOPIC SUGGESTIONS

The Commission considered Memorandum 90-19 and the First and Second Supplements to Memorandum 90-19, relating to the Commission's priorities and schedule for work on matters on its calendar and new topics that have been suggested for Commission consideration. The Commission approved the priorities and schedule for work proposed by the staff in the memorandum, and added meeting time to its schedule as set out above under the heading, "Meeting Schedule".

With respect to the proposed new topics, the Commission made the following decisions:

(1) Community or separate property classification of personal injury damage awards. The staff should prepare material on this matter for Commission review, including an analysis of how it is handled in other community property jurisdictions, and material from the Law Revision Commission's study of this matter that resulted in enactment of the existing California law.

(2) Defendant's request for plaintiff's statement of nature and amount of damages sought. The staff should forward a copy of Judge Todd's letter to the litigation section of the State Bar, with a request for their comments on it.

(3) Discovery after judicial arbitration. The staff should prepare a draft of a tentative recommendation on this matter for Commission review at its next meeting.

(4) Amendment of Evidence Code § 352. The Commission felt that the courts are better equipped to deal with problems arising under Section 352 than the Legislature. The staff should make this response to letters the Commission has received on the matter, and cite as an example the recent case of People v. Stoll, 49 Cal. 3d 1136 (1989).

#### RELATIONS WITH STATE BAR

The Executive Secretary should prepare a letter for the Chairperson's signature addressed to the Chair of the State Bar Family Law Section. The letter should encourage input of the Section at

Commission meetings. (In recent months when a representative of the Section has attended Commission meetings, he has spoken as an individual and not for the Section, since the Section's executive committee had not reviewed the matters under consideration.)

STUDY F-641/L-3020 - DISPOSITION OF COMMUNITY PROPERTY--DONATIVE  
TRANSFERS AND REVOCATION OF CONSENT

The Commission considered Memorandum 89-106, along with a letter from State Bar Probate Study Team 4 (attached to Exhibit 1), relating to issues raised by the MacDonald case concerning donative transfers and revocation of consent. The Commission asked the staff to report back at the next meeting with suggestions concerning a possible academic consultant on this matter.

STUDY F-1000 - FAMILY RELATIONS LAW

The Executive Secretary made a brief report on the progress on the Family Relations Law project. At the January meeting, the Commission approved distribution of a questionnaire to solicit views whether there should be a new Family Relations Code or Act and, if so, what should be included in the new code or act. More than 4,000 copies of the questionnaire have been distributed, and more than 600 questionnaires have been returned to the Commission.

Approximately 80 percent of those returning the questionnaire favored a new Family Relations Code or Act. A new code was favored over a new act by approximately 60 percent of those returning a questionnaire.

A more detailed report on the responses to the questionnaire will be prepared for the April meeting.

STUDY L-644 - RECOGNITION OF TRUSTEES' POWERS

The Commission considered Memorandum 90-1, the First Supplement thereto, and the draft *Tentative Recommendation Relating to Liability for Failure to Accept Trustee's Powers*. The Commission approved the draft tentative recommendation to be distributed for comment.

STUDY L-645 - JURISDICTION OF SUPERIOR COURT IN TRUST MATTERS

The Commission considered Memorandum 90-29 concerning clarification of the jurisdiction of the superior court in trust matters in light of two recent cases. The support of the Executive Committee of the State Bar Estate Planning, Trust and Probate Law Section is noted in a letter distributed at the meeting. (See Exhibit 1.) The Commission approved the revisions proposed by the staff and directed the staff to prepare a draft tentative recommendation for consideration at the next meeting.

STUDY L-700 - RETROACTIVE APPOINTMENT OF COUNSEL  
IN CONSERVATORSHIP PROCEEDINGS

The Commission considered Memorandum 90-16. The Commission approved the staff draft of new Probate Code Section 1473 to be sent out for comment. (The case cited in the Comment, *Young, Wooldridge, Paulden, Self, Farr & Griffin v. Thomas*, 210 Cal. App. 3d 812, 258 Cal. Rptr. 574 (1989), has been decertified for publication.)

STUDY L-1025 - CREDITOR CLAIMS

SENATE BILL 1855 (BEVERLY) CREDITORS OF DECEDENT

The Commission considered Memorandum 90-39 and the First Supplement to Memorandum 90-39, relating to problems on the bill concerning notice to creditors in estate administration. The

Commission asked Commissioner Plant, who knows Garrett Elmore personally, to write to Mr. Elmore to thank him for his suggestions on the bill and to encourage him to make the suggestions earlier in the process so that the Commission will have the benefit of them before the Commission has printed its final report and the bill is about to be heard in the Legislature.

The Commission made the following decisions concerning amendments to the bill.

Code Civ. Proc. § 353 (statute of limitations). The Commission reviewed the policy of the one-year absolute statute of limitations and reaffirmed its position that the one-year period is an appropriate balance of the rights of creditors and the needs of probate administration. The section should be amended to make clear that filing of a claim in probate tolls the statute of limitations. Comments to sections that cross-refer to Section 353 should note that the cross-reference includes an extension of the decedent's rights under Section 353(a).

Prob. Code § 9050 (notice required). Section 9050 should be amended to require the personal representative to notify a creditor that estate administration is pending whenever actual knowledge of the creditor is acquired, whether before or after the four-month claim period. Conforming changes should be made in Sections 9051 and 9052 as set out in the memorandum; other conforming changes may be necessary.

Prob. Code § 9103 (late claims). Paragraph (b)(2) should be amended to preclude a late claim filed more than one year after letters are issued, rather than one year after the decedent's death; this would preserve existing law. A provision should be added to the effect that nothing in the paragraph extends the time within which an action must be brought under Section 353 of the Code of Civil Procedure. The language of this amendment should be brought to the Commission's attention at the next Commission meeting, so that if the Commission is not satisfied with the language it will have an opportunity to further amend the bill.

Prob. Code § 9392 (liability of distributee). The Commission considered and reaffirmed the policy of requiring distributee liability until one year after death and making that liability joint and

several. A double-jointing provision should be added so that this section is included in the new code if AB 759 is enacted.

#### SUGGESTIONS FOR SUBSTANTIVE REVISION

The Commission considered Memorandum 90-7, relating to substantive revisions that have been suggested in the creditor claims statute. The proposed revision of Section 9103 (late claims) should be phrased to refer to the liability of a preliminary distributee "to restore to the estate an amount sufficient" for payment of the distributee's proper share of the claim. The staff should also review Section 9053 (immunity of personal representative) in light of the situation where the personal representative makes preliminary distribution knowing of the existence of creditors and the creditors have no remedy because the estate has been distributed and preliminary distributees are insolvent. In this connection, the personal representative's liability on the affidavit for preliminary distribution alleging that all debts have been adequately secured should be examined. The staff should bring back to the Commission a memorandum on this matter for the next meeting.

The Commission did not believe any change is appropriate in the law governing the place the creditor must file a claim.

#### STUDY L-1028 - INDEPENDENT ADMINISTRATION OF ESTATES ACT

The Commission considered Memorandum 90-11, containing a suggestion that a court order not be required for a preliminary distribution under independent administration. The Commission believed the existing scheme works satisfactorily.

#### STUDY L-1030 - COLLECTION BY AFFIDAVIT DESPITE PROBATE

The Commission considered Memorandum 89-79, First Supplement and attached staff draft of a *Tentative Recommendation Relating to Summary Collection of Decedent's Property During or After Probate*, and Second

Supplement, together with a letter from the Legislative Committee, Probate, Trust & Estate Planning Section of the Beverly Hills Bar Association (Exhibit 2). The Commission approved the draft TR attached to the First Supplement, with the addition of proposed Section 13005 set out in the Second Supplement. The TR will be expanded to include the drafts attached to Memorandum 89-33 (inclusion of personal property in real property proceeding) and Memorandum 89-86 (substitution of parties by affidavit). The TR should be retitled to reflect its expansion (e.g., *Tentative Recommendation Relating to Disposition of Estate Without Administration*) and distributed for comment.

STUDY L-1030 - SUMMARY COLLECTION IN SMALL ESTATES  
(CAMERON LETTER)

The Commission considered Memorandum 89-33, attached staff draft, and First Supplement. The Commission revised subdivision (a) of Section 13154 to read:

Probate Code § 13154 (amended), Court order

13154. (a) If the court makes the determinations required under subdivision (b), the court shall issue an order determining (1) that real property, to be described in the order, of the decedent is property passing to the petitioners and the specific property interest of each petitioner in the described property and (2) that no administration of the decedent's estate is necessary, and (3) if the petition so requests under Section 13152.5, that personal property, to be described in the order, of the decedent is property passing to the petitioners and the specific property interest of each petitioner in the described property.

As thus revised, the Commission approved the staff draft for inclusion in the TR attached to the First Supplement to Memorandum 89-79.

STUDY L-1040 - APPOINTMENT OF PUBLIC ADMINISTRATOR

The Commission considered Memorandum 90-12, containing a suggestion that the public administrator not be required to petition for appointment as administrator of an estate unless there are no known heirs or devisees. The Commission was concerned that, if this change were made, unless the matter was somehow brought to the court's attention and the court ordered the public administrator to act, there would be no one required to take steps to dispose of the decedent's assets. The staff should make inquiry of the public administrators in Orange and Los Angeles counties and elsewhere to see whether any other solutions of the problem might be appropriate.

STUDY L-1041 - BOND OF NONRESIDENT PERSONAL REPRESENTATIVE

The Commission considered Memorandum 90-13 relating to requiring bonds of nonresident personal representatives. The Commission felt existing law is satisfactory.

STUDY L-1061 - AGREEMENT TO SPLIT BROKERS' COMMISSIONS

The Commission considered Memorandum 90-14 concerning agreements to split brokers' commissions in probate sales. The Commission approved proposed Probate Code Section 10168 for inclusion in an appropriate bill in this legislative session, such as Senate Bill 1775.

STUDY L-3002 - MOVING CIVIL CODE PROVISIONS TO PROBATE CODE

The Commission discussed Memorandum 90-34 relating to moving the powers of appointment statute and the powers of attorney statutes in the Civil Code to the Probate Code. The position of the Executive Committee of the State Bar Estate Planning, Trust and Probate Law

Section is noted in a letter distributed at the meeting. (See Exhibit 1.) However, the Commission did not take any action on this issue because of insufficient time.

STUDY L-3012 - UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT

The Commission considered Memorandum 90-21, the First Supplement thereto, and the revised *Recommendation Relating to Uniform Management of Institutional Funds Act*. A copy of the recommendation with technical revisions concerning enactments in other states was distributed at the meeting. The Commission approved the revised recommendation in the form distributed. The Chairperson abstained from voting on this matter.

STUDY L-3013 - UNIFORM STATUTORY RULE AGAINST PERPETUITIES

The Commission considered Memorandum 90-22, the First through Sixth Supplements thereto, and the draft *Tentative Recommendation Proposing Enactment of the Uniform Statutory Rule Against Perpetuities*. The support of the Executive Committee of the State Bar Estate Planning, Trust and Probate Law Section is noted in a letter distributed at the meeting. (See Exhibit 1.) The Commission approved the tentative recommendation to be distributed for comment. The Commission decided that the tentative recommendation should be prospective in operation, and not applicable to instruments executed before its operative date. Draft Section 21202 should be revised to clarify this policy. The staff was also directed to work with Charles Collier, Jr., the Commission's consultant on this subject, on language needed to deal with the technical problems raised in the memorandums, specifically as concerns honorary trusts, options in gross, leases to commence in the future, and the relationship of USRAP to the generation skipping tax.

STUDY L-3015 - DISTRIBUTION OF PROPERTY IN ESTATE

The Commission considered Memorandum 89-78, along with a letter from Camille Cadoo on behalf of the Legislative Committee, Probate, Trust & Estate Planning Section of the Beverly Hills Bar Association (attached as Exhibit 3), relating to debts that are contingent, disputed, or not due. The Commission made the following revisions in the draft statute attached to the memorandum. The staff should prepare a revised draft of a tentative recommendation on this matter for consideration by the Commission at its next meeting.

§ 11460. Definitions

This section was revised to read:

11460. As used in this chapter:

(a) A debt is "contingent" if it is established under Part 4 (commencing with Section 9000) in either a fixed or an uncertain amount and will become absolute on occurrence of a stated event other than the passage of time. The term includes a secured obligation for which there may be recourse against property in the estate, other than the property that is the security, if the security is insufficient.

(b) A debt is "disputed" if it is a claim rejected in whole or in part under Part 4 (commencing with Section 9000) and is not barred as to the part rejected under Section 9353.

(c) A debt is "not due" if it is established under Part 4 (commencing with Section 9000) and will become due on the passage of time. The term includes a debt payable in installments.

The staff might consider adding a specific reference to a mortgage or deed of trust in the Comment.

§ 11462. Agreement of interested persons

This section should be revised to require the court to approve the agreement unless the court determines that the continuation of administration of the estate will be unreasonably extended.

§ 11463. Continuation of administration

This section should be relocated to the end of the statute in order to deemphasize it as a solution.

§ 11464. Payment into court

This section should be revised to provide for payment into a blocked account subject to court order rather than payment into court.

§ 11467. Distribution subject to bond

The last sentence of this section should be expanded to make the cost of the bond recoverable for a contingent debt if litigation is required to establish the contingency.

STUDY L-3023 -- UNIFORM TOD SECURITY REGISTRATION ACT

The Commission considered Memorandum 90-26 and the First Supplement to that memorandum. These materials reviewed the comments of the Tentative Recommendation proposing enactment of the Uniform TOD Security Registration Act.

Although the comments received were overwhelmingly favorable to enactment of the Uniform Act, the Executive Committee of the Estate Planning Trust and Probate Law Section was strongly opposed.

The Executive Committee is greatly concerned that California would enact the act before it had been enacted in other major commercial states. The Executive Committee would much prefer that California have the experience of other states that enact the act before it is enacted in California. Also, the Executive Committee believes that the enactment of the legislation would add further complexity to an area of the law that is already complex. The recommendation does not attempt to deal with the issue of creditors. The Executive Committee has concerns about the language of the act. For a more detailed statement of the reasons the Executive Committee opposes the Uniform Act, see the letter dated March 7, 1990, to the Commission from Valerie J. Merritt (attached to these Minutes as Exhibit 4).

The Commission decided not to submit a recommendation proposing enactment of the Uniform Act at this time. When some of the major commercial states have enacted the Uniform Act, the Commission will then consider whether to submit a recommendation concerning the Uniform Act.

STUDY L-3025 - TOD REGISTRATION FOR VEHICLES AND VESSELS

The Commission considered Memorandum 89-85, attached staff draft, and First Supplement. The Commission asked the staff to draft a letter to the Director of the Department of Motor Vehicles for the Chairman's signature. The letter should send the draft to the Director and ask the Director for a reaction. When the Director has responded, the staff should bring the proposal and response back for further consideration by the Commission.

STUDY L-3026 - AFFIDAVIT PROCEDURE FOR SUBSTITUTION OF PARTIES

The Commission considered Memorandum 89-85, the First Supplement thereto, and the draft *Tentative Recommendation Relating to Affidavit Procedure for Substitution of Parties*. The Commission approved the draft recommendation, subject to the modifications suggested in the First Supplement. This material will be included with the other proposed revisions concerning the affidavit procedure.

STUDY L-3030 - CUSTODIANSHIPS UNDER UNIFORM TRANSFERS TO MINORS ACT

The Commission considered Memorandum 90-17 containing a staff report on whether a custodianship may be created for a minor who has attained the age of 18. The study was undertaken because Peter L. Muhs stated that the Uniform Transfers to Minors Act needed to be revised to permit creation of a custodianship by a transfer made at any time before the "minor" reaches the age at which the custodianship terminates (age 21 or age 25), so that the custodianship will have a duration from the time created until the age at which the custodianship terminates. The memorandum reported that no revision in the statute was needed since existing law permits the creation of a custodianship in the case that concerned Mr. Muhs.

STUDY L-3031 - ACCEPTANCE OF FIDUCIARY RESPONSIBILITY  
BY ATTORNEY IN FACT

The Commission considered Memorandum 90-30. The Commission approved the substance of proposed new Civil Code Section 2515 as set out in the Memorandum.

The Commission asked the staff to conform Probate Code Section 15600 (trust law) by including the substance of subdivision (b) of Section 2515. That subdivision provides that if the attorney in fact is compensated for agreeing to serve and the agreement is not required by law to be in writing, he or she may accept the duties of attorney in fact by orally agreeing to serve or otherwise manifesting acceptance by words or conduct.

The staff should bring these two sections back for further consideration by the Commission.

STUDY L-3033 - NOTICE AT COUNTY SEAT

The Commission considered Memorandum 90-27 concerning the meaning of service on a person at the "county seat" in Probate Code Sections 1215 and 1220. The support of the Executive Committee of the State Bar Estate Planning, Trust and Probate Law Section is noted in a letter distributed at the meeting. (See Exhibit 1.) The Commission approved the staff proposal to adopt the approach of the Trust Law in these sections and directed the staff to prepare a draft for consideration at the next meeting.

STUDY L-3034 - GIFTS IN VIEW OF DEATH

The Commission considered Memorandum 90-31, attached staff draft of a *Tentative Recommendation Relating to Gifts in View of Death*, and First Supplement. The Commission suggested that the staff revise the draft of Civil Code Section 1149 to make the language internally consistent.

The Comment to Section 1149 should note that a person must have legal capacity to make an effective gift in view of death. 4 B. Witkin, *Summary of California Law Personal Property* § 109, at 100-101 (9th ed. 1987) (gift in view of death has same intent requirement as gift inter vivos); *id.* § 100, at 95 (for valid gift inter vivos, donor must have capacity to contract).

The Commission rejected the 120-hour survival rule proposed in the First Supplement, but approved proposed subdivision (c) of Section 1151 in the First Supplement to make clear that a gift in view of death is subject to rules on effect of homicide (Prob. Code §§ 250-257).

The staff should bring a revised draft back for Commission consideration.

#### STUDY L-3035 - INFORMATION FOR FIDUCIARIES CONCERNING DUTIES

The Commission considered Memorandum 90-33. The Commission discussed the staff draft of proposed new Probate Code Section 1517 to require the Judicial Council to prepare an information packet for guardians, similar to the information packet now being prepared for conservators. The Commission did not approve the section. Instead, the Commission asked the staff to write a letter to the Judicial Council. The letter should say that the Commission has considered a section to require the Judicial Council to develop an information packet for guardians, that the Commission understands that the Judicial Council intends to do this whether or not required by statute, and that the Commission has therefore decided not to recommend such a statute. The letter should ask the Judicial Council to advise the Commission if this understanding is not correct.

STUDY M-100 - STATUTES OF LIMITATION FOR FELONIES

The Commission considered Memorandum 90-32, relating to correction of the Comments to the statute of limitations for felonies. The Commission approved the corrected comments for printing in the annual report.

APPROVED AS SUBMITTED \_\_\_\_\_

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Executive Secretary

Minutes,  
March 8-9, 1990

EXHIBIT 1

Studies F-641/L-3020, L-645, L-3002,  
L-3013, L-3033

CA LAW REV. COMMISSION

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

**MAR 07 1990**

**RECEIVED**

**Chair**

**JAMES V. QUILLINAN, Mountain View**

**Vice-Chair**

**BRUCE S. ROSS, Los Angeles**

**Executive Committee**

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**CLARK R. BYAM, Pasadena**

**MICHAEL G. DESMARAIS, San Jose**

**ROBERT J. DURHAM, JR., La Jolla**

**MELITTA FLECK, La Jolla**

**ANDREW S. GARR, Los Angeles**

**JOHN T. HARRIS, Gridley**

**LYNN P. HART, San Francisco**

**BEATRICE L. LAWSON, Los Angeles**

**VALERIE J. MERRITT, Los Angeles**

**BARBARA J. MILLER, Oakland**

**JAMES V. QUILLINAN, Mountain View**

**BRUCE S. ROSS, Los Angeles**

**ROBERT L. SULLIVAN, JR., Fresno**

**MICHAEL V. VOLLMEYER, Irvine**



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March 6, 1990

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**D. KEITH BILTER, San Francisco**  
**IRWIN D. GOLDKING, Los Angeles**  
**ANNE K. HILKEK, Los Angeles**  
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**STERLING L. ROSS, JR., Mill Valley**  
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**LEONARD W. POLLARD II, San Diego**

**Section Administrator**

**LYNDA K. KLINE, San Francisco**

**REPLY TO:**

444 Castro St., #900  
Mtn. View, CA 94041  
(415) 969-4000

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

Re: LRC Memos and Pending Legislation

Dear John:

In response to your letter of 2/14/90 and in regards to the various memos on the March 8-9 LRC agenda, please be advised as follows:

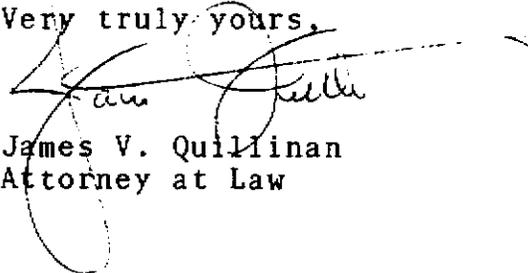
1. We have sent letters of support through Larry Doyle on the following Bills: AB 759, AB 831, SB 1774, SB 1777, SB 1885. We will not oppose but nor will we actively support, AB 2589. We are still opposed to the 120 hour survival requirement in Statutory Wills and will oppose that portion of SB 1775 but do support the balance of the bill. We are unanimously opposed to SB 1870 and will actively oppose it in the Legislature. Valerie Merritt will be sending you our position paper on SB 1870.

2. Memo 90-22. We support the adoption of the Uniform Statutory Rule Against Perpetuities. I have enclosed a copy of Team's 1 report, which report does not represent the majority view of the Exec. Comm.

Mr. John H. DeMouilly  
March 6, 1990  
Page 2

3. Memo 90-34. We support the moving of the Powers of Appt. provisions of the Civil Code to the Probate Code but not the Durable Powers of Attorney (Property & Health). The powers of attorney provisions are really agency rules and as such belong in the civil code not in the probate code. I have also enclosed a copy of Team 1's report which is for your information only.
4. Memo 90-29. We support the change in the trust law.
5. Memo 90-27. We support the change in the notice provision to conform with the trust law.
6. Memo 89-85. We oppose.
7. Memo 90-31. Needs some work. We are in the process of reviewing and will provide some suggested changes.
8. Memo 89-106. Team 4's response is attached. The Exec. Comm. has yet to take a final position on this memo.
9. Memo 90-30. Support.
10. TR Re Deposit of Est. Plan Docs. w/Atty. Team 4's response is attached. The Exec. Comm. has yet to take a final position on this TR.
11. Memo 90-11. We oppose.

Very truly yours,

  
James V. Quillinan  
Attorney at Law

JVQ/h1  
Encls.  
cc: Valerie Merritt    Bill Hosington  
      Terry Ross        Irv Goldring  
      Larry Doyle  
1913q

REPORT

TO: JIM QUILLINAN  
BRUCE ROSS  
VALERIE MERRITT  
TERRY ROSS  
IRV GOLDRING  
THE EXECUTIVE COMMITTEE IN GENERAL

FROM: WILLIAM V. SCHMIDT (Captain)  
Study Team No. 1

DATE: February 27, 1990

RE: LRC MEMORANDUM 90-22:  
Uniform Statutory Rule Against Perpetuities;  
Study L-3013

---

Study Team No. 1 had a conference call on Monday, February 26, 1990. Mike Desmarais, Lynn Hart, Bob Sullivan, Dick Kinyon, Terry Ross, Charles Collier and William Schmidt all participated.

At the beginning of the conference call we conducted a poll of the position of each of its members. We then had Charles Collier give us some background on this Uniform Act and answer any questions that any member of the team had. At the end of approximately one hour, we again polled the members and their positions for or against the Uniform Act, and for or against the recommendation of the staff, remained the same although the comments of Charles Collier were helpful and gave new insight to our members.

Mike Desmarais is against the Act. He states that he is not a believer in uniformity. He feels the existing California law

is fine as it is. "If it ain't broke -- don't fix it."

Dick Kinyon said that he had an open mind, but only ten states had adopted the Act, and he was not convinced that the proposed law would be beneficial.

Terry Ross is opposed to the Act. He states that uniformity may never occur. He further states that there is nothing wrong with existing law, and he doesn't see any reason to adopt a new one.

Lynn Hart states that her position is one of opposing change, unless she can see the benefit of it. She does not see the benefit of this law, and, therefore, opposes it.

Bob Sullivan favors the Uniform Act. He feels that the 90 year wait and see concept is a better law than the existing California law. Bob felt that he liked the simplicity of the Act, and that was much more important to him than uniformity.

I stated that I was in favor of the Uniform Act. I am impressed by those who support it (Collier, Halbach, ACPC, etc.), and I feel that the wait and see concept is beneficial.

Chuck Collier then talked about the advantages of the Uniform Act. Among other things, he talked about the "wait and see" concept as a coming concept, it having been adopted in approximately twenty states. He also talked about the fact that this Act was approximately only two years old and to be adopted by ten states in that short period of time indicated that it was being adopted by the states at a rapid rate compared to other

uniform acts. He also explained the reformation would, in most cases, be at the end of the 90-year period, if it was needed at all. There would be no opportunity to reform provisions of the appropriate instrument prior to that time. At one time during our discussion we talked about the possible need to modify our savings clauses if this Act was adopted. Charles Collier felt that it would not be necessary to modify them. Other members of the group felt that they probably would be modified by attorneys, which creates additional work and perhaps revision of prior documents.

All participants with the exception of Richard Kinyon and Terry Ross, plan to be at the May 3, 1990 meeting of the Executive Committee in San Diego. Chuck Collier plans to be there and make a presentation. I expressed the opinion that this is the type of Memorandum which I thought should be and would be discussed and decided upon by the Executive Committee after a full discussion by its members. Therefore, all of the members of the Study Team could speak for themselves on May 3, with the exception of Dick Kinyon and Terry Ross.

At the end of the meeting I asked Terry again to state his position, and he stated that he felt the impetus for this Act was coming primarily from law professors and academicians. He feels that as a practical matter, California's law is working well. There is no present problem and no need for reform. Any reform

takes time and creates a certain amount of trouble, which is not justified in the absence of a benefit.

Dick Kinyon, at the end of the meeting, stated that he felt that we should adopt a "wait and see" approach to the "wait and see" approach. He felt things are working well now. He would like to keep an open mind, and if more states adopted this Act, he would be inclined to re-consider it. For the time being, he felt, however, that the matter should be tabled. Charles Collier had earlier stated that he would like to see the Uniform Act at least be put in the form of a Tentative Recommendation and presented to interested parties throughout the State of California for their reaction. It was to this comment that Dick Kinyon felt the matter should be tabled.

The members of our Study Team were unanimously on one point. They all felt that if the Act were to be adopted, its application should be prospective only, not retroactive.

Respectfully submitted,

STUDY TEAM NO. 1

By:   
William V. Schmidt  
Captain

REPORT

TO: JIM QUILLINAN  
BRUCE ROSS  
VALERIE MERRITT  
TERRY ROSS  
IRV GOLDRING  
THE EXECUTIVE COMMITTEE IN GENERAL

FROM: WILLIAM V. SCHMIDT (Captain)  
Study Team No. 1

DATE: February 27, 1990

RE: LRC MEMORANDUM 90-34:  
Moving Civil Code Provisions to Probate Code  
Study L-3002

---

Study Team No. 1 had a conference call on Monday, February 26, 1990. Mike Desmarais, Lynn Hart, Bob Sullivan, Dick Kinyon, Terry Ross, Charles Collier and William Schmidt all participated.

We discussed this Memorandum prior to our discussion of Memorandum 90-22, the Uniform Statutory Rule Against Perpetuities. We unanimously agreed without much discussion that we support the recommendation of the staff to move the power of appointment sections and the power of attorney sections to a new division, Division 12 of the Probate Code. One of our members wondered whether it was wise to remove the power of attorney sections from the Agency Sections in general, which, he assumed, would stay in the Civil Code. We were not quite sure exactly what the staff has in mind here, but we generally support the

concept of moving provisions relating to powers of appointment  
and powers of attorney to the Probate Code.

Respectfully submitted,  
STUDY TEAM NO. 1

By:   
William V. Schmidt  
Captain

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PLEASE REFER TO  
FILE NO.

899001L.766

March 1, 1990

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

BY FAX

Dear Jim:

On February 14, 1990, Harley Spitler, Lloyd Homer, Clark Byam, Bob Temmerman and I discussed LRC Memorandum 89-106: Tentative Recommendation Relating to Probate Law and Procedure "Right of Surviving Spouse to Dispose of Community Property". Our comments follow:

1. General Overview: With respect to each issue raised in the Memorandum, Team 4 was concerned that ERISA-type problems be clearly distinguished inasmuch as these problems are controlled solely by federal law. Team 4 addressed each of the issues presented on page 2 under the term "Analysis"; our comments are presented in the remainder of this letter.
2. Issue 1: "Are donative transfers, such as beneficiary designations and IRA accounts, Totten trust accounts, POD bank accounts, United States Savings Bonds, living trusts, pension plans, and insurance policies subject to the community property gift limitations of Civil Code Section 5125?"

Team 4 unanimously felt that such donative transfers are subject to the community property gift limitations and should continue to be so.

3. Issue 2: If the answer to Issue 1 is yes, what acts by the non-donor spouse are sufficient to satisfy the consent requirement?

With the exception of those issues controlled by federal law, Team 4 suggests:

- (a) A de minimis rule should be established whereby certain donative transfers are exempt, e.g., establishing a custodial account for children of a prior marriage;
- (b) A writing should be required because of a compelling need to show a clear understanding of what rights, etc., are being relinquished. Hopefully, the requirement of such a writing would result in less litigation. Such a writing would be in the nature of that required when the character of property is transformed from separate property to community property, or vice versa.

Another issue is, if such consent is given, whether certain other subsequent changes could be made by the donor spouse, e.g., such as changing the beneficiary under a non-qualified retirement plan. Still another issue is whether or not the relinquishing spouse should have independent counsel.

4. Issue 3: After consent is given by the non-donor spouse, is a consent to such a donative transfer revocable?

Team 4 felt that such a consent would always be revocable because of fraud and undue influence. In fact, Team 4 felt that the general rule that a consent is revocable if it is not expressly made irrevocable should apply, although consent could be irrevocably given.

5. Issue 4: If so, must a non-donor spouse revoke the consent during lifetime, or may the non-donor spouse's personal representative revoke the consent after the spouse has died?

Team 4 felt that such a consent should be revocable after death by the appropriate representative of the estate.

#### Creditor's Right

6. On page 11, the issue of certain creditor's rights was raised. Team 4 felt that, if a gift is not irrevocable, then the donor's creditor should be able to reach the gift. Or, even if the gift is irrevocable, but the individual retains the right to change beneficiaries, then the creditor should be able to reach the property. In order to respond to this issue, the answers would be different depending upon who was granting the consent, the type of transfer and who is doing it. Finally,

March 1, 1990  
Page 3.

Team 4 wishes to point out that there is no such thing as a  
revocable gift.

Thank you for your consideration.

Cordially,

*Kathryn A. Ballsun*

KATHRYN A. BALLSUN  
A Member of  
STANTON and BALLSUN  
A Law Corporation

KAB:mkr

cc: Terry Ross, Esq.  
Irwin Goldring, Esq.  
Valerie Merritt, Esq.  
Team 4

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PLEASE REFER TO  
FILE NO.

899001L.765

March 1, 1990

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

BY FAX

Re: Tentative Recommendation Relating to Deposit of  
Estate Planning Documents With Attorneys

Dear Jim:

On February 2, 1990, Harley Spitler, Lloyd Homer, Clark Byam, Robert Temmerman and I discussed the Tentative Recommendation Relating to Deposit of Estate Planning Documents with Attorneys. Our comments follow:

I. Section 701. Attorney.

Team 4 suggests that Section 701 be reworded to ensure that the primary reliance for the definition of "attorney" is that set forth in the Business and Professions Code. Team 4 further questions whether the definition of "attorney" as set forth includes a sole proprietorship and a partnership. Both of these forms of doing business should be incorporated within the definition of "attorney".

II. Section 703. Depositor.

Team 4 suggests that the proposed comments to Section 703 be deleted inasmuch as Civil Code Section 1858(a) appears to have nothing whatsoever to do with the term "depositor" and merely confuses the issue.

In addition, Team 4 has the following questions:

- (a) Does the term "depositor" include an attorney-in-fact acting under a durable power of attorney or a conservator.

- (b) What is the meaning and reason for the use of the word "natural".
- (c) Whether or not the Law Revision Commission intentionally intended to exclude banks and other institutions, particularly in view of Probate Code Section 56 which defines "person" so as to include "corporations".

III. Section 711. Attorneys' Standard of Care.

With respect to Section 711, Team 4 suggests the following:

- (1) Delete from subsection (a) the initial clause which provides: "subject to subdivision (b)".
- (2) Team 4 is concerned that the depositor will not have been given the current address. Therefore, the section should provide that notice may be sent to the last known addressee. It is important that the standards set forth in this section be made more explicit so that the burden imposed upon attorneys is reasonable. Therefore, Team 4 suggests that the Code Section be reworded as follows: "If an attorney gives thirty (30) days' notice to the depositor at the depositor's last known address, then an attorney shall not thereafter be liable for the loss or destruction of a document deposited with the attorney."

IV. Section 721. Attorney May Terminate Deposit Only As Provided in This Chapter.

Section 722. Termination By Attorney By Delivery or As Agreed.

Team 4 suggests that Sections 721 and 722 be combined as follows:

- (a) Delete Section 721; and
- (b) Rewrite Section 722 as follows: "An attorney may only terminate a deposit by one of the following methods:
  - (i) by personal delivery of the document to the

depositor; or (ii) by any method agreed on by the depositor and attorney (new words underlined).

V. Section 723. Termination by Attorney Transferring Document to Another Attorney or Trust Company.

An issue is whether the term "depository" should be limited to a "trust company" as provided in Section 723(a) or whether the terminology should be broadened.

Under Section 723(b), Team 4 suggests that the notice of transfer include the date.

Finally, a separate notice should be required for each depositor.

VI. Section 724. Termination by Attorney after Death of Depositor.

Section 724 requires clarification in two respects:

- (1) If an individual dies domiciled outside of California; and
- (2) The situation where the attorney has disappeared. Team 4 believes that the staff should address both of these issues.

VII. Section 725. Deceased or Incompetent Attorney.

Throughout Section 725, the word "incompetent" should be deleted, and the term "incapacitated" used.

Line 3 of Section 725 should have the word "may" deleted, and the term "shall" substituted in place of it.

Section 725 should be revised to include:

- (1) "The attorney's law partner, if the attorney is a law corporation or shareholder of that corporation"; and
- (2) "Any associate or person in charge of the records of the incapacitated attorney or any employee of the firm

James Quillinan, Esq.  
March 1, 1990  
Page 4.

or any person who has access to the documents that are subject to the depository."

The second line of subparagraph (b) should read, "the conservator of the attorney's estate."

Under subsection (c), Team 4 urges that great care be taken with respect to the clause, "the person entitled to collect the attorney's property." This clause could be construed as referring to a creditor, and Team 4 feels certain that this is not the result intended by the Law Revision Commission.

VIII. Probate Code Section 2586, amended; Production of Conservatee's Will and Other Relevant Estate Plan Documents.

With respect to the new proposed subsection (d), Team 4 strongly suggests that the court be given guidance as to what constitutes "cause". The Law Revision Commission should articulate specific instances and emphasize the fact that good cause will be the exception rather than the rule.

Thank you for your consideration.

Cordially,

*Kathryn A. Ballsun*

KATHRYN A. BALLSUN  
A Member of  
STANTON AND BALLSUN  
A Law Corporation

KAB/mkr

cc: - Terry Ross, Esq. (By Fax)  
Irwin Goldring, Esq. (By Fax)  
Valerie Merritt, Esq. (By Fax)  
Team 4 (By Fax and Federal Express)

**CAMILLE CADOO**  
**INDEPENDENT LEGAL ASSISTANT**

ESTATE • CONSERVATORSHIP • GUARDIANSHIP

5763 Bloomfield St.  
Simi Valley, CA 93063  
(805) 583-2588

March 6, 1990

Telecopier No.  
(805) 583-4582

CA Law Revision Commission  
4000 Middlefield Rd., Suit D-2  
Palo Alto, CA 94303-4739

ATT: Nathaniel Sterling/Robert J. Murphy III

Re: Law Revision Commission Study L-1030: Memos 89-33/89-79  
Collection by Affidavit Despite Probate; Collection of Life  
Insurance Proceeds by Affidavit and Summary Collection in  
Small Estates

Dear Ladies and Gentlemen:

On March 6, 1990, the Legislative Committee, Probate, Trust & Estate Planning Section of the Beverly Hills Bar Association, ("Committee") reviewed and discussed the Law Revision Commission Study L-1030, Memorandums 89-33 and 89-79, Collection by Affidavit Despite Probate; Collection of Life Insurance Proceeds by Affidavit and Summary Collection in Small Estates. The Committee, after careful review and discussion, has the following comments:

Summary Collection in Small Estates: The suggestion that Probate Code Sections 13150-13157 be amended by changing the language to authorize the court to "set aside" property to those entitled to it. The Committee agrees that this is a "change of taste" rather than a substantive change. For that reason, the Committee agrees with the position of the Law Revision Commission Staff that the existing statutory language not be changed.

Collection by Affidavit Despite Probate: The final changes suggested concerning Collection by Affidavit Despite Probate appear to be right on point and permission by the personal representative seems more appropriate than filing a petition for additional court approval.

Collection of Life Insurance Proceeds by Affidavit (and pension benefits): The changes recommend in new Section 13005 appear to be appropriate for the collection of life insurance and pension benefits.

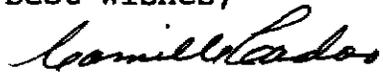
Nathaniel Sterling/Robert J. Murphy III  
CA Law Revision Commission

March 6, 1990  
Page Two

Judicial Council Forms: We agree with the Law Revision Commission that it is appropriate to refer these comments to the Judicial Council.

Thank you in advance for your consideration in this matter.

Best Wishes,



Camille Cadoo  
Legal Assistant/Member of Beverly Hills  
Bar Legislative Committee

CC: idm  
cc: Lisa Alexander, Esq., Chairperson

**CAMILLE CADOO**  
**INDEPENDENT LEGAL ASSISTANT**

ESTATE • CONSERVATORSHIP • GUARDIANSHIP

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March 6, 1990

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CA Law Revision Commission  
4000 Middlefield Rd., Suit D-2  
Palo Alto, CA 94303-4739

ATT: Nathaniel Sterling, Assistant Executive Secretary

Re: Law Revision Commission Study L-3015: Memo 89-78  
Debts that are Contingent, Disputed, or Not Due

Dear Ladies and Gentlemen:

On March 6, 1990, the Legislative Committee, Probate, Trust & Estate Planning Section of the Beverly Hills Bar Association, ("Committee") reviewed and discussed the Law Revision Commission Study L-3015, Memorandum 89-78, Debts that are Contingent, Disputed, or Not Due. The Committee, after careful review and discussion, has the following comments:

Section 11460. Definitions

(a) Should not include a mortgage or deed of trust. These obligations become due on the passage of time and are payable in installments and should be stated in "not due" paragraph.

A suggested rewording of second sentence of paragraph (a) as follows: "The term includes a secured obligation for which there may be recourse against other property in the estate, other than the secured property, if the security is insufficient.

It is suggested that the words "deed of trust and other secured loans" be added to your paragraph (b) on Page 5.

Also, Paragraphs (b) and (c), Page 5, appear to be misnumbered.

Section 11463. Continuation of administration

It is suggested there be an additional sentence. "If there is no change other than the passage of time, no additional status report requesting continuation of administration of estate will be necessary."

Section 11464. Payment into Court

It is suggested that payment be placed in blocked account, subject to court order instead of being paid to court.

Nathaniel Sterling  
CA Law Revision Committee

March 6, 1990  
Page Two

Section 11465. Distribution subject to assumption of liability.

Comment. It is suggested that statement concerning depositing cash into a blocked account should be made. Also, that a bond would not be required if the lender approves the assumption of liability.

Section 11466. Appointment of trustee

The Committee believes this should be clearer as to who the trustee gives accountings to and to whom. Is the Trustee to be bonded? What about Fiduciary Income Tax Returns?

Section 11467. Distribution subject to bond

The Committee suggests there is no coverage in this section in case of a defaulted debt for which a bond has been posted. Also, the bond may be unwritable by most bonding companies, i.e., difficult to obtain. Even if a bonding company can be found to write such a bond they may not issue bond to an applicant without a collateral position. The bond premium would be extremely expensive, i.e., two percent (2%) of amount of bond annually.

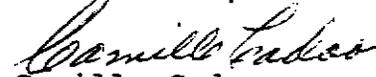
It is suggested the last sentence be rewritten to include "contingent, disputed or not due" rather than "disputed".

Other Sections.

All other proposed amended or new sections appear to be satisfactory.

Thank you in advance for your consideration in this matter.

Best Wishes,



Camille Cadoo  
Legal Assistant/Member of Beverly Hills  
Bar Legislative Committee

CC: idm  
cc: Lisa Alexander, Esq., Chairperson

Minutes,  
March 8-9, 1990

EXHIBIT 4

Study L-3023

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

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*Vice-Chair*  
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March 7, 1990

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*Section Administrator*  
Pres Zablan Soberon, San Francisco

REPLY TO:

California Law Revision Commission  
4000 Middlefield Road, #D-2  
Palo Alto, California 94303-4739

RE: CALIFORNIA LAW REVISION COMMISSION MEMO 90-26 AND  
SENATE BILL 1870

Dear Commissioners:

The Executive Committee of the Estate Planning, Trust and Probate Law Section of the State Bar of California continues to have serious concerns about this proposal and will oppose the legislation. We note that our previous letter of October 9, 1990 was not included among the letters received in response to the Tentative Recommendation of the Commission in the mistaken belief that the Tentative Recommendation answered our concerns. Such is not the case.

While the TR and SB 1870 are closer to the Uniform TOD Security Registration Act, they are still not the Uniform Act. But even if this were a verbatim repetition of the Uniform Act, we are still concerned that California may be the first, and perhaps only, state to enact this legislation which has the goal of uniformity. We strongly believe that California should not be the leader in this field. The Uniform Act, which was just adopted late in 1989, has not been enacted as yet in any state, and thus the goal of uniformity of treatment is more illusory than real. Since California is the most populous state in the nation, we do not believe it is wise for this state to be the one to suffer the problems of dealing with the unanticipated problems of this law. We believe it to be better public policy for this new legislation to be tested in smaller states, where the potential number of people to be adversely affected by problems is a smaller number, and then adopted by California when the problems have been discovered and corrected. Alternatively, we should not enact this legislation unless or until it is enacted in New York. New York is the traditional home of the securities industry and contains the largest concentration of transfer agents. If New York promptly adopts it, that will be soon enough

for us to act. If New York does not adopt it, there will never be uniformity, and the major justification for enacting this legislation will not exist.

We do appreciate the deletions of most of the references to "community property held in joint tenancy", although we note that "community property with right of survivorship" is still part of the proposed legislation. As we have pointed out in detail in the past, this concept has no place in California law where one of the attributes of community property is the ability to dispose of it by testamentary disposition at death.

There are additional reasons to oppose this proposal. We believe that this legislation will add further complexity to an area of the law that is already complex. It will complicate simple estate plans for modest estates and lead to litigation as securities brokers implement the law in a way which produces results not intended by married couples. If this law passes, those clients who consult lawyers for a "simple Will" will incur additional charges as the lawyer reviews title to each security to make sure the Will will affect the security and to make sure no beneficiary designation is inconsistent with the estate plan desired by the client. The reason this is necessary is the TOD designation can not be changed by the Will. This will add to the charges the public has to pay for estate planning, a service which is already moving beyond the reach of the middle class.

The TOD designation restricts the ability of spouses to independently change their estate plans. If Husband and Wife register a security in both of their names, TOD John, their only son, they must both agree or no change in title can be accomplished. If Husband later discovers John taking drugs, but Wife refuses to change the title, Husband can not unilaterally remove John from the beneficiary designation. While this example may sound extreme, others can be easily imagined.

A related issue is that any change in title requires reregistration of the security. While the assertion was made by staff that it is easier to change security registration than a Will, that is not so if multiple securities must be reregistered to implement a change that otherwise could have been accomplished by a simple codicil. Reregistration is a slow process, and the law doesn't even address what the rights of the parties are if the owners have requested but not received a reregistration at the time of death of one or more of the multiple owners.

These problems are not present in POD accounts with financial institutions, because in most cases, one of the joint multiple owners of the account can withdraw all or his portion of the funds, and thus is not precluded from making unilateral changes. Thus, the approval of the Multiple Party Accounts legislation by our section is not relevant to this proposal.

Transfers under the proposed legislation are not subject to Wills, and presumably are unable to benefit from the benefits of the anti-lapse provisions of the Probate Code. While the law contemplates the possibility of a title designation "LDPS" to allow a gift to descendants of a deceased beneficiary, our committee members expressed great scepticism that the securities industry would expend time and money educating the public about this option and its great desirability. We think it more likely that a parent will name his or her children without the LDPS designation. Then, if a child predeceases the parent, the security will not pass to the deceased child's issue, but will instead pass to the other surviving child or children named as beneficiaries. We think this is contrary to most parents' intents, contrary to the previously enacted public policy of the legislature as evidenced in the intestacy and anti-lapse statutes, and bad public policy. But that is the likely result if this statute is passed.

The statute introduces to California law the concept of "tenancy by the entirety" without defining or regulating it. This term should be omitted from all legislation in this state.

Finally, we are concerned that this proposal does not attempt to deal with the issue of creditors. Section 5509(b) might be sufficient, but we are very concerned as to how it will be applied. Unlike the affidavit procedures adopted previously, there is no option on the part of the beneficiary to seek probate administration in order to deal with and resolve creditors' claims. At its worst, we are concerned that the legislation may be inadvertently creating another class of assets free from the claims of creditors by expanding the category of assets treated as joint tenancies are treated. While the staff has listed some of those categories, they have ducked the issue as to whether the list should be expanded. We believe it to be unsound public policy to expand the category of assets protected from creditors at the death of the holder.

Thus, we believe there are more than sufficient reasons to oppose this suggested legislation, and we suggest the Commission disapprove of this memorandum and withdraw its bill. We will oppose the bill in the legislature.

Sincerely,

  
Valerie J. Merritt

cc: James V. Quillinan  
Irwin D. Goldring  
Sterling L. Ross  
Matthew S. Rae, Jr.