

04/20/90

<b>DATE &amp; TIME:</b> <ul style="list-style-type: none"><li>• April 26 (Thursday) 10:00 am - 6:00 pm</li><li>• April 27 (Friday) 9:00 am - 2:30 pm</li></ul>	<b>PLACE:</b> <ul style="list-style-type: none"><li>• Sacramento State Capitol Room 125</li></ul>
<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.	

**FINAL AGENDA**

*for meeting of*

**CALIFORNIA LAW REVISION COMMISSION**

**THURSDAY, APRIL 26**

1. MINUTES OF MARCH 8-9, 1990, COMMISSION MEETING (sent 3/19/90)
2. ADMINISTRATIVE MATTERS

**1990 Legislative Program**

Oral report at meeting (list of measures introduced at request of Commission is attached)

Memorandum 90-52 (NS) Amendments to SB 1855 (sent 4/5/90)

Amended SB 1777 (to be sent)

**Suggestions Concerning Family Law Consultants**

Memorandum 90-40 (NS) (sent 4/5/90)

**Communications from Interested Persons**

3. STUDY F-1000 - FAMILY RELATIONS LAW

**Analysis of Questionnaire Responses; Scope of Study**

Memorandum 90-37 (JHD) (sent 3/23/90)

4. STUDY F-672 - PERSONAL INJURY DAMAGES AS COMMUNITY OR SEPARATE PROPERTY

Memorandum 90-45 (RJM) (sent 4/5/90)

5. STUDY L-3020 - RIGHT OF SURVIVING SPOUSE TO DISPOSE OF COMMUNITY PROPERTY

Comments on Tentative Recommendation  
Memorandum 90-47 (NS) (sent 4/5/90)

6. STUDY L-3040 - COMMUNITY PROPERTY PRESUMPTION FOR JOINT TENANCY UPON DEATH

Memorandum 90-60 (JHD) (sent 3/23/90)  
First Supplement to Memorandum 90-60 (JHD) (sent 4/4/90)

7. STUDY L-3043 - FORMS FOR MULTIPLE-PARTY ACCOUNTS LAW

Memorandum 90-66 (JHD) (sent 4/11/90)

8. STUDY L-1029 - DISTRIBUTION AND DISCHARGE

Memorandum 90-69 (NS) Distribution Under Independent Administration  
of Estates Act (enclosed)

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

Draft of Tentative Recommendation  
Memorandum 90-42 (NS) Debts that are Contingent, Disputed, or Not  
Due (sent 3/19/90)

10. STUDY L-1025 - CREDITOR CLAIMS

Draft of Tentative Recommendation  
Memorandum 90-44 (NS) Time for Filing Claims; Late Claims;  
Liability of Personal Representative (sent 3/23/90)  
First Supplement to Memorandum 90-44 (sent 4/9/99)

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

Draft of Tentative Recommendation  
Memorandum 90-56 (SU) (sent 3/23/90)

12. ~~STUDY L-3033~~ - NOTICE IN PROBATE WHERE ADDRESS UNKNOWN

Draft of Tentative Recommendation  
Memorandum 90-57 (SU) (sent 3/23/90)

13. STUDY L-1040 - APPOINTMENT OF PUBLIC ADMINISTRATOR

Memorandum 90-46 (RJM) When Public Administrator Must Petition for  
Appointment (sent 4/12/90)

14. STUDY L-700 - COMPENSATION OF COUNSEL IN GUARDIANSHIP AND  
CONSERVATORSHIP PROCEEDING

Approval of Tentative Recommendation for Distribution for Comment  
Memorandum 90-67 (RJM) (sent 4/16/90)

15. STUDY L-3041 - PROCEDURE FOR CREDITOR TO REACH NONPROBATE ASSETS

Memorandum 90-62 (JHD) (sent 03/30/90)

16. STUDY L-3038 - SEVEN-YEAR LIMIT ON DURABLE POWER OF ATTORNEY FOR HEALTH  
CARE

Memorandum 90-51 (RJM) (sent 4/12/90)  
First Supplement to Memorandum 90-51 (JHD) (sent 3/30/90)

17. STUDY L-3031 - ACCEPTANCE BY AGENT OF RESPONSIBILITIES UNDER POWER OF  
ATTORNEY

Memorandum 90-64 (JD) (sent 4/11/90)

18. STUDY L-3042 - GENERAL STANDARD OF DUTY OF ATTORNEY IN FACT

Memorandum 90-65 (JD) (sent 4/11/90)

19. STUDY L-3002 - MOVING CIVIL CODE PROVISIONS INTO THE PROBATE CODE

Memorandum 90-34 (SU) (sent 2/16/90)  
First Supplement to Memorandum 90-34 (JHD) (sent 3/19/90)

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

Memorandum 90-54 (RJM) (sent 3/23/90)

21. STUDY L-1029 - DISTRIBUTION AND DISCHARGE

Memorandum 90-38 (RJM) Unclaimed Distribution (alternate  
~~beneficiaries)~~ (sent 3/19/90)

22. STUDY L-3018 - LITIGATION INVOLVING DECEDENT

Memorandum 90-28 (SU) (sent 3/39/90)  
First Supplement to Memorandum 90-28 (NS) (sent 4/11/90)

23. STUDY L-3036 - USE OF VIDEOTAPE IN CONNECTION WITH WILL

Memorandum 90-35 (RJM) (sent 3/19/90)

24. STUDY L-3039 - REVOCABLE TRUST AS LOTTERY BENEFICIARY

Memorandum 90-59 (SU) (sent 4/9/90)

25. STUDY L-300 - PROBATE HOMESTEAD

Memorandum 90-61 (NS) (sent 3/30/90)

FRIDAY APRIL 27

26. STUDY N - ADMINISTRATIVE LAW

N-102 - APPLICATION OF ADMINISTRATIVE PROCEDURE ACT

Draft of Statute

Memorandum 90-23 (NS) (sent 3/23/90)

N-103 - ALJ CENTRAL PANEL

Memorandum 90-36 (NS) (sent 4/5/90)

First Supplement to Memorandum 90-36 (sent 4/5/90)

27. STUDY J-501 - DISCOVERY AFTER JUDICIAL ARBITRATION

Draft of Tentative Recommendation

Memorandum 90-58 (NS) (sent 3/23/90)

28. STUDY J-900 - SHIFTING ATTORNEY'S FEES BETWEEN LITIGANTS

Memorandum 90-55 (SU) (sent 4/17/90)

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1990 LEGISLATIVE PROGRAM

Measures Introduced at Request of Law Revision Commission

Sent to Governor

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 of fees. This leaves the issue of attorney fees to be dealt with in Assembly Bill 831. The bill was further amended in the Senate to make technical amendments and to provide that the bill will not become operative unless Assembly Bill 831 is enacted. State Bar Section supports. SENATE AMENDMENTS CONCURRED IN BY ASSEMBLY ON APRIL 2.

Passed One House

Assembly Bill 831 (Harris) Trustees Fees and Attorney Fees

This bill would effectuate the Commission recommendations concerning trustee fees and attorney fees. State Bar Section supports. This bill must be enacted after Assembly Bill 759 (new Probate Code). SET FOR HEARING BY SENATE JUDICIARY COMMITTEE ON MAY 15.

Assembly Bill 2589 (Sher) In-law Inheritance

State Bar no position. Amended on March 13 (technical amendment). SET FOR HEARING BY SENATE JUDICIARY COMMITTEE ON MAY 15.

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.

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).

Senate Concurrent Resolution 76 (Lockyer) Resolution to Continue Authority to Study Previously Authorized Topics

Sent to Floor in First House

Senate Bill 1855 (Beverly) Creditors of Decedent

State Bar Section supports. AMENDED AND APPROVED BY SENATE JUDICIARY COMMITTEE ON APRIL 2.

Set For Hearing in First House

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. SET FOR HEARING BY SENATE JUDICIARY COMMITTEE ON MAY 8.

Senate Bill 2649 (Morgan) Uniform Management of Institutional Funds Act

Introduced March 1, 1990. SET FOR HEARING BY SENATE COMMITTEE ON INSURANCE, CLAIMS AND CORPORATIONS ON MAY 2.

MEETING SCHEDULE

April 1990

Apr. 26 (Thurs.)	10:00 a.m. - 6:00 p.m.	Sacramento
Apr. 27 (Fri.)	9:00 a.m. - 2:30 p.m.	

May-June 1990

May 31 (Thurs.)	10:00 a.m. - 6:00 p.m.	San Francisco
June 1 (Fri.)	9:00 a.m. - 2:00 p.m.	State Bar Building

July 1990

July 26 (Thurs.)	10:00 a.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.)	10:00 a.m. - 6:00 p.m.	Stanford or
Sep. 14 (Fri.)	9:00 a.m. - 2:00 p.m.	San Jose

October 1990

Oct. 11 (Thurs.)	10:00 a.m. - 6:00 p.m.	Los Angeles
Oct. 12 (Fri.)	9:00 a.m. - 2:00 p.m.	

November 1990

Nov. 29 (Thurs.)	10:00 a.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  
APRIL 26-27, 1990  
SACRAMENTO

A meeting of the California Law Revision Commission was held in Sacramento on April 26-27, 1990.

Commission:

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

Staff:

Present:	John H. DeMouilly	Stan Ulrich
	Nathaniel Sterling	Robert J. Murphy III (Apr. 26)

Consultants:

Michael Asimow, Administrative Law

Other Persons:

Richard T. Baker, Association of California State Attorneys and Administrative Law Judges (ACSA), Sacramento (Apr. 27)  
Camille Cadoo, Legislative Committee, Probate, Trust and Estate Planning Section, Beverly Hills Bar Association, Beverly Hills (Apr. 26)  
Michael D'Onofrio, Administrative Law Judge, Department of Health Services, Sacramento (Apr. 27)  
Karl Engeman, Director, Office of Administrative Hearings, Sacramento  
Ruth Friedman, Administrative Law Judge, State Personnel Board, ACSA, San Francisco (Apr. 27)  
Donald B. Jarvis, Administrative Law Judge, National Conference of Administrative Law Judges, ACSA, San Francisco (Apr. 27)  
Ray Leonardini, Sacramento (Apr. 26)  
James E. Mahler, Hearing Officer, Board of Equalization, Sacramento (Apr. 27)  
James Quillinan, State Bar Estate Planning, Trust and Probate Law Section, Mountain View (Apr. 26)  
Carol Reichstetter, Probate and Trust Law Section, Los Angeles County Bar Association, Los Angeles (Apr. 26)



Barry D. Russ, Executive Committee, State Bar Family Law Section,  
Sherman Oaks (Apr. 26)  
Janet Saunders, Hearing Officer, Board of Equalization, Sacramento  
(Apr. 27)  
Douglas W. Schroeder, Santa Ana (Apr. 26)  
John Sikora, Staff Consultant, ACSA, Sacramento (Apr. 27)  
Cynthia Spencer-Ayres, Hearing Officer, Board of Equalization,  
Sacramento (Apr. 27)  
Valerie Tibbett, Administrative Law Judge, Department of Social  
Services, Sacramento (Apr. 27)  
David Watts, Administrative Law Judge, Department of Social  
Services, Sacramento (Apr. 27)  
Paul Wyler, State Bar Public Law Section, Los Angeles (Apr. 27)  
Keith Yamanaka, CAL/OSHA Standards Board, Sacramento (Apr. 27)  
Shirley Yawitz, California Probate Referees Association, San  
Francisco

#### ADMINISTRATIVE MATTERS

##### APPROVAL OF MINUTES OF MARCH 8-9, 1990, MEETING

The Commission approved the Minutes of the March 8-9, 1990, Commission Meeting submitted by the staff, with the following revisions:

(1) On page 2, near the bottom of the page, under the discussion of Assembly Bill 759, in the second to last sentence, the phrase "a fee bill" was substituted for "Assembly Bill 831" so that the last portion of the sentence will read: "the bill will not become operative unless a fee bill is enacted."

(2) On page 13, in the second sentence under the discussion of "STUDY L-3023 - UNIFORM TOD SECURITY REGISTRATION ACT," the words "comments received concerning" were substituted for the words "comments of".

##### MEETING SCHEDULE

The Commission changed the location of the May 31-June 1 meeting from San Francisco to Sacramento. The meeting should go from 1:30 pm until 6:00 pm on Thursday, May 31, and from 9:00 am until 2:00 pm on Friday, June 1. Time should be allowed in the schedule for the possibility of a bill-signing ceremony in the Governor's office for AB 759 (new Probate Code).

#### FAMILY LAW CONSULTANTS

The Commission considered Memorandum 90-40, concerning possible academic consultants on two of the Commission's family law studies.

Family Code. The Commission directed the staff to send a letter to all professors of family law in California notifying them of the study to develop a new Family Code and making inquiry whether they would be able and willing to give the Commission comments on meeting materials and tentative recommendations. The letter should make clear the technical nature of this project. Of those interested in contributing to the study, the Commission will monitor the comments received, and on that basis may make contracts with one or more of the professors to pay travel expenses in attending Commission meetings when the Family Code is discussed.

Revocability of Donative Transfer of Community Property. The Commission approved retention of Professor Jerry Kasner of University of Santa Clara Law School as a consultant to prepare a background study that analyzes issues involved in donative transfers of community property. The study should include a discussion of consent and transmutation problems, revocability problems, effect of termination of marriage by dissolution or death, rights of creditors, and any other matters the consultant finds are relevant. The study should also state the consultant's proposed resolution of the various problems identified in the study. The consultant's contract should be in the Commission's standard form for studies by academic consultants. Compensation should be in the amount of \$5,000 for the background study, plus an additional amount not exceeding \$1,500 for the consultant's travel expenses in attending Commission meetings and legislative hearings when requested by the Commission.

#### 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

Sent to Governor

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 of fees. This leaves the issue of attorney fees to be dealt with in Assembly Bill 831 or another fee bill. The bill was further amended in the Senate to make technical amendments and to provide that the bill will not become operative unless a fee bill is enacted. State Bar Section supports. ENROLLED AND SENT TO GOVERNOR ON APRIL 23.

Passed One House

Assembly Bill 831 (Harris) Trustees Fees and Attorney Fees

This bill would effectuate the Commission recommendations concerning trustee fees and attorney fees. State Bar Section supports. Amended April 18. SET FOR HEARING BY SENATE JUDICIARY COMMITTEE ON MAY 15.

The Executive Secretary reported that Senator Lockyer is concerned about the effect of the bill on small estates. The Senator met with Barbara Miller (court commissioner from Alameda county) and the Executive Secretary and William L. Hoisington (State Bar Section representative) to discuss the bill. However, the Senator did not indicate what amendments, if any, would satisfy his concerns about the bill. He is giving the matter further study.

The Executive Secretary briefly reviewed the study on probate attorney fees prepared by the American Association of Retired Persons.

Assembly Bill 2589 (Sher) In-law Inheritance

State Bar no position. Amended on March 13 (technical amendment). SET FOR HEARING BY SENATE JUDICIARY COMMITTEE ON MAY 15.

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. TO BE SET FOR HEARING IN JUNE.

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). This bill will be amended to include any additional revisions the Commission decides at its May meeting to make in the Probate Code this session. TO BE SET FOR HEARING IN JUNE.

Senate Bill 1855 (Beverly) Creditors of Decedent

State Bar Section supports. Amendments were made in the Senate. See Memorandum 90-52, discussed in these Minutes, infra. PASSED SENATE ON APRIL 19.

Senate Concurrent Resolution 76 (Lockyer) Resolution to Continue

Authority to Study Previously Authorized Topics TO BE SET FOR HEARING IN JUNE.

Set For Hearing in First House

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. Bill has been amended to delete provision providing for attorney fees in action against person who unreasonably refuses to honor power of attorney. This amendment was necessary to eliminate opposition of California Bankers Association and California Land Title Association. The staff suggested that the Commission consider at a future meeting whether to recommend the deleted provision for enactment in 1991. Amended April 26. SET FOR HEARING BY SENATE JUDICIARY COMMITTEE ON MAY 8.

Senate Bill 2649 (Morgan) Uniform Management of Institutional Funds Act

Introduced March 1, 1990. SET FOR HEARING BY SENATE COMMITTEE ON INSURANCE, CLAIMS AND CORPORATIONS ON MAY 2. Staff member Ulrich reported that a meeting was held by two members of the legislative committee staff, Jeff Fuller (representative of the office of the Attorney General), Jonathan Brown (representative of the Association of Independent California Colleges and Universities), and a representative of the author. Staff member Ulrich also was present at the meeting. He reported that a provision is to be added to the bill that (1) unrealized appreciation of real property is not to be recognized and (2) a five-year rolling average will be used to calculate the appreciation. The added provision will have a three-year sunset provision. The effect is that for three years the full effect of the Commission's recommendation will not be realized. It is understood that the Attorney General will not oppose the bill if this provision is added.

The Commission requested that a copy of the bills as amended be provided to each member of the Commission.

STUDY F-672 - PERSONAL INJURY DAMAGES AS  
COMMUNITY OR SEPARATE PROPERTY

The Commission considered Memorandum 90-45 relating to personal injury damages as community or separate property. The Commission tabled the Memorandum. The Commission asked the staff to send a copy of the Memorandum to the State Bar Family Law Section, California Trial Lawyers, and to family law professors to ask for comments on whether existing law should be changed as suggested by Douglas Schroeder in his law review article.

STUDY F-1000 - FAMILY CODE GENERALLY

The Commission considered Memorandum 90-37 and also a Family Relations Law Questionnaire Summary Report printed on April 23, 1990 (attached to these Minutes as Exhibit 1).

As of April 23, 1990, the Commission had received 720 responses to the questionnaire distributed by the Commission. A summary of the responses is outlined below.

Want Either New Code or Act

The great majority (83 percent) of those responding wanted either a new Act or a separate family relations code. Only 17 percent were opposed to a new Act or Code. Of the judges who responded, 82 percent favored a new code or Act.

Prefer New Code Over Act Which Is Part of Existing Code

A clear majority (64 percent) who expressed a view on the issue favored a new code over a new Act which would be part of an existing code. Of those responding, 53 percent favored a new code, 29 percent favored an Act that would be part of an existing code, and 18 percent were in favor of both an Act and a separate code (didn't care which).

The staff estimated that the material that clearly should be included in a new code or Act would constitute three volumes of the annotated codes. Additional material that might be included in the new code or Act would constitute another volume of the annotated codes.

Commission Decisions

The Commission decided to commence work on a new code, which the Commission tentatively decided will be called the "Family Code." The new code would be drafted using the same procedure that was used in preparing the new Probate Code. A portion of the new code will be drafted each year, and a bill will be introduced to add that portion to the new code. However, the first bill will not be submitted to the Legislature until a sufficient amount of the new code has been drafted (perhaps in 1992) to justify the law publishers to publish the enactment as a significant portion of the new code.

The Commission should advise the law publishers of its plans so that publication of the new code will be facilitated. Perhaps they would publish the first portions of the new code as a paperback, with a conversion table so that the new code sections could be related to the annotations in the bound volume of the Civil Code.

The staff is to commence work on the new code, giving priority to the provisions relating to formalities of marriage and judicial determination of void or voidable marriage.

The Commission's objective is to prepare a well organized and well drafted code. The following guidelines will govern the study. The Commission does not plan to review the substantive policy issues presented by the various provisions that will be included in the new code. No significant substantive revisions are planned, although technical and clarifying revisions will be considered. Procedural provisions will be carefully reviewed with a view to making them consistent where consistency is appropriate. The review of the procedural provisions may result in significant changes in procedure. In some areas of substantive law, substantial revisions may be required to conform to constitutional requirements. For example, the rights of unmarried fathers in adoption proceedings is a matter that needs careful study. Also a Uniform Act on adoption is now in preparation, and the Commission may want to consider the new Uniform Act in connection with its recommendation concerning the adoption provisions of the new code. Likewise, the Uniform Commissioners are now engaged in a complete redraft of the Uniform Reciprocal Enforcement of Support Act, and the new version of the Uniform Act (which probably will be

available late in 1991) will be taken into account in drafting the new Family Code. The Commission believes that these guidelines are consistent with the legislative directive to the Commission to undertake this study.

The Commission noted that most of the persons who responded to the questionnaire opposed including in the new code provisions now found in the Evidence Code or Probate Code.

The office of the Legislative Counsel should be requested to review the outline of the new code which was included in Memorandum 90-37. The views of the Family Law Section of the State Bar on the outline also should be solicited.

The Commission desires to develop a working relationship with the Family Law Section of the State Bar similar to the relationship that now exists with the Estate Planning, Trust and Probate Law Section. The representative of the Family Law Section plans to discuss the matter of procedure with the representatives of the Estate Planning, Trust and Probate Law Section.

Similar working relationships should be established with the appropriate section of the Los Angeles County Bar Association and perhaps with other local bar associations. It is important to have the views of these groups on staff prepared material available at the time the Commission considers the staff material at a meeting.

A procedure should be developed that would obtain comments from law professors who work in the family law field.

An effort should be made to obtain the comments of judges who are active in the family law field. It was suggested that Chris Markey, General Counsel of USC, might be willing to review the staff prepared material. He formerly served as a family law judge. His telephone number is (213) 743-7922. His mailing address is: University of Southern California, Office of the General Counsel, University Park, Adm. 353, Los Angeles, CA 90089-5013. Also, Isabella Grant, Superior Court, San Francisco County, (415) 554-5073, is very active in the Family Law section, and she might be willing to review the staff prepared material. Judge Leonard P. Edwards, Superior Court, Santa Clara County, (408) 299-3949, was a member of the Committee that proposed that there be a new Family Relations Code, and he may be

willing to review staff prepared material. The Family Law Section will make suggestions for judges that might be asked to comment on the staff prepared materials.

It was suggested that a person involved with Judicial Council rule making be included among those who are asked to comment on the staff prepared materials.

#### STUDY J-501 - DISCOVERY AFTER JUDICIAL ARBITRATION

The Commission considered Memorandum 90-58 and the attached *Tentative Recommendation Relating to Discovery After Judicial Arbitration*. The Commission thought that existing law relating to discovery after judicial arbitration should not be expanded. There was some sentiment on the Commission for not having any discovery at all after judicial arbitration, other than by court order for good cause shown. The Commission asked the staff to prepare a revised draft and bring it back to the Commission for further consideration.

#### STUDY L-100 - ALTERNATE BENEFICIARIES FOR UNCLAIMED DISTRIBUTION

The Commission considered Memorandum 90-38 concerning alternate beneficiaries for an unclaimed distribution. The Commission approved the staff draft of proposed amendments to Probate Code Section 11603. The staff should send it out as a *Tentative Recommendation* for comment. The staff should make sure that a copy of the TR is sent to the Attorney General's Office. The TR should include a note after the draft section asking whether the proposed three-year period is too short.



STUDY L-300 - PROBATE HOMESTEAD

The Commission considered Memorandum 90-61, relating to the probate homestead. The Commission approved the technical correction to the probate homestead law as set out in the memorandum, and instructed the staff to include the change in currently pending legislation, if possible.

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

The Commission considered Memorandum 90-56 and the draft *Tentative Recommendation Relating to Jurisdiction of Superior Court in Trust Matters*. The Commission approved the draft recommendation. Since this recommendation reaffirms and clarifies earlier sections, this recommendation will not be distributed for comment. The necessary amendments are to be included in SB 1775 currently pending in the Legislature.

STUDY L-700 - COMPENSATION OF COUNSEL IN  
GUARDIANSHIP AND CONSERVATORSHIP PROCEEDING

The Commission considered Memorandum 90-67 and attached *Tentative Recommendation Relating to Compensation of Counsel in Guardianship and Conservatorship Proceeding*. The Commission approved the TR for distribution for comment.

STUDY L-1025 - CREDITOR CLAIMS

SENATE BILL 1855 (BEVERLY) CREDITORS OF DECEDENT

The Commission considered Memorandum 90-52, reporting amendments made in the Senate to the Commission's recommendation on notice to creditors. The staff also reported that Garrett Elmore is actively opposing the bill. The Commission took no action on this matter.

REMEDIES OF CREDITOR WHERE PERSONAL REPRESENTATIVE FAILS TO GIVE NOTICE

The Commission considered Memorandum 90-44 and the First Supplement to the memorandum, addressing miscellaneous issues where the personal representative fails to give a creditor notice of probate. The Commission approved the drafts in the memoranda to distribute for comment as a tentative recommendation.

STUDY L-1029 - DISTRIBUTION AND DISCHARGE

The Commission considered Memorandum 90-69 relating to distribution under the Independent Administration of Estates Act. The Commission approved addition of the following provision to Probate Code Section 11623:

Nothing in this section limits the authority of the personal representative to make preliminary distribution under other provisions of this chapter, whether or not authority is granted to administer the estate under the Independent Administration of Estates Act, Part 6 (commencing with Section 10400).

This provision should be added to SB 1775, if possible, in order to so amend the new Probate Code before it takes effect.

STUDY L-1030 - DISPOSITION OF SMALL ESTATE WITHOUT ADMINISTRATION

The Commission considered an oral suggestion from the staff that the previously approved tentative recommendation relating to disposition of a small estate without administration be revised to permit use of the summary small estate proceedings by the trustee of a trust created by the decedent's will.

Existing law precludes use of the summary proceedings for a small estate by the trustee of a trust created by the decedent's will. The staff proposal would eliminate this restriction. This would permit the trustee to use the summary proceedings, whether or not proceedings for the administration of the estate are or will be conducted in this state. This would be consistent with the proposal in the Tentative

Recommendation that any successor of the decedent could use the summary procedures, despite a pending probate proceeding, if the personal representative agrees.

The Commission adopted the staff suggestion, and the suggested provision will be included in the tentative recommendation which is to be distributed to interested persons and organizations for review and comment.

The Commission discussed whether summary collection procedures should be authorized when additional property of the decedent is discovered after the probate has been closed and the personal representative discharged. The Commission thought the order for final distribution will ordinarily have a clause covering later-discovered property. If not, probate will often have to be reopened to determine whether the property is community or separate. The Commission concluded that the summary collection procedures should not be expanded to cover property discovered after the closing of probate.

STUDY L-1040 - WHEN PUBLIC ADMINISTRATOR MUST PETITION  
FOR APPOINTMENT AS PERSONAL REPRESENTATIVE

The Commission considered Memorandum 90-46 concerning when the public administrator must petition for appointment as personal representative, and a redraft of proposed amendments to Probate Code Section 7620 that was handed out at the meeting. The draft amendments handed out at the meeting read as follows:

Probate Code § 7620 (amended). Petition for appointment as  
personal representative

7620. (a) The public administrator of the county in which the estate of a decedent may be administered shall promptly:

(a) (1) Petition for appointment as personal representative of the estate if ~~no person having higher priority has petitioned for appointment~~ the public administrator has taken possession or control of property of the decedent pursuant to Section 7601.

(b) (2) Petition for appointment as personal representative of any other estate the public administrator determines is proper.

(e) (3) Accept appointment as personal representative of an estate when so ordered by the court whether or not on petition of the public administrator, after notice to the public administrator as provided in Section 7621.

(b) A petition filed by the public administrator under subdivision (a) may name as the proposed personal representative either the public administrator or any interested person who has agreed to serve.

(c) A petition naming the public administrator as proposed personal representative may state that appointment of a personal representative is unnecessary, and may request that a personal representative not be appointed. The court may decline to appoint a personal representative if the court determines all of the following:

(1) All known persons with priority over the public administrator for appointment as personal representative have been given notice of the hearing by mail or personal delivery at least 15 days before the hearing and that none of them have agreed to serve.

(2) The circumstances of the estate do not justify further involvement of the public administrator and the use of public resources.

Comment. Section 7620 is amended to do the following:

(1) To replace the former requirement that the public administrator must petition for appointment as personal representative where no person having higher priority has done so with the new requirement that the public administrator must petition for appointment if the public administrator has taken possession or control of the decedent's property pursuant to Section 7601. Under Section 7601, the public administrator must take possession or control of decedent's property that is subject to loss, injury, waste, or misappropriation.

(2) To add new subdivision (b) to permit the public administrator to recommend to the court that some other person be appointed as personal representative.

(3) To add new subdivision (c) to give the court discretion to decline to appoint a personal representative in an appropriate case.

The Commission asked the staff to send the proposed amendments set out above to the State Bar Estate Planning, Trust and Probate Law Section for comment.

STUDY L-3002 - MOVING CIVIL CODE PROVISIONS INTO THE PROBATE CODE

The Commission considered Memorandum 90-34 and the First Supplement to Memorandum 90-34. The Commission decided to defer a decision on moving the power of attorney provisions to the Probate Code until the new power of attorney statute (discussed below under L-3044) has been drafted.

The Commission decided to defer consideration of the location of the provisions relating to gifts in view of death until Memorandum 90-54 is considered.

The Commission requested the staff to determine whether Section 704 of the Civil Code is necessary in light of Section 5000 of AB 759. If Section 704 is no longer necessary, a tentative recommendation should be drafted proposing its repeal. If the section is necessary, further consideration will be given to where it should be compiled in the statutes.

STUDY L-3015 - DISTRIBUTION OF PROPERTY IN ESTATE

The Commission considered Memorandum 90-42 and the attached draft of a tentative recommendation relating to debts that are contingent, disputed, or not due. The staff should make sure the statute is adequate to ensure that a creditor receives notice of the proposed distribution. The Comment to Section 11464 (distribution subject to assumption of liability) should note that the creditor enforces any liability of the distributee under the section. The Commission approved the tentative recommendation to distribute for comment as so revised.

STUDY L-3018 - LITIGATION INVOLVING DECEDENT

The Commission considered Memorandum 90-28 and the draft *Tentative Recommendation Relating to Litigation Involving Decedents*. The Commission also considered the comments of Team 3 of the Executive

Committee of the State Bar Estate Planning, Trust and Probate Law Section distributed at the meeting. (See Exhibit 2 attached hereto.) The Executive Committee's support of the draft, subject to technical amendments, is noted in Exhibit 3. Support of the concept was also noted by the representative of the Probate and Trust Law Section of the Los Angeles County Bar Association.

The Commission approved the tentative recommendation to be distributed for comment, subject to the following revisions:

Code Civ. Proc. § 366.2. Limitations period after death of person against whom action may be brought

This section should conform to the policy of Code of Civil Procedure Section 353 as proposed to be amended in Senate Bill 1855.

Code Civ. Proc. § 377.110. Beneficiary of decedent's estate

Subdivision (a) of this section should be revised to conform with subdivision (b), as follows:

377.110. For the purposes of this chapter, "beneficiary of the decedent's estate" means:

(a) If the decedent died leaving a will, the sole beneficiary or all of the beneficiaries who succeed to a cause of action or particular item of property of the decedent under the decedent's will.

(b) If the decedent died without leaving a will, the sole person or all of the persons who succeed to the cause of action, or particular item of property that is the subject of the cause of action under Sections 6401 and 6402 of the Probate Code or, if the law of a sister state or foreign nation governs succession to the cause of action or particular item of property, under the law of the sister state or foreign nation.

Code Civ. Proc. § 377.120. Decedent's successor in interest

The Comment to this section should be revised as follows:

Comment. Section 377.120 is new. The term "successor in interest" is derived from the second sentence of former Section 385. "Beneficiary of the decedent's estate" is defined Section 377.110, and refers to takers of assets that are or would be subject to probate. Other successors in interest include persons who take property at the decedent's

death by operation of law or ~~a---pay-on-death---or transfer-on-death---provision---~~ in a contract or account agreement.

The decedent's successor in interest does not include a person to whom the cause of action or property was assigned during the decedent's lifetime.

Code Civ. Proc. § 377.310. Commencement of decedent's cause of action

This section should be revised to correct a typographical error:

377.310. A decedent's cause of action that survives passes to the decedent's successor in interest, subject to Chapter 1 (commencing with Section 7000) of Part 1 of Division 7 of the Probate Code, and an action may be commenced by the decedent's personal representative or, if none, by the decedent's successor in interest.

Code Civ. Proc. § 377.330. Affidavit or declaration by decedent's successor in interest

The provisions for the contents of the affidavit should be revised to require the affiant to state facts in support of the statement that the affiant is the decedent's successor in interest or is authorized to act on behalf of the decedent's successor in interest. See Section 377.330(a)(5).

Code Civ. Proc. § 377.420. Continuation of pending action against decedent

This section should be redrafted to combine subdivisions (a) and (b), making clear that the authority of the court to allow the pending action to continue is subject to the creditor claims provisions in the Probate Code.

Article 5. Insured Claims

These provisions should remain in the Probate Code (§§ 550-555) with the following cross-reference in the Code of Civil Procedure:

§ 377.510. Action on insured claim

377.510. An action to establish the decedent's liability for which the decedent was protected by insurance may be commenced or continued against the decedent's estate as provided in Chapter 1 (commencing with Section 550) of Part 13 of Division 2 of the Probate Code.

[Code Civ. Proc. § 377.550. Damages in action on insured claim]

Subdivision (b)(2) should be revised as follows: "The plaintiff files a claim under in compliance with Section 9390 of the Probate Code." However, since the insured claims sections are not going to be moved into the Code of Civil Procedure, this change should be made in Probate Code Section 554 by an amendment included in SB 1775.

Code Civ. Proc. § 355 (amended). Limitation on new action following reversal on appeal

The meaning of this section was discussed and the staff was directed to consult with Team 3 on their concerns about the reference to a new action being commenced within one year after reversal of a judgment for plaintiffs. The staff noted that the language concerning the death of the plaintiff should be deleted as a conforming change, but that the other proposed changes were not necessary and could be omitted.

Prob. Code § 9390 (amended). Claim covered by insurance

In connection with the First Supplement to Memorandum 90-28, the Commission added the following clarifying language to Section 9390(c):

(c) If the insurer seeks reimbursement under the insurance contract for any liability of the decedent, including, but not limited to, deductible amounts in the insurance coverage and costs and attorney's fees for which the decedent is liable under the contract, an insurer defending an action under Section 550 shall file a claim as provided in this part. Failure to file a claim is a waiver of reimbursement under the insurance contract for any liability of the decedent.

Comment. Subdivision (c) of Section 9390 is amended to make clear that the subdivision is not an independent authorization for reimbursement of the insurer's costs and attorney's fees, but only a procedure for recovering those costs and attorney's fees if the decedent is liable under the contract. This amendment is a clarification of, and not a change in, existing law.

This amendment should be included in SB 1775 currently pending in the Legislature.



STUDY L-3020 - RIGHT OF SURVIVING SPOUSE  
TO DISPOSE OF COMMUNITY PROPERTY

The Commission considered Memorandum 90-47 analyzing comments received on the tentative recommendation relating to the right of the surviving spouse to dispose of community property. The Commission approved the recommendation to print and submit to the Legislature, subject to the following changes:

Prob. Code § 13540 (amended). Right of surviving spouse to dispose of real property

Section 13540 was revised to read:

13540. (a) Except as provided in Section 13541, after 40 days from the death of a spouse, the surviving spouse or the personal representative, guardian of the estate, or conservator of the estate of the surviving spouse has full power to sell, convey, lease, mortgage, or otherwise deal with and dispose of the community or quasi-community real property, and the right, title, and interest of any grantee, purchaser, encumbrancer, or lessee shall be free of rights of the estate of the deceased spouse or of devisees or creditors of the deceased spouse to the same extent as if the property had been owned as the separate property of the surviving spouse.

(b) The surviving spouse or the personal representative, guardian of the estate, or conservator of the estate of the surviving spouse may record, together with the instrument that makes a disposition of property under this section, an affidavit of the facts that establish the right of the surviving spouse to make the disposition.

(c) Nothing in this section affects or limits the liability of the surviving spouse under Sections 13550 to 13553, inclusive, and Chapter 3.5 (commencing with Section 13560).

Prob. Code § 13541 (amended). Recording notice of interest in property

Subdivision (a) of Section 13541 was revised to read:

Section 13540 does not apply ~~if, within 40 days from the death of the spouse, to a sale, conveyance, lease, mortgage or other disposition that takes place after~~ a notice that satisfies the requirements of this section is recorded in the office of the county recorder of the county in which real property is located.

Prob. Code § 13545 (added). Right of surviving spouse to dispose of securities

In subdivision (a), a reference to "the estate of the deceased spouse" was added, parallel to the comparable provision in Section 13540 (right of surviving spouse to dispose of real property".

STUDY L-3031 - ACCEPTANCE BY AGENT OF RESPONSIBILITIES  
UNDER POWER OF ATTORNEY

The Commission considered Memorandum 90-64. The Commission requested that the staff prepare a Tentative Recommendation based on the Missouri provision set out below in place of Civil Code Section 2515, the substance of which was previously approved by the Commission.

The Missouri provision reads:

4. A person who is appointed an attorney in fact under a durable power of attorney has no duty to exercise the authority conferred in the power of attorney, whether or not the principal has become disabled or incapacitated, is missing or is held in a foreign country, unless the attorney in fact has agreed expressly in writing to act for the principal in such circumstances. An agreement to act on behalf of the principal is enforceable against the attorney in fact as a fiduciary without regard to whether there is any consideration to support a contractual obligation to do so. Acting for the principal in one or more transactions does not obligate an attorney in fact to act for the principal in subsequent transactions.

**Comment.** Section 3.4 makes clear that merely appointing a person as attorney in fact in a durable power of attorney imposes no duty on that person to act, even if the attorney in fact knows of the appointment and has received the written power of attorney. A duty to act under this law only arises by reason of an express agreement in writing and reliance is not sufficient to impose a legal duty to act. The subsection thus recognizes that many powers of attorney are given and accepted as a gratuitous accommodation for the principal by the attorney in fact. The principal wants someone to have the ability to act if something needs to be done, but rarely would the principal in a family or friend situation expect that he is imposing a duty to act if the attorney in fact chooses not to do so. Consequently, unless the attorney in fact has agreed to act, accepting a power of attorney appointment imposes no duty to act and he may resign. He may also merely wait until the situation arises and then determine whether to act. The attorney in fact may refuse to act because of the personal inconvenience at the time of

becoming involved, or for any other reason and is not required to justify a decision not to act. The attorney in fact may believe that there are others in a better position to act for the principal or that the situation really warrants appointment of a court supervised guardian or conservator. However, once the attorney in fact undertakes the act under the power of attorney, the transaction is governed by the duties imposed in the law to act as a fiduciary.

STUDY L-3033 - NOTICE IN PROBATE WHERE ADDRESS UNKNOWN

The Commission considered Memorandum 90-57 and the draft *Tentative Recommendation Relating to Notice in Probate Where Address Unknown*. The Commission approved the draft recommendation. Due to the technical and noncontroversial nature of the changes it would make, this recommendation will not be distributed for comment. The necessary amendments are to be included in SB 1775 currently pending in the Legislature.

STUDY L-3038 - SEVEN-YEAR LIMIT ON  
DURABLE POWER OF ATTORNEY FOR HEALTH CARE

The Commission considered Memorandum 90-51 and the attached *Tentative Recommendation Relating to Elimination of Seven-Year Limit for Durable Powers of Attorney for Health Care*. The Commission approved the TR for distribution for comment.

STUDY L-3039 - REVOCABLE TRUST AS LOTTERY BENEFICIARY

The Commission considered Memorandum 90-59, relating to a revocable trust as a lottery beneficiary. The Commission decided not to study this matter because of the other demands on Commission resources and the relatively small number of people impacted by the problem.

STUDY L-3040 - COMMUNITY PROPERTY PRESUMPTION  
FOR JOINT TENANCY UPON DEATH

The Commission considered Memorandum 90-60 and the First Supplement to Memorandum 90-60. The Commission also considered a memorandum prepared by Valerie J. Merritt for Team 2 of the Estate Planning, Trust and Probate Law Section, which was handed out at the meeting and is attached to these Minutes as Exhibit 4.

Memorandum 90-60 suggested that the Commission staff make a study to determine whether to extend to the death situation the Civil Code presumption (for marriage dissolution cases) that property taken in joint tenancy title by married persons is community property. The State Bar Section agreed with the suggestion that such a study be made, and also that consideration be given to making joint tenancy property of married persons community property for all purposes.

The Commission directed the staff to prepare a background study. In making the study, the staff should take into account the comments included in the memorandum from the State Bar Section which was handed out at the meeting. Also, a review should be made of recently published law review articles concerning this issue. The practice under the Probate Code of obtaining a court order that joint tenancy property is actually community property held in joint tenancy form should also be reviewed.

STUDY L-3041 - PROCEDURE FOR CREDITORS TO REACH NONPROBATE ASSETS

The Commission considered Memorandum 90-62. The Commission also considered a memorandum prepared by Valerie J. Merritt for Team 2 of the Estate Planning, Trust and Probate Law Section, which was handed out at the meeting and is attached to these Minutes as Exhibit 5.

The representative of the Estate Planning, Trust and Probate Law Section reported that the Section is now in the final stages of completing work on a draft statute that would provide a creditor's claims procedure for trusts. The development of a procedure for

reaching nonprobate assets will be a difficult task. The statute being drafted by the Section will deal with 99 percent of the problems with respect to nonprobate assets.

The draft statute of the Section will be considered at the June meeting of the Executive Committee.

The Commission decided to defer consideration of this matter until the State Bar Section supplies the Commission with its draft bill relating to trusts. If the State Bar Section draft bill is not provided to the Commission by July 2, the Commission will renew its consideration of this matter.

#### STUDY L-3043 - FORMS FOR MULTIPLE-PARTY ACCOUNTS LAW

The Commission considered Memorandum 90-66. The Commission also considered a memorandum prepared by Valerie J. Merritt for Team 2 of the Estate Planning, Trust and Probate Law Section, which was handed out at the meeting and is attached to these Minutes as Exhibit 6.

The State Bar Section objected to statutory forms, fearing that statutory forms would discourage experimentation and improvement of forms.

The Commission decided not to attempt to develop statutory forms. Instead, the Chairperson is to write to the organizations representing various types of financial institutions. His letter should express the Commission's view that without satisfactory forms the new statute will not be fully effective, that the Commission encourages the financial institutions to develop uniform forms to implement the new statute, and that the Commission and the Estate Planning, Trust and Probate Law Section of the State Bar stand willing to cooperate in the effort to develop such forms.

STUDY L-3044 - NEW POWER OF ATTORNEY STATUTE

Revision of Uniform Durable Power of Attorney Act

The Commission considered the First Supplement to Memorandum 90-51.

The official text of the Uniform Durable Power of Attorney Act was revised by changes approved by the National Conference of Commissioners on Uniform State Laws in 1984 and 1987. The Uniform Commissioners considered the revisions to be clarifying, technical revisions.

The Commission decided that Civil Code Section 2401 should be amended to add the sentence added in 1987 to the official text of Section 5-502 of the Uniform Probate Code (Uniform Durable Power of Attorney Act). The section would read:

Civil Code § 2401. Durable power of attorney not affected by lapse of time or incapacity of principal

SEC. Section 2401 of the Civil Code is amended to read:

2401. All acts done by an attorney in fact pursuant to a durable power of attorney during any period of incapacity of the principal have the same effect and inure to the benefit of and bind the principal and his or her successors in interest as if the principal were competent. Unless the instrument states a time of termination, the power is exercisable notwithstanding the lapse of time since the execution of the instrument.

Comment. The second sentence is added to Section 2401 to conform the section to the official text of the Uniform Durable Power of Attorney Act. The addition of the second sentence to the Uniform Act section was approved by the National Conference of Commissioners on Uniform State Laws in 1987. See Uniform Probate Code § 5-502 (1989 text).

The Commission agreed with the staff recommendation not to revise Civil Code Section 2400.

Comprehensive Statute Governing Powers of Attorney

The Commission considered Memorandum 90-65 (general standard of duty of attorney in fact). The Commission decided to commence work on a comprehensive statute governing powers of attorney. The staff will prepare a background study covering the issues involved in preparing such a statute. The Missouri statute should be considered and the statutes of any other states that have similar provisions also should be considered.

STUDY N-102 - APPLICATION OF ADMINISTRATIVE PROCEDURE ACT

The Commission considered Memorandum 90-23 and the draft statute relating to application of the administrative procedure act. The Commission made the following decisions concerning the draft.

§ 600. Short title

The word "California" should be deleted from the short title, so that the statute is referred to throughout as the "Administrative Procedure Act".

§ 610.370. "Local agency"

This section was revised to read:

"Local agency" means a county, city, district, authority, or other political subdivision or public corporation in the State of California other than the state.

§ 610.400. "Person"

This section was revised to read:

"Person" includes an individual, partnership, corporation, governmental subdivision or unit thereof, or public or private organization or entity of any character.

The Comment should note that other agencies are included within the definition, as well as the trustee of a trust.

§ 610.610. "Provision of law"

This section should be deleted and its substance repeated in the provisions to which it relates.

§ 610.700. "Rule"

A Note should be added to this section that the Commission plans to address the problem of proceedings that are adjudicatory/rulemaking hybrids. Included in this matter are orders that have precedential or stare decisis effect and proceedings that result in both an order and a rule or determination of general application.

§ 610.810. "Statute"

This section should be deleted. If the constitution is intended to be included in a particular section, it should be included expressly.

§ 615.010. Application of division to state

References to the Governor and the Legislature should be capitalized throughout the statute. The references to the "courts" and the "Governor" are ambiguous; the staff should examine the functions of different elements of the court system and gubernatorial functions, and should attempt to be more explicit in the application of the statute to them. Exceptions might be phrased in terms of functions rather than entities.

The exemption for the University of California was deleted from the draft. Commissioner Plant opposed this decision. The University should be alerted to the fact that the Commission's tentative decision is to include the University in the coverage of the administrative procedure act.

§ 615.020. Application of division to local agencies

Subdivision (c) (application of division to school districts) is limited to adjudication and for that reason perhaps should be relocated to Part 4.

§ 615.030. Election to apply division

The staff should investigate whether adoption of the administrative procedure act by a local agency would be done by "rule", or whether adoption of an ordinance or other appropriate procedure is considered to be "rulemaking".

§ 640.010. Adjudicative proceedings; when required; exceptions

The application of the adjudicative proceedings provisions should be limited to hearings required by statute or constitution, and should not extend to hearings required by regulation. The Comment should point out that the public agency may, but is not required to, apply the provisions to hearings required by regulation.



STUDY N-103 - ALJ CENTRAL PANEL

The Commission considered Memorandum 90-36 and the First Supplement to Memorandum 90-36, relating to expansion of the administrative law judge central panel. The Commission also heard remarks of a number of administrative law judges present at the meeting in support of expansion of the central panel. The Commission decided to solicit input from the affected agencies on this matter before coming to any decisions on it.

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

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chairperson

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

**Family Relations Law Questionnaire Summary Report**

Printed on 04/23/90

Questionnaires received:

720

Out of 4,246 questionnaires sent.

	Yes	Yes %	No	No %	Blank
Family Relations as part of existing Code?	272	43%	361	57%	87
Separate Family Relations Code?	406	61%	265	39%	49
FR Code if NO Family Relations Court?	533	91%	54	9%	133
Do NOT want either an Act a separate Family Relations Code:				118	16%
Do NOT want a separate Code - no opinion on an Act:				2	0%
Do NOT want an Act - no opinion on separate Code:				0	0%
Total Opposed:				120	17%
DO want either an Act or a separate Family Relations Code:				573	83%
Strongly favor an Act as part of an existing Code:				145	25%
Favor an Act as part of an existing Code:				22	4%
Total:				167	29%
Strongly favor a SEPARATE Family Relations Code:				243	42%
Favor a SEPARATE Family Relations Code:				58	10%
Total:				301	53%
Favor BOTH an Act and a separate Code - don't care which:				105	18%
Have no opinion - left both questions blank:				27	

Summary Report - Content of Family Relations Code (or Act)  
 Printed on 04/23/90

	Yes	Yes %	No	No %	Blank
<b>Civil Code</b>					
Medical treatment of minors	530	79%	137	21%	53
Minors contracts, enlistment in armed forces	393	60%	267	40%	60
Conveyances or contracts (unsound mind)	203	32%	438	68%	79
Wrongs not actionable	363	55%	297	45%	60
Libel or slander (abuse charges pending)	272	41%	384	59%	64
Acts forbidden by rights of personal relations	378	61%	242	39%	100
Emancipation of Minors Act	599	93%	48	7%	43
Parent and child	654	96%	30	4%	36
Adoption	627	92%	58	8%	35
Freedom from parental custody & control	624	91%	58	9%	38
Uniform Civil Liability for Support Act	657	97%	23	3%	40
Instate Compact on Placement of Children	614	91%	61	9%	45
Priority for foster care & placement	555	82%	118	18%	47
Liability of parent & guardian for acts	447	66%	230	34%	43
Family Law Act	666	97%	22	3%	32
Uniform Parentage Act	662	96%	25	4%	33
<b>Code of Civil Procedure</b>					
Uniform Reciprocal Enforcement of Support	651	95%	33	5%	36
Family Conciliation Court Law	658	96%	28	4%	34
<b>Evidence Code</b>					
NO Evidence Code Provisions in Code	355	49%	365	51%	
Presumption of legitimacy	320	47%	368	53%	32
Leading questions of minor under 10	199	29%	478	71%	43
Blood test to determine paternity	341	49%	357	51%	22
Privileges	216	32%	462	68%	42
Hearsay exceptions to minors	210	31%	473	69%	37
<b>Probate Code</b>					
NO Probate Code provisions in new Code	425	59%	295	41%	
Surviving spouses waiver of rights	133	20%	543	80%	44
Guardian of person of minor	243	35%	455	65%	22
Guardian of estate of minor	223	32%	471	68%	26
Conservatorship of person of adult	121	18%	557	82%	42
Conservatorship of estate of adult	117	17%	559	83%	44
Management or disposition of community property	213	31%	485	69%	22
Other protective proceedings	132	20%	528	80%	60
Personal prop. of absent federal personnel	82	12%	591	88%	47
Temp. possession of family dwelling	165	24%	524	76%	31
Setting aside exempt property other	111	16%	569	84%	40
Probate Homestead	99	15%	579	85%	42
Family Allowance	124	18%	557	82%	39
Spouse or child unprovided for in will	101	15%	581	85%	38
Small estate set-aside	74	11%	601	89%	45
<b>Welfare &amp; Institutions Code</b>					
Dependent children under Juvenile Court Law	394	65%	214	35%	112
Wards under Juvenile Court Law	364	60%	239	40%	117
Interstate Compact on Juveniles	382	63%	220	37%	118
District Attorney enforcement of child supp.	525	84%	102	16%	93

# Family Relations Law Questionnaire Personal Information Summary Report

Printed on 04/23/90

## Role you play in the legal system

Practicing Lawyer	631	88%
Judge	22	3%
Social Worker	12	2%
Court Commissioner	13	2%
Paralegal	5	1%
Court Investigator	0	0%
Other	25	3%
No Answer	12	2%

## Years of Practice (judge or lawyer)

5 years or less	48	7%
6 to 10 years	104	14%
11 to 15 years	181	25%
16 to 20 years	137	19%
21 to 25 years	84	12%
More than 25 years	136	19%
No Answer	30	4%

## Locality in which you practice

### Southern California

Los Angeles	211	29%
San Diego	44	6%
Riverside	11	2%
San Bernardino	8	1%
Orange County	55	8%
Long Beach	10	1%
Other City	48	7%
Rural Area	11	2%

### Northern California

Oakland	26	4%
San Francisco	51	7%
San Jose	42	6%
Sacramento	37	5%
Stockton	2	0%
Santa Cruz	3	0%
Other City	94	13%
Rural Area	57	8%
No Answer	10	1%

## Size of law firm in which you practice

Sole Practitioner	320	44%
2-9 Attorney Firm	272	38%
10-29 Attorney Firm	27	4%
30 + Attorney Firm	26	4%
No Answer	75	10%

## Are you a certified legal specialist?

Yes	169	23%
No	501	70%
No Answer	50	7%

## If you are a judge, do you serve in a particular department?

[Includes Court Commissioners.]

Yes	31	89%
No.	4	11%

**Family Relations Law Questionnaire Summary Report****JUDGES ONLY**

Printed on 04/23/90

Questionnaires received:

22

Out of 4,246 questionnaires sent.

	Yes	Yes %	No	No %	Blank
Family Relations as part of existing Code?	11	52%	10	48%	1
Separate Family Relations Code?	12	55%	10	45%	0
FR Code if NO Family Relations Court?	18	95%	1	5%	3
Do NOT want either an Act a separate Family Relations Code:				4	18%
Do NOT want a separate Code - no opinion on an Act:				0	0%
Do NOT want an Act - no opinion on separate Code:				0	0%
Total Opposed:				4	18%
DO want either an Act or a separate Family Relations Code:				18	82%
Strongly favor an Act as part of an existing Code:				6	33%
Favor an Act as part of an existing Code:				0	0%
Total:				6	33%
Strongly favor a SEPARATE Family Relations Code:				6	33%
Favor a SEPARATE Family Relations Code:				1	6%
Total:				7	39%
Favor BOTH an Act and a separate Code - don't care which:				5	28%
Have no opinion - left both questions blank:				0	

Summary Report - Content of Family Relations Code (or Act)  
 Printed on 04/23/90

	Yes	Yes %	No	No %	Blank
<b>Civil Code</b>					
Medical treatment of minors	16	80%	4	20%	2
Minors contracts, enlistment in armed forces	15	79%	4	21%	3
Conveyances or contracts (unsound mind)	8	42%	11	58%	3
Wrongs not actionable	8	42%	11	58%	3
Libel or slander (abuse charges pending)	8	42%	11	58%	3
Acts forbidden by rights of personal relations	10	59%	7	41%	5
Emancipation of Minors Act	17	85%	3	15%	2
Parent and child	20	100%	0	0%	2
Adoption	18	90%	2	10%	2
Freedom from parental custody & control	18	95%	1	5%	3
Uniform Civil Liability for Support Act	20	100%	0	0%	2
Intstate Compact on Placement of Children	17	89%	2	11%	3
Priority for foster care & placement	16	80%	4	20%	2
Liability of parent & guardian for acts	15	75%	5	25%	2
Family Law Act	19	100%	0	0%	3
Uniform Parentage Act	20	100%	0	0%	2
<b>Code of Civil Procedure</b>					
Uniform Reciprocal Enforcement of Support	19	100%	0	0%	3
Family Conciliation Court Law	19	100%	0	0%	3
<b>Evidence Code</b>					
NO Evidence Code Provisions in Code	15	68%	7	32%	
Presumption of legitimacy	5	24%	16	76%	1
Leading questions of minor under 10	3	14%	18	86%	1
Blood test to determine paternity	6	29%	15	71%	1
Privileges	3	14%	18	86%	1
Hearsay exceptions to minors	3	14%	18	86%	1
<b>Probate Code</b>					
NO Probate Code provisions in new Code	13	59%	9	41%	
Surviving spouses waiver of rights	4	19%	17	81%	1
Guardian of person of minor	8	38%	13	62%	1
Guardian of estate of minor	8	38%	13	62%	1
Conservatorship of person of adult	3	14%	18	86%	1
Conservatorship of estate of adult	3	14%	18	86%	1
Management or disposition of community property	5	24%	16	76%	1
Other protective proceedings	3	14%	18	86%	1
Personal prop. of absent federal personnel	2	10%	19	90%	1
Temp. possession of family dwelling	4	19%	17	81%	1
Setting aside exempt property other	4	19%	17	81%	1
Probate Homestead	4	19%	17	81%	1
Family Allowance	4	19%	17	81%	1
Spouse or child unprovided for in will	4	19%	17	81%	1
Small estate set-aside	4	19%	17	81%	1
<b>Welfare &amp; Institutions Code</b>					
Dependent children under Juvenile Court Law	13	72%	5	28%	4
Wards under Juvenile Court Law	13	72%	5	28%	4
Interstate Compact on Juveniles	13	72%	5	28%	4
District Attorney enforcement of child supp.	16	89%	2	11%	4

# Family Relations Law Questionnaire Personal Information Summary Report

Printed on 04/23/90

## Role you play in the legal system

Practicing Lawyer	0	0%
Judge	22	100%
Social Worker	0	0%
Court Commissioner	0	0%
Paralegal	0	0%
Court Investigator	0	0%
Other	0	0%
No Answer	0	0%

## Years of Practice (judge or lawyer)

5 years or less	1	5%
6 to 10 years	1	5%
11 to 15 years	1	5%
16 to 20 years	4	18%
21 to 25 years	6	27%
More than 25 years	9	41%
No Answer	0	0%

## Locality in which you practice

### Southern California

Los Angeles	5	23%
San Diego	2	9%
Riverside	0	0%
San Bernardino	0	0%
Orange County	4	18%
Long Beach	0	0%
Other City	2	9%
Rural Area	2	9%

### Northern California

Oakland	1	5%
San Francisco	0	0%
San Jose	1	5%
Sacramento	1	5%
Stockton	1	5%
Santa Cruz	0	0%
Other City	0	0%
Rural Area	3	14%
No Answer	0	0%

## Size of law firm in which you practice

Sole Practitioner	0	0%
2-9 Attorney Firm	3	14%
10-29 Attorney Firm	0	0%
30 + Attorney Firm	1	5%
No Answer	18	82%

## Are you a certified legal specialist?

Yes	0	0%
No	9	41%
No Answer	13	59%

## If you are a judge, do you serve in a particular department?

[Includes Court Commissioners.]

Yes	19	86%
No.	3	14%

**Family Relations Law Questionnaire Summary Report****COURT COMMISSIONERS ONLY**

Printed on 04/23/90

Questionnaires received:

13

Out of 4,246 questionnaires sent.

	Yes	Yes %	No	No %	Blank
Family Relations as part of existing Code?	1	8%	11	92%	1
Separate Family Relations Code?	9	69%	4	31%	0
FR Code if NO Family Relations Court?	10	100%	0	0%	3
Do NOT want either an Act a separate Family Relations Code:				3	23%
Do NOT want a separate Code - no opinion on an Act:				0	0%
Do NOT want an Act - no opinion on separate Code:				0	0%
Total Opposed:				3	23%
DO want either an Act or a separate Family Relations Code:				10	77%
Strongly favor an Act as part of an existing Code:				1	10%
Favor an Act as part of an existing Code:				0	0%
Total:				1	10%
Strongly favor a SEPARATE Family Relations Code:				8	80%
Favor a SEPARATE Family Relations Code:				1	10%
Total:				9	90%
Favor BOTH an Act and a separate Code - don't care which:				0	0%
Have no opinion - left both questions blank:				0	



Summary Report - Content of Family Relations Code (or Act)  
 Printed on 04/23/90

	Yes	Yes %	No	No %	Blank
<b>Civil Code</b>					
Medical treatment of minors	12	100%	0	0%	1
Minors contracts, enlistment in armed forces	12	100%	0	0%	1
Conveyances or contracts (unsound mind)	3	27%	8	73%	1
Wrongs not actionable	5	42%	7	58%	1
Libel or slander (abuse charges pending)	5	42%	7	58%	1
Acts forbidden by rights of personal relations	7	58%	5	42%	1
Emancipation of Minors Act	12	100%	0	0%	1
Parent and child	12	100%	0	0%	1
Adoption	12	100%	0	0%	1
Freedom from parental custody & control	12	100%	0	0%	1
Uniform Civil Liability for Support Act	12	100%	0	0%	1
Intstate Compact on Placement of Children	12	100%	0	0%	1
Priority for foster care & placement	12	100%	0	0%	1
Liability of parent & guardian for acts	10	83%	2	17%	1
Family Law Act	12	100%	0	0%	1
Uniform Parentage Act	12	100%	0	0%	1
<b>Code of Civil Procedure</b>					
Uniform Reciprocal Enforcement of Support	12	100%	0	0%	1
Family Conciliation Court Law	12	100%	0	0%	1
<b>Evidence Code</b>					
NO Evidence Code Provisions in Code	4	31%	9	69%	
Presumption of legitimacy	8	67%	4	33%	1
Leading questions of minor under 10	7	58%	5	42%	1
Blood test to determine paternity	8	67%	4	33%	1
Privileges	8	67%	4	33%	1
Hearsay exceptions to minors	8	67%	4	33%	1
<b>Probate Code</b>					
NO Probate Code provisions in new Code	8	62%	5	38%	
Surviving spouses waiver of rights	2	17%	10	83%	1
Guardian of person of minor	5	42%	7	58%	1
Guardian of estate of minor	4	33%	8	67%	1
Conservatorship of person of adult	2	17%	10	83%	1
Conservatorship of estate of adult	1	8%	11	92%	1
Management or disposition of community property	3	25%	9	75%	1
Other protective proceedings	1	8%	11	92%	1
Personal prop. of absent federal personnel	1	8%	11	92%	1
Temp. possession of family dwelling	4	33%	8	67%	1
Setting aside exempt property other	2	17%	10	83%	1
Probate Homestead	2	17%	10	83%	1
Family Allowance	2	17%	10	83%	1
Spouse or child unprovided for in will	2	17%	10	83%	1
Small estate set-aside	2	17%	10	83%	1
<b>Welfare &amp; Institutions Code</b>					
Dependent children under Juvenile Court Law	7	58%	5	42%	1
Wards under Juvenile Court Law	7	58%	5	42%	1
Interstate Compact on Juveniles	7	58%	5	42%	1
District Attorney enforcement of child supp.	12	100%	0	0%	1

# Family Relations Law Questionnaire Personal Information Summary Report

Printed on 04/23/90

## Role you play in the legal system

Practicing Lawyer	0	0%
Judge	0	0%
Social Worker	0	0%
Court Commissioner	13	100%
Paralegal	0	0%
Court Investigator	0	0%
Other	0	0%
No Answer	0	0%

## Years of Practice (judge or lawyer)

5 years or less	0	0%
6 to 10 years	0	0%
11 to 15 years	0	0%
16 to 20 years	7	54%
21 to 25 years	1	8%
More than 25 years	5	38%
No Answer	0	0%

## Locality in which you practice

### Southern California

Los Angeles	10	77%
San Diego	0	0%
Riverside	0	0%
San Bernardino	0	0%
Orange County	1	8%
Long Beach	0	0%
Other City	2	15%
Rural Area	0	0%

### Northern California

Oakland	0	0%
San Francisco	0	0%
San Jose	0	0%
Sacramento	0	0%
Stockton	0	0%
Santa Cruz	0	0%
Other City	0	0%
Rural Area	0	0%
No Answer	0	0%

## Size of law firm in which you practice

Sole Practitioner	1	8%
2-9 Attorney Firm	0	0%
10-29 Attorney Firm	0	0%
30 + Attorney Firm	0	0%
No Answer	12	92%

## Are you a certified legal specialist?

Yes	2	15%
No	5	38%
No Answer	6	46%

## If you are a judge, do you serve in a particular department?

[Includes Court Commissioners.]

Yes	10	77%
No.	3	23%

**Family Relations Law Questionnaire Summary Report**

Printed on 04/23/90

Questionnaires received:

Out of 4,246 questionnaires sent.

**CERTIFIED LEGAL SPECIALISTS ONLY**

169

	Yes	Yes %	No	No %	Blank
Family Relations as part of existing Code?	64	42%	87	58%	18
Separate Family Relations Code?	96	59%	67	41%	6
FR Code if NO Family Relations Court?	123	87%	19	13%	27
Do NOT want either an Act a separate Family Relations Code:				33	20%
Do NOT want a separate Code - no opinion on an Act:				0	0%
Do NOT want an Act - no opinion on separate Code:				0	0%
Total Opposed:				33	20%
DO want either an Act or a separate Family Relations Code:				133	80%
Strongly favor an Act as part of an existing Code:				34	26%
Favor an Act as part of an existing Code:				3	2%
Total:				37	28%
Strongly favor a SEPARATE Family Relations Code:				54	41%
Favor a SEPARATE Family Relations Code:				15	11%
Total:				69	52%
Favor BOTH an Act and a separate Code - don't care which:				27	20%
Have no opinion - left both questions blank:				3	

Summary Report - Content of Family Relations Code (or Act)  
 Printed on 04/23/90

	Yes	Yes %	No	No %	Blank
<b>Civil Code</b>					
Medical treatment of minors	124	79%	33	21%	12
Minors contracts, enlistment in armed forces	100	64%	56	36%	13
Conveyances or contracts (unsound mind)	56	37%	96	63%	17
Wrongs not actionable	94	60%	62	40%	13
Libel or slander (abuse charges pending)	56	36%	99	64%	14
Acts forbidden by rights of personal relations	83	56%	64	44%	22
Emancipation of Minors Act	149	92%	13	8%	7
Parent and child	160	97%	5	3%	4
Adoption	150	91%	14	9%	5
Freedom from parental custody & control	152	93%	12	7%	5
Uniform Civil Liability for Support Act	157	96%	6	4%	6
Intstate Compact on Placement of Children	150	91%	14	9%	5
Priority for foster care & placement	129	80%	33	20%	7
Liability of parent & guardian for acts	103	64%	59	36%	7
Family Law Act	162	98%	4	2%	3
Uniform Parentage Act	160	97%	5	3%	4
<b>Code of Civil Procedure</b>					
Uniform Reciprocal Enforcement of Support	156	96%	7	4%	6
Family Conciliation Court Law	157	96%	6	4%	6
<b>Evidence Code</b>					
NO Evidence Code Provisions in Code	84	50%	85	50%	
Presumption of legitimacy	76	47%	87	53%	6
Leading questions of minor under 10	47	29%	113	71%	9
Blood test to determine paternity	80	49%	84	51%	5
Privileges	51	32%	110	68%	8
Hearsay exceptions to minors	54	34%	107	66%	8
<b>Probate Code</b>					
NO Probate Code provisions in new Code	97	57%	72	43%	
Surviving spouses waiver of rights	31	20%	122	80%	16
Guardian of person of minor	55	35%	104	65%	10
Guardian of estate of minor	50	31%	109	69%	10
Conservatorship of person of adult	25	16%	130	84%	14
Conservatorship of estate of adult	24	16%	130	84%	15
Management or disposition of community property	54	33%	109	67%	6
Other protective proceedings	30	20%	121	80%	18
Personal prop. of absent federal personnel	19	12%	134	88%	16
Temp. possession of family dwelling	40	25%	117	75%	12
Setting aside exempt property other	29	19%	125	81%	15
Probate Homestead	25	16%	129	84%	15
Family Allowance	29	19%	126	81%	14
Spouse or child unprovided for in will	24	16%	130	84%	15
Small estate set-aside	18	12%	134	88%	17
<b>Welfare &amp; Institutions Code</b>					
Dependent children under Juvenile Court Law	85	59%	58	41%	26
Wards under Juvenile Court Law	72	51%	69	49%	28
Interstate Compact on Juveniles	79	57%	60	43%	30
District Attorney enforcement of child supp.	123	84%	24	16%	22

**Family Relations Law Questionnaire Personal Information Summary Report**  
**Printed on 04/23/90**

**Role you play in the legal system**

Practicing Lawyer	166	98%
Judge	0	0%
Social Worker	0	0%
Court Commissioner	2	1%
Paralegal	0	0%
Court Investigator	0	0%
Other	1	1%
No Answer	0	0%

**Years of Practice (judge or lawyer)**

5 years or less	0	0%
6 to 10 years	11	7%
11 to 15 years	46	27%
16 to 20 years	47	28%
21 to 25 years	28	17%
More than 25 years	37	22%
No Answer	0	0%

**Locality in which you practice**

**Southern California**

Los Angeles	37	22%
San Diego	15	9%
Riverside	3	2%
San Bernardino	5	3%
Orange County	13	8%
Long Beach	2	1%
Other City	10	6%
Rural Area	3	2%

**Northern California**

Oakland	2	1%
San Francisco	14	8%
San Jose	16	9%
Sacramento	7	4%
Stockton	0	0%
Santa Cruz	1	1%
Other City	28	17%
Rural Area	12	7%
No Answer	1	1%

**Size of law firm in which you practice**

Sole Practitioner	79	47%
2-9 Attorney Firm	76	45%
10-29 Attorney Firm	7	4%
30 + Attorney Firm	5	3%
No Answer	2	1%

**Are you a certified legal specialist?**

Yes	169	100%
No	0	0%
No Answer	0	0%

**If you are a judge, do you serve in a particular department?**

[Includes Court Commissioners.]

Yes	4	100%
No.	0	0%

**Family Relations Law Questionnaire Summary Report****SOCIAL WORKERS ONLY**

Printed on 04/23/90

Questionnaires received:

12

Out of 4,246 questionnaires sent.

	Yes	Yes %	No	No %	Blank
Family Relations as part of existing Code?	6	50%	6	50%	0
Separate Family Relations Code?	10	83%	2	17%	0
FR Code if NO Family Relations Court?	11	92%	1	8%	0
Do NOT want either an Act a separate Family Relations Code:				0	0%
Do NOT want a separate Code - no opinion on an Act:				0	0%
Do NOT want an Act - no opinion on separate Code:				0	0%
Total Opposed:				0	0%
DO want either an Act or a separate Family Relations Code:				12	100%
Strongly favor an Act as part of an existing Code:				2	17%
Favor an Act as part of an existing Code:				0	0%
Total:				2	17%
Strongly favor a SEPARATE Family Relations Code:				6	50%
Favor a SEPARATE Family Relations Code:				0	0%
Total:				6	50%
Favor BOTH an Act and a separate Code - don't care which:				4	33%
Have no opinion - left both questions blank:				0	

Summary Report - Content of Family Relations Code (or Act)  
 Printed on 04/23/90

	Yes	Yes %	No	No %	Blank
<b>Civil Code</b>					
Medical treatment of minors	11	92%	1	8%	0
Minors contracts, enlistment in armed forces	8	67%	4	33%	0
Conveyances or contracts (unsound mind)	5	56%	4	44%	3
Wrongs not actionable	4	50%	4	50%	4
Libel or slander (abuse charges pending)	8	73%	3	27%	1
Acts forbidden by rights of personal relations	7	88%	1	13%	4
Emancipation of Minors Act	11	100%	0	0%	1
Parent and child	9	100%	0	0%	3
Adoption	10	91%	1	9%	1
Freedom from parental custody & control	10	91%	1	9%	1
Uniform Civil Liability for Support Act	9	100%	0	0%	3
Intstate Compact on Placement of Children	10	91%	1	9%	1
Priority for foster care & placement	9	90%	1	10%	2
Liability of parent & guardian for acts	10	100%	0	0%	2
Family Law Act	9	100%	0	0%	3
Uniform Parentage Act	7	100%	0	0%	5
<b>Code of Civil Procedure</b>					
Uniform Reciprocal Enforcement of Support	8	100%	0	0%	4
Family Conciliation Court Law	11	100%	0	0%	1
<b>Evidence Code</b>					
NO Evidence Code Provisions in Code	2	17%	10	83%	
Presumption of legitimacy	7	70%	3	30%	2
Leading questions of minor under 10	6	75%	2	25%	4
Blood test to determine paternity	9	82%	2	18%	1
Privileges	6	75%	2	25%	4
Hearsay exceptions to minors	6	75%	2	25%	4
<b>Probate Code</b>					
NO Probate Code provisions in new Code	7	58%	5	42%	
Surviving spouses waiver of rights	1	9%	10	91%	1
Guardian of person of minor	6	50%	6	50%	0
Guardian of estate of minor	6	50%	6	50%	0
Conservatorship of person of adult	1	9%	10	91%	1
Conservatorship of estate of adult	1	9%	10	91%	1
Management or disposition of community property	2	17%	10	83%	0
Other protective proceedings	1	9%	10	91%	1
Personal prop. of absent federal personnel	1	9%	10	91%	1
Temp. possession of family dwelling	2	18%	9	82%	1
Setting aside exempt property other	1	9%	10	91%	1
Probate Homestead	1	9%	10	91%	1
Family Allowance	3	25%	9	75%	0
Spouse or child unprovided for in will	2	17%	10	83%	0
Small estate set-aside	1	9%	10	91%	1
<b>Welfare &amp; Institutions Code</b>					
Dependent children under Juvenile Court Law	8	73%	3	27%	1
Wards under Juvenile Court Law	6	60%	4	40%	2
Interstate Compact on Juveniles	7	70%	3	30%	2
District Attorney enforcement of child supp.	9	90%	1	10%	2

# Family Relations Law Questionnaire Personal Information Summary Report

Printed on 04/23/90

## Role you play in the legal system

Practicing Lawyer	0	0%
Judge	0	0%
Social Worker	12	100%
Court Commissioner	0	0%
Paralegal	0	0%
Court Investigator	0	0%
Other	0	0%
No Answer	0	0%

## Years of Practice (judge or lawyer)

5 years or less	0	0%
6 to 10 years	0	0%
11 to 15 years	0	0%
16 to 20 years	1	8%
21 to 25 years	1	8%
More than 25 years	0	0%
No Answer	10	83%

## Locality in which you practice

### Southern California

Los Angeles	0	0%
San Diego	0	0%
Riverside	2	17%
San Bernardino	0	0%
Orange County	0	0%
Long Beach	0	0%
Other City	0	0%
Rural Area	0	0%

### Northern California

Oakland	0	0%
San Francisco	0	0%
San Jose	1	8%
Sacramento	2	17%
Stockton	0	0%
Santa Cruz	1	8%
Other City	0	0%
Rural Area	5	42%
No Answer	1	8%

## Size of law firm in which you practice

Sole Practitioner	0	0%
2-9 Attorney Firm	0	0%
10-29 Attorney Firm	0	0%
30 + Attorney Firm	0	0%
No Answer	12	100%

## Are you a certified legal specialist?

Yes	0	0%
No	8	67%
No Answer	4	33%

## If you are a judge, do you serve in a particular department?

[Includes Court Commissioners.]

Yes	0	0%
No.	0	0%



Family Relations Law Questionnaire Summary Report

Printed on 04/23/90

Questionnaires received:

Out of 4,246 questionnaires sent.

"OTHER" ONLY

25

	Yes	Yes %	No	No %	Blank
Family Relations as part of existing Code?	11	52%	10	48%	4
Separate Family Relations Code?	14	58%	10	42%	1
FR Code if NO Family Relations Court?	21	100%	0	0%	4
Do NOT want either an Act a separate Family Relations Code:				3	12%
Do NOT want a separate Code - no opinion on an Act:				0	0%
Do NOT want an Act - no opinion on separate Code:				0	0%
Total Opposed:				3	12%
DO want either an Act or a separate Family Relations Code:				22	88%
Strongly favor an Act as part of an existing Code:				7	32%
Favor an Act as part of an existing Code:				1	5%
Total:				8	36%
Strongly favor a SEPARATE Family Relations Code:				7	32%
Favor a SEPARATE Family Relations Code:				4	18%
Total:				11	50%
Favor BOTH an Act and a separate Code - don't care which:				3	14%
Have no opinion - left both questions blank:				0	

This category includes the following descriptions:

Attorney - Mediator	1
C.P.A.	1
Consultant	1
Counsel to Board	1
Deputy County Counsel	1
District Attorney	1
Family Law Specialist for Legal Publisher	1
Firm's General Counsel	1
Judicial Attorney	1
Law Librarian	4
Legal Editor	3
Legal Publisher	1
Legal Writer	2
Legislative Analyst	1
Professor of Law	3
Public Guardian/Administrator	1
Retired Superior Court Judge	1

Summary Report - Content of Family Relations Code (or Act)  
 Printed on 04/23/90

	Yes	Yes %	No	No %	Blank
<b>Civil Code</b>					
Medical treatment of minors	23	96%	1	4%	1
Minors contracts, enlistment in armed forces	17	71%	7	29%	1
Conveyances or contracts (unsound mind)	9	39%	14	61%	2
Wrongs not actionable	12	52%	11	48%	2
Libel or slander (abuse charges pending)	12	52%	11	48%	2
Acts forbidden by rights of personal relations	15	68%	7	32%	3
Emancipation of Minors Act	22	92%	2	8%	1
Parent and child	24	100%	0	0%	1
Adoption	23	96%	1	4%	1
Freedom from parental custody & control	23	96%	1	4%	1
Uniform Civil Liability for Support Act	24	100%	0	0%	1
Intstate Compact on Placement of Children	24	100%	0	0%	1
Priority for foster care & placement	23	96%	1	4%	1
Liability of parent & guardian for acts	18	75%	6	25%	1
Family Law Act	24	100%	0	0%	1
Uniform Parentage Act	24	96%	1	4%	0
<b>Code of Civil Procedure</b>					
Uniform Reciprocal Enforcement of Support	23	92%	2	8%	0
Family Conciliation Court Law	21	88%	3	13%	1
<b>Evidence Code</b>					
NO Evidence Code Provisions in Code	12	48%	13	52%	
Presumption of legitimacy	11	46%	13	54%	1
Leading questions of minor under 10	5	22%	18	78%	2
Blood test to determine paternity	11	46%	13	54%	1
Privileges	6	26%	17	74%	2
Hearsay exceptions to minors	5	22%	18	78%	2
<b>Probate Code</b>					
NO Probate Code provisions in new Code	12	48%	13	52%	
Surviving spouses waiver of rights	5	20%	20	80%	0
Guardian of person of minor	12	48%	13	52%	0
Guardian of estate of minor	11	44%	14	56%	0
Conservatorship of person of adult	5	21%	19	79%	1
Conservatorship of estate of adult	5	21%	19	79%	1
Management or disposition of community property	7	28%	18	72%	0
Other protective proceedings	7	29%	17	71%	1
Personal prop. of absent federal personnel	4	17%	20	83%	1
Temp. possession of family dwelling	6	24%	19	76%	0
Setting aside exempt property other	5	20%	20	80%	0
Probate Homestead	5	20%	20	80%	0
Family Allowance	6	24%	19	76%	0
Spouse or child unprovided for in will	6	24%	19	76%	0
Small estate set-aside	4	17%	20	83%	1
<b>Welfare &amp; Institutions Code</b>					
Dependent children under Juvenile Court Law	18	82%	4	18%	3
Wards under Juvenile Court Law	14	64%	8	36%	3
Interstate Compact on Juveniles	15	68%	7	32%	3
District Attorney enforcement of child supp.	19	86%	3	14%	3

Family Relations Law Questionnaire Personal Information Summary Report  
Printed on 04/23/90

Role you play in the legal system

Practicing Lawyer	0	0%
Judge	0	0%
Social Worker	0	0%
Court Commissioner	0	0%
Paralegal	0	0%
Court Investigator	0	0%
Other	25	100%
No Answer	0	0%

Years of Practice (judge or lawyer)

5 years or less	3	12%
6 to 10 years	5	20%
11 to 15 years	5	20%
16 to 20 years	4	16%
21 to 25 years	0	0%
More than 25 years	4	16%
No Answer	4	16%

Locality in which you practice

Southern California

Los Angeles	3	12%
San Diego	0	0%
Riverside	0	0%
San Bernardino	0	0%
Orange County	0	0%
Long Beach	0	0%
Other City	1	4%
Rural Area	0	0%

Northern California

Oakland	5	20%
San Francisco	4	16%
San Jose	2	8%
Sacramento	4	16%
Stockton	0	0%
Santa Cruz	1	4%
Other City	2	8%
Rural Area	3	12%
No Answer	0	0%

Size of law firm in which you practice

Sole Practitioner	1	4%
2-9 Attorney Firm	6	24%
10-29 Attorney Firm	0	0%
30 + Attorney Firm	3	12%
No Answer	15	60%

Are you a certified legal specialist?

Yes	1	4%
No	10	40%
No Answer	4	16%

If you are a judge, do you serve in a particular department?

[Includes Court Commissioners.]

Yes	0	0%
No.	0	0%

Study L-3018

EXHIBIT 2

Minutes, April 26-27, 1990

LAW OFFICES OF

## LOEB AND LOEB

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

1000 WILSHIRE BOULEVARD, SUITE 1800

LOS ANGELES, CALIFORNIA 90017

TELEPHONE (213) 688-3400

TELECOPIER (213) 688-3480

CABLE ADDRESS "LOBAND"

TELEX 67-3108

JOSEPH R. LOEB

(1983-1974)

EDWIN J. LOEB

(1988-1970)

MORTIMER H. NESE

(1988-1988)

WRITER'S DIRECT DIAL NUMBER:

(213) 688-3406

VIA TELECOPIER #(415) 969-6953

## NEW YORK OFFICE

230 PARK AVENUE

NEW YORK, N. Y. 10168

(212) 682-4800

TELECOPIER (212) 682-4880

TELEX 127400

## CENTURY CITY OFFICE

10100 SANTA MONICA BOULEVARD

LOS ANGELES, CALIFORNIA 90067

(213) 688-8000

TELECOPIER (213) 688-8191

TELEX 67-3108

April 23, 1990

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

Re: Memorandum 90-28  
(Litigation Involving Decedent)

Dear Jim:

This letter will contain the response of Team 3 to  
Memorandum 90-28:

We agree to the general concept of all of the changes.  
Our individual comments follow.

## (a) Section 366.2

We prefer no action on CCP §353 until after S.B.  
1855 is enacted. Then, changes should only be made in the new  
statute if it is substantively required. It is too confusing to  
practioners to be making so many changes relating to CCP §353,  
some of which may be cosmetic only.

## (b) Section 377.110

Subparagraph (a) does not include a person taking  
by reason of partial intestacy or as a pretermitted heir. The  
subsection should be amended to add these individuals.

In subsection (b), there is a reference to "cause  
of action or particular item of property" but subsection (a)  
refers only to "particular item of property." Was this an  
intentional difference, or was it an oversight? If it was  
intentional, we could not understand why there should be a  
difference. Also, we recommend deleting everything after the

James Quillinan, Esq.  
April 23, 1990  
Page 2

words "cause of action" on the third line of §377.110(b) on the basis that the deleted material is superfluous and confusing.

(c) Section 377.120 (Comment)

We recommend deleting everything after the first two sentences. The comment creates the impression that P.O.D. beneficiaries have liability. However, they are only liable when another statute provides for liability. This comment should not be suggesting that liability exists beyond that created by a particular statute. Further, there are other ways one can succeed to property in addition to payable on death accounts. Thus, we thought it was better not to refer to that example at all. The comment should therefore be limited to the first two sentences.

(d) Section 377.330

In the proposed Affidavit or Declaration, paragraph (5)(A) and (B) are conclusionary only. The court should know the facts upon which the declarant bases the claim that he is successor. Accordingly, we suggest adding to both (5)(A) and (5)(B) the words "State facts in support thereof."

(e) Section 377.420

In subsection (b) we assume the word "may" was intended to be "shall". If so, we believe it should be changed to "shall." We believe (b) should be mandatory rather than permissive, and the word "shall" makes this clear.

(f) Article 5

We agree that the provisions of Article 5 should be in the Code of Civil Procedure rather than the Probate Code.

(g) Section 377.550(b)(2)

We believe the word "under" should be changed to "in compliance with." It should be clear that simply filing a claim under Section 9390 is not enough; the claim must be timely and meet the other requirements of the statute.

(h) Section 377.610

Is there a priority set forth in a statute or case law in the event the personal representative and the spouse or children all wish to assert causes of action for wrongful death? If such a priority exists, it should be clear that Section 377.610 will not change that priority. If not, perhaps the priority issue should be addressed. The comment would suggest

James Quillinan, Esq.  
April 23, 1990  
Page 3

that the spouse or children should be permitted priority over the personal representative if both wish to pursue causes of action since the comment states that the "authority of personal representative ... is for administrative convenience only."

(i) Section 355 (Staff Draft, Page 15)

The suggested change does not seem to cure the problem identified in the comment. We believe the ambiguity is in the use of the words "a new action." Some members of the Team thought the reference was intended to be to a "retrial" instead of a "a new action". However, if it is only a retrial, it did not appear that the statute of limitations would be applicable. Thus, we were confused about the intent of this change.

(j) Section 376(g)(1) (Staff Draft, Page 20)

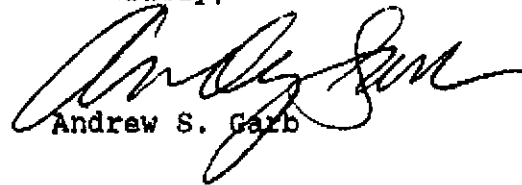
We believe the word "maintained" should have been kept in this subsection and not changed to "commenced". The change creates a material substantive difference and we do not believe such a difference was intended.

(k) Section 9390(c)

The First Supplement dated April 9, 1990 recommends a change which the Team believes is appropriate.

Please let me know if you need anything further.

Cordially,



Andrew S. Garb

ASG:cb

cc: Anne K. Hilker, Esq.  
John T. Harris, Esq.  
Leonard W. Pollard, II, Esq.  
H. Neal Wells, III, Esq.  
Melitta Fleck, Esq.

GAA10727.L01

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

**APR 24 1990****RECEIVED**

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*Vice-Chair*  
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MICHAEL V. VOLLMER, Irvine



555 FRANKLIN STREET  
SAN FRANCISCO, CA 94102  
(415) 561-8289

April 23, 1990

*Advisors*  
KATHRYN A. BALLSUN, Los Angeles  
D. KEITH BILTER, San Francisco  
IRWIN D. GOLDBERG, Los Angeles  
ANNE E. HILKER, Los Angeles  
WILLIAM L. HOBINGTON, San Francisco  
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KENNETH M. KLUG, Fresno  
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ANN E. STODOLN, Los Angeles  
JAMES A. WILLETT, Sacramento  
JANET L. WRIGHT, Fresno

*Technical Advisors*  
MATTHEW S. RAE, JR., Los Angeles  
HARLEY J. SPITLER, San Francisco

*Reporter*  
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:

The Executive Committee of the Estate Planning, Trust and Probate Law Section of the California State Bar met over this past weekend and considered the LRC agenda for April 26-27 and makes the following report:

1. Memos 90-37, 90-45, 90-47, and 90-60. These memos all represent a start on the Family Law study and the implications of Community Property during life and at death. We have designated a special team of Kathy Ballsun, Lloyd Homer, Harley Spitler, Bob Temmerman, Clark Byam, Valerie Merritt, Jim Willett, Bruce Ross and Jack McIlroy to work with the Family Law Section, through Honey Amado. I have enclosed an outline of our proposed issue study-list prepared by the special team and Kathy Ballsun for your information.

I have also enclosed our preliminary response to Memo 90-60. All of the issues presented require careful study. We look forward to working with the Commission, its staff and the Family Law Section in this area.

Mr. John H. De Mouilly  
April 23, 1990  
Page 2

2. Memo 90-66. I have attached a copy of Team 2's report which has been approved by the Executive Committee. We feel strongly the LRC should not be in the business of adopting statutory forms for commercial transactions.

3. Memo 90-69. This memo has not been reviewed by the Executive Committee, but I cannot imagine us not supporting it.

4. Memo 90-42. Support.

5. Memo 90-44. Support subject to review by Neal Wells.

6. Memo 90-56. Support.

7. Memo 90-57. Support.

8. Memo 90-46. No position.

9. Memo 90-67. Support.

10. Memo 90-62. I have enclosed a copy of Team 2's report which has been adopted as the position of the Executive Committee as far as it goes. The real problem here is one of procedure before substance. The proposal points out a problem but the procedure overturns substantive law that is long standing. It would force a probate in all circumstances in order to protect creditors and the Personal Representative. The Commission should take a careful look at whether California's priority system for the payment of creditors should be replaced with a proportional system.

11. Memo 90-51. Support!

12. Memo 90-64. We oppose the Missouri approach as confusing. The issues need more study but the CC Section 2515 looks fine.

13. Memo 90-65. The study should be undertaken but the scope of the study should be broader than the Missouri statute.

14. Memo 90-34. We are still opposed to moving the Powers of Attorney to the Probate Code for the reasons previously stated.

15. Memo 90-54. Our team has been unable to complete its study of this memo. We request that it be put over.

16. Memo 90-38. Support.



Mr. John H. De Mouilly  
April 23, 1990  
Page 3

17. Memo 90-28. Support with some technical amendments to be sent to staff.

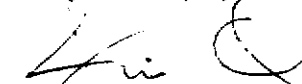
18. Memo 90-35. Videotape wills should not be allowed or allowed to be incorporated by reference. Too Hollywood!. Videotape degrades with time and can be easily erased. Too much temptation for tampering. Video tapes of a will execution should be allowed as evidence and are. The evidence code should not be changed for this limited purpose. There is ample ability under the Evidence Code to enter video and audio tapes as evidence subject to the general rules of evidence. Probate issues should not be accorded some special standard of admissability.

19. Memo 90-59. Oppose as unnecessary and as a waste of time.

20. Memo 90-61. Support.

Thank you for your attention to these matters. If you have any questions, please feel free to call.

Very truly yours,



James V. Quillinan  
Chair

JVQ/h1  
Encls.

cc: Valerie Merritt    Bill Hoisington  
     Terry Ross        Irv Goldring

## EXHIBIT 1

### ESTATE PLANNING, TRUST AND PROBATE LAW/ FAMILY LAW SECTIONS JOINT STUDY ISSUES

#### 1. Agreements Between Spouses and Others

- 1.1. Transmutations
- 1.2. Spousal property contracts and prenuptial agreements
- 1.3. Postnuptial agreements
- 1.4. Standard agreements and requirements

#### 2. Treatment of Joint Tenancies at Death

- 2.1. Abolition of joint tenancy - different rules for spouses and others
- 2.2. Definition of joint tenancy (joint tenancies not community property)
- 2.3. Necessity of spousal property petition to establish community property where title held in joint tenancy
- 2.4. Fraud; constructive trusts
- 2.5. Spousal property; community property or not
- 2.6. Contributions for federal estate taxes and tracing
- 2.7. Joint tenancies for convenience only
- 2.8. Abolishing joint tenancies -- different rules for spouses and others
- 2.9. Clarifying only natural persons as joint tenants
- 2.10. Tax issues; basis adjustments
- 2.11. Presumption joint tenancy as community property
- 2.12. True joint tenancies versus inadvertent joint tenancies
- 2.13. Joint tenancies as substitute for power of attorney

#### 3. Employee Benefits

##### 3.1. Qualified retirement plans

- 3.1.1. Federal preemption of state law - nature, extent, exceptions
- 3.1.2. California offsets compensation for federal preemption
- 3.1.3. QUDRO from probate court
- 3.1.4. Terminable interest rule in California
- 3.1.5. Powers v. Powers -- non-employee spouse with vested community interest; dissolution, death
- 3.1.6. Non-employee's spouse's ability to dispose of 1/2 interest in employee spouse's qualified retirement plan

- 3.1.7. Different rules, divorce versus death
- 3.1.8. Beneficiary designation; consent of spouse
- 3.1.9. Non-employee spouse's ability to designate benefits
- 3.1.10. Power of court to enforce premarital agreement waiver of rights -- specific performance
- 3.1.11. Transmutation and gift tax issues in non-employee's spouse's consent to non-spouse beneficiary
- 3.1.12. Enforceability of agreements that separate property is separate even when federal question
- 3.2. IRAs
  - 3.2.1. Requirement of one spouse's signature to effect beneficiary designation
  - 3.2.2. Consent of non-employee spouse
- 3.3. Public plans; section 403(b); specific rules
- 3.4. Non-qualified deferred compensation plans
  - 3.4.1. Beneficiary designation; no federal presumption
  - 3.4.2. Death benefit only plans
  - 3.4.3. SERPS; Top Hats, etc.
- 3.5. Tax Issues
  - 3.5.1. With federal preemption, designation of property for \$600,000 exemption
  - 3.5.2. Qualification of qualified retirement benefits for marital deduction
- 4. Gifts of community property
  - 4.1. Gift by check signed by one spouse
    - 4.1.1. Charitable gifts
    - 4.1.2. Gifts to children
    - 4.1.3. Revocation by non-donor spouse
    - 4.1.4. Necessity of de minimis rule
    - 4.1.5. Statute of limitations for challenge
  - 4.2. Tax consequences of consent or non-consent
  - 4.3. Transmutation by gift
  - 4.4. Input of charities re revocable gifts

## 5. Contracts with third party beneficiaries

### 5.1. Life insurance

- 5.1.1. Community payment of premiums
- 5.1.2. Non-owner spouse claim to 1/2 of proceeds
- 5.1.3. Term policies; payment of premiums

### 5.2. Multi-party accounts

- 5.3. Community property bank accounts; one spouse designated beneficiaries; rights of the non-consenting spouse
- 5.4. Deferred annuities
- 5.5. POD savings bonds
- 5.6. Buy-sell contracts
- 5.7. Under some circumstances, premarital contracts
- 5.8. Trusts

## 6. Quasi-Community Property

### 6.1. Abolition

- 6.1.1. Alternatives
- 6.1.2. Division at dissolution
- 6.1.3. Treatment as separate property at death
- 6.1.4. Intestacy issues

### 6.2. Difference in treatment of quasi-community property, death and divorce

### 6.3. Partnership rules to recognize validity of property rights?

## 7. Non-Traditional Relations -- Property Rights

- 7.1. Rights of heterosexuals who live together
- 7.2. Rights of homosexuals who live together
- 7.3. Common-law marriage

## 8. Characterization of Property

- 8.1. Tracing
- 8.2. Commingling
- 8.3. Elimination of either the Van Camp or Pereira rules; one rule for all
- 8.4. Presumptions
- 8.5. Community property payment of mortgage on separate property home:
  - 8.5.1. Other family residence rules
  - 8.5.2. Same rules for dissolution or probate

9. Item versus Aggregate Theory of Community Property

9.1. Benefits: aggregate theory

9.1.1. Effect: employee benefits area

9.1.2. Effect: insurance

9.2. Distortions cash versus liquid assets

9.3. Non-prorata division at dissolution/death

9.3.1. Equitable adjustment

10. Considerations Common to All Issues

10.1. Evidentiary issues

10.2. Presumptions; binding effect of court order on other

10.3. Tax issues

10.4. Independent counsel

10.5. Litigation, e.g. forum

## EXHIBIT 2

### PRIORITY OF STUDY ISSUES

1. Category 1 issues were as follows: (a) agreements between spouses and others; (b) employee benefits; (c) treatment of joint tenancy at death; (d) gifts of community property; and (e) characterization of property.

2. Category 2 issues were: (a) third party beneficiary contracts; (b) item versus aggregate theory; (c) quasi-community property; (d) non-traditional relationships.

### EXHIBIT 3

1. Re Requiring Consent for Small Gifts: Team 4 agrees with the consensus of the Family Law Section Standing Committee on Property (South) that consent for small gifts should not be required.

2. Re: Oral Consent to Joinder in a Large Gift. Notwithstanding several prior statements, Team 4 was fairly evenly divided about this issue. A primary reason for the opposition to requiring a written consent was that in the real world, people simply do not memorialize all their decisions, even those that might involve a significant amount of money. The opposing view was that a writing created certainty after death, particularly when only one spouse could testify. Another unresolved issue was what constituted a writing.

## M E M O R A N D U M

TO: Executive Committee

FROM: Valerie J. Merritt, Team 2

RE: Memorandum 90-60 (Community Property Presumption For Joint Tenancy Upon Death)

DATE: April 17, 1990

---

Our information ("empirical studies") shows that married persons put property into joint tenancy title without thinking. Most married persons do not know the distinctions between joint tenancy and community property title and are not even sufficiently sophisticated to know that joint tenancy passes by operation of law and community property does not. Since community property avoids probate so long as the property is passing to the surviving spouse, there is no reason to create a joint tenancy title to avoid probate. It is done as a matter of tradition and habit without thought or knowledge.

We are not opposed to the extension of the presumption that joint tenancy property held by married individuals is community property (currently applicable at dissolution only) to apply at death. However, we believe that if it is to be community property, it should be community property for all purposes. That means that title will not pass automatically to the survivor at death. Each spouse will have a right to dispose of his or her property by will. If there is no will, then under the intestacy statutes, all of the property would pass to the surviving spouse



as community property. It would not be subject to probate administration, except by the election of the surviving spouse, and title could be cleared by affidavit within 40 days of the date of death. I think that the staff should have very clear directions that if the presumption is to be changed, then it should be changed for all purposes. We are opposed to a hybrid form of property, such as the concept of "community property which passes by survivorship."

We are mindful of the differing tax treatment that the federal government accords to community and joint tenancy property. We have always believed that married persons would be best advised to hold title to all of their property in community property title, but that is not the common practice. This Commission cannot change the federal tax law, and thus the question before us is whether California's property laws should be changed for tax purposes. We do not believe the property laws should be changed for tax purposes only. However, we do believe the tax effects should be considered when making property changes. We happen to believe that community property title is preferable for all purposes. That being so, we would favor a change in the presumptions, unless further study uncovers a significant detriment.


Our statement that we are not opposed to extension of the presumption should be read in the context of the staff's proposal to conduct a study. We think this is consistent with the recommendation made at the prior meeting of the Commission to

hire an academic consultant. We also are keeping in mind that Team 4 is looking into community property issues and is actively consulting with members of the Family Law Section in order to develop a coherent position of both sections of the State Bar with regard to community property law issues.

The staff report accompanying memo 90-60 continues to indicate a confusion as to what the case of Estate of Levine states and what the law of California is with regard to joint tenancies and community property. A joint tenancy is not community property under current California law, except for purposes of dissolution of marriage. Joint tenancy title indicates separate property. That presumption can only be rebutted by a showing of an "agreement or common understanding" between the spouses. An agreement changing separate property (e.g., joint tenancy) to community property is necessarily a transmutation. It is difficult to understand how the assertion can be made that the transmutation statute would not be involved at all. A transmutation agreement is precisely the type of agreement at issue in Estate of Levine.

We should make it clear that we heartily support the current transmutation law. The requirement of a writing has eliminated a great deal of "pillow talk" testimony from our courts. Furthermore, since one of the spouses is dead and unavailable to testify at the time this litigation reaches our probate courts, it has also eliminated a great deal of fraud. Thus, whatever decision the Commission makes with regard to a change in

community property presumptions, we hope that the Commission will not undermine the current requirement of the transmutation statutes that transmutation agreements be in writing.

  
Valerie J. Merritt

/lt

## M E M O R A N D U M

TO: Executive Committee

FROM: Valerie J. Merritt, Team 2

RE: Memorandum 90-62 (Procedure for Creditor to Reach Non-Probate Assets)

DATE: April 19, 1990

---

*Procedure  
before Substance*

*Priority vs Probate*

The Memorandum proposes the adoption of a new procedure for the personal representative of a probate estate to reach virtually any asset of the decedent's in order to satisfy the claims of creditors and expenses of administration. The exhibits to the Memorandum include a Missouri statute and the Uniform Probate Code provision.

We are very concerned about the implications of this proposal. It is our perception that this proposal is a dramatic change from existing law. The proposal suggests that non-probate assets are liable for their proportionate share of claims if the probate estate is inadequate. It is up to the personal representative to seek contribution with regard to the non-probate assets. It is a shift to pro rata contribution from all assets. While we understand that this may be more equitable (if looked at merely as a theoretical scheme), we feel it will lead to dramatic escalation of costs of probate estate administration. We believe that the equity is not worth the administrative nightmare, the added complexity, the increased costs of running the courts and the increased costs to the average citizen.

We believe that both of the proposed systems create a mandatory probate for every case. A situation which would now not need probate (such as all assets in joint tenancy, or payable-on-death contracts) would be changed to a situation where in order to invoke pro rata contribution, a probate would be necessary. A lawyer representing a beneficiary or a creditor would have to advise that they institute probate proceedings in order to protect themselves. There will be a proliferation of probate proceedings.

Not only will there be more probate proceedings, but they will be more lengthy probate proceedings. The procedure cannot really work effectively until the creditors' claim period has closed. Both proposed laws have allowed for the procedure to be started up to 1 year (or 2 years) from the date of death. By the time the procedure has been fully implemented, we perceive that several years will have passed.

We don't believe that this is going to be a measure that will be popular with estate beneficiaries in the State of California. The clear trend of the law has been to simplify the probate process and encourage prompt closing of estates, not to make the process more complex and increase the time estates remain open.

Our perception is that if this law were in effect, lawyers

would be advising all personal representatives of estates which are not adequate to meet all creditors' claims, expenses of administration and taxes to implement the procedure. We also think that protective steps will be taken. We have no idea what will happen when the personal representative tries to join the trustee of the qualified pension plan or an insurance company in order to have a protective claim before benefits are paid to an individual. We are concerned about the personal representatives' liability if they have not notified such stake holders and they later discover the probate assets are inadequate to fully cover all their obligations.

We have in the past suggested that the laws be improved with regard to the liability of non-probate assets to the claims of creditors. We still believe that to be true. However, our belief is that there should be a priority of certain assets available to creditors. Our priority would be first, the assets subject to probate administration; second, the assets of any intervivos trusts established by the decedent; and third, other non-probate assets. We believe that priority gives guidance to the creditors as to where to seek payment. We also believe that the burden should not be on the personal representative of the probate estate but should be on the creditors to seek the assets. We don't think that is unreasonable. It will limit the number of probates in situations where they would not otherwise be required.

We believe the proposal creates a system which appears equitable on its face and will not work in practice. We believe it is necessary to resolve the basic policy issues before commenting on details of either the Missouri statute or the Uniform Probate Code procedure.

  
Valerie J. Merritt

/lt

## M E M O R A N D U M

TO: Executive Committee

FROM: Valerie J. Merritt, Team 2

RE: Memorandum 90-66 (Forms for Multiple Party Account Law)

DATE: April 19, 1990

---

Team 2 is of the opinion that the California Law Revision Commission should not be developing forms for the Multiple Party Account Law. We also believe that any forms that are developed should not be in the statutes because statutory forms will discourage experimentation and improvement.

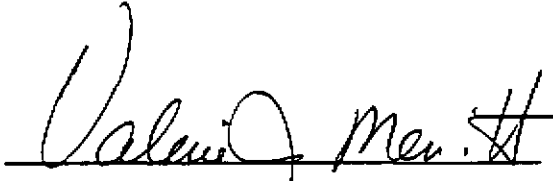
We are wondering whether the forms which are proposed here were developed after any contact with the credit unions which have been using multiple party accounts for a number of years. We believe that credit unions should be contacted for their forms if any form development is to be done by the staff of the Commission. We are also wondering what role the California Bankers Association had in developing this particular draft. It was the perception of our Team that these forms did not look like the kind of forms the California Bankers Association would be likely to favor.

We have expressed concern in the past that it will be difficult to devise forms which can be understood and used by consumers. The forms proposed by the staff are an illustration of that difficulty. The language used in the forms would not



pass a "plain English" test. The average consumer doesn't deal with "parties;" the average consumer deals with "persons." The plain English could be further improved by talking about "when one person dies, ownership passes to the surviving person(s)." "At the death of the last surviving person, ownership passes to the persons whose names have been written on this' form (payable-on-death beneficiaries). The ownership will not be part of any of the last surviving person's estate."

The single party or multiple party account form should be split so that the single party form is separate from the multiple party form.

  
Valerie J. Merritt

/lt