

CALIFORNIA LAW REVISION COMMISSION

4000 MIDDLEFIELD ROAD, SUITE D-2
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(415) 494-1335



02/28/92

DATE: • March 12 & 13	PLACE: • Sacramento
• March 12 (Thursday) 10:00 am - 5:00 pm -- State Capitol, Room 2040	
• March 13 (Friday) 9:00 am - 3:00 pm -- State Capitol, Room 113	
<p>NOTE: Changes may be made in this agenda, or the meeting may be rescheduled, on short notice. IF YOU PLAN TO ATTEND THE MEETING, PLEASE CALL (415) 494-1335 AND YOU WILL BE NOTIFIED OF LATE CHANGES.</p> <p>Individual items on this agenda are available for purchase at the prices indicated or to be determined. Prices include handling, shipping, and sales tax. Orders must be accompanied by a check in the proper amount made out to the "California Law Revision Commission".</p>	

FINAL AGENDA*for meeting of***CALIFORNIA LAW REVISION COMMISSION**Thursday, March 13, 1992

1. MINUTES OF JANUARY 23-24, 1992, COMMISSION MEETING (sent 2/4/92)
2. STUDY N-100 - ADMINISTRATIVE ADJUDICATION
 - N-106 - IMPARTIALITY OF DECISION MAKER
 - Revised Draft
 - Memorandum 92-15 (NS) (sent 2/13/92) (\$8.50)
 - N-107 - THE PROCESS OF ADMINISTRATIVE ADJUDICATION
 - Policy Issues
 - Memorandum 92-4 (NS) (sent 1/13/92) (\$8.50)
 - First Supplement to Memorandum 92-4 (NS) (sent 1/17/92) (\$5.50)
 - Second Supplement to Memorandum 92-4 (NS) (sent 2/26/92) (\$5.50)
 - Background Study (sent 10/4/91) (\$25.00)

NOTE. We will continue consideration of this matter commencing at page 8 of the memorandum and page 76 of the background study, relating to "Official Notice".

Sanctions in Proceedings

Memorandum 92-22 (RJM) (sent 2/26/92) (\$5.50)

N-107 - THE PROCESS OF ADMINISTRATIVE ADJUDICATION
Staff Draft of Previously Decided Policy Issues
Memorandum 92-16 (NS) (sent 2/25/92) (\$18.00)

3. 1992 LEGISLATIVE PROGRAM

Memorandum 92-13 (NS) (to be sent)

NOTE. Agenda item 3 will be considered on Friday, March 13, if time does not permit on Thursday, March 12.

4. ADMINISTRATIVE MATTERS

Priorities and New Topic Suggestions
Memorandum 92-14 (NS) (enclosed) (\$8.50)

Communications from Interested Persons

NOTE. Agenda item 4 will be considered on Friday, March 13, if time does not permit on Thursday, March 12.

Friday, March 13, 1992

5. STUDY F-1000 - FAMILY CODE

Family Code Draft
Assembly Bill 2650 (Speier) (sent 2/20/92)

Explanatory Text for Recommendation
Memorandum 92-12 (SU) (enclosed) (\$5.50)

Corrective Amendments to Bill
Memorandum 92-19 (SU) (to be sent)

Conforming Revisions in Other Statutes
Memorandum 92-18 (SU) (enclosed) (\$35.00)

6. STUDY F-521.1/L-521.1 - COMMUNITY PROPERTY IN JOINT TENANCY FORM

Policy Issues
Memorandum 92-17 (NS) (sent 2/26/92) (\$8.50)
Consultant's Background Study (sent 1/6/92) (\$18.00)

7. STUDY L-708 - SPECIAL NEEDS TRUST

Memorandum 92-20 (RJM) (sent 2/14/92) (\$8.50)

8. STUDY L-640.10 - LIVING TRUST INDUSTRY

Presentation by State Bar "Truth Squad"

9. STUDY L-3044 - COMPREHENSIVE POWERS OF ATTORNEY STATUTE

Policy Issues

Memorandum 92-21 (SU) (sent 2/25/02) (\$25.00)

10. STUDY L-3016.01 - STANDING TO SUE FOR WRONGFUL DEATH

Memorandum 92-10 (RJM) (to be sent)

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MEETING SCHEDULE

<u>February 1992</u>	No Meeting	
<u>March 1992</u>		<u>Sacramento</u>
Mar. 12 (Thur.)	10:00 a.m. - 5:00 p.m.	
Mar. 13 (Fri.)	9:00 a.m. - 3:00 p.m.	
<u>April 1992</u>	No Meeting	
<u>May 1992</u>		<u>San Francisco</u>
May 14 (Thur.)	10:00 a.m. - 6:00 p.m.	
May 15 (Fri.)	9:00 a.m. - 4:00 p.m.	
<u>June 1992</u>	No Meeting	
<u>July 1992</u>		<u>San Diego</u>
July 9 (Thur.)	10:00 a.m. - 6:00 p.m.	
July 10 (Fri.)	9:00 a.m. - 4:00 p.m.	
<u>August 1992</u>	No Meeting	
<u>September 1992</u>		<u>Sacramento</u>
Sep. 10 (Thur.)	10:00 a.m. - 5:00 p.m.	
Sep. 11 (Fri.)	9:00 a.m. - 3:00 p.m.	
<u>October 1992</u>	No Meeting	
<u>November 1992</u>		<u>Los Angeles</u>
Nov. 12 (Thur.)	10:00 a.m. - 6:00 p.m.	
Nov. 13 (Fri.)	9:00 a.m. - 4:00 p.m.	
<u>December 1992</u>	No Meeting	

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION
MARCH 12-13, 1992
SACRAMENTO

A meeting of the California Law Revision Commission was held in Sacramento on March 12 and 13, 1992.

Commission:

Present:	Edwin K. Marzec Chairperson Arthur K. Marshall Vice Chairperson (Mar. 13) Christine Byrd	Bion M. Gregory Legislative Counsel (Mar. 13) Daniel M. Kolkey Forrest A. Plant Sanford Skaggs Colin Wied (Mar. 13)
Absent:	Bill Lockyer Senate Member	Terry B. Friedman Assembly Member

Staff:

Present:	Nathaniel Sterling Stan Ulrich	Pamela K. Mishey Robert J. Murphy III
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Consultants:

Michael Asimow, Administrative Law (Mar. 12)
Jerry Kasner, Community Property (Mar. 13)
Robert J. Sullivan, Administrative Law (Mar. 12)
Richard K. Turner, Administrative Law (Mar. 12)

Other Persons:

Larry Alamao, Department of Real Estate, Sacramento (Mar. 12)
Seymour R. Appleby, California Probate Referees Association,
Hayward (Mar. 13)
Kathryn A. Ballsun, Executive Committee, State Bar Estate Planning,
Trust and Probate Law Section, Los Angeles (Mar. 13)
Monica Dell'Osso, Executive Committee, State Bar Estate Planning,
Trust and Probate Law Section, Oakland (Mar. 13)
Karl Engeman, Office of Administrative Hearings, Sacramento (Mar. 12)
Catherine Frank, Office of Administrative Hearings, Sacramento
(Mar. 12)
Paul J. Goda, S.J., Professor, School of Law, Santa Clara
University, Santa Clara (Mar. 13)
Don E. Green, Executive Committee, State Bar Estate Planning, Trust
and Probate Law Section, Sacramento (Mar. 13)
Robert Hargrove, Department of Motor Vehicles, Sacramento (Mar. 12)

Bill Heath, California School Employees Association, San Jose (Mar. 12)
Judith Imel, Department of Health Services, Sacramento (Mar. 13)
Steve Kahn, Attorney General, Department of Justice, Sacramento (Mar. 12)
Tim McArdle, California Unemployment Insurance Appeals Board, Sacramento (Mar. 12)
Melanie McClure, State Teachers' Retirement System, Sacramento (Mar. 12)
Michael Mount, Department of Developmental Services, Sacramento (Mar. 13)
Greg Newington, Board of Accountancy, Sacramento (Mar. 12)
Ronald C. Pearson, Executive Committee, Probate and Trust Law Section, Los Angeles County Bar Association, Los Angeles (Mar. 13)
Joel T. Perlstein, Public Utilities Commission, San Francisco (Mar. 12)
Virginia L. Rose, Department of Developmental Services, Sacramento (Mar. 13)
Sterling (Terry) Ross, Executive Committee, State Bar Estate Planning, Trust and Probate Law Section, Mill Valley (Mar. 13)
Willard Shank, Public Employment Relations Board, Sacramento (Mar. 12)
John Sikora, Association of California State Attorneys and Administrative Law Judges, Sacramento (Mar. 12)
Thomas J. Stikker, Executive Committee, State Bar Estate Planning, Trust and Probate Law Section, San Francisco (Mar. 13)
Robert E. Temmerman, Jr., Executive Committee, State Bar Estate Planning, Trust and Probate Law Section, Campbell (Mar. 13)

MINUTES OF JANUARY 23-24, 1992, COMMISSION MEETING

The Minutes of the January 23-24, 1992, Commission meeting were approved as submitted by the staff.

ADMINISTRATIVE MATTERS

BUDGET MATTERS

The Executive Secretary reported that the Commission's actions to reduce expenditures during the 1991-92 fiscal year are proving effective and the Commission is living within its reduced budget. The Commission should have sufficient funds to schedule an extra meeting and retain a consultant on judicial review of administrative decisions. See discussion below.

The Executive Secretary also reported that the Commission, and all state agencies, has been directed by the Department of Finance to be prepared to receive a further reduction of 5, 10, or 15 percent in the 1992-93 budget. The exact amount will be determined in late May on the basis of state revenues at that time. The Commission directed the staff to make clear to the Department of Finance the devastating impact any budget cuts would have on the Commission's productivity, and to make a case against any cuts for the Commission.

MEETING SCHEDULE

The Commission added a meeting on April 23 and 24 in Sacramento, and changed the May 14 and 15 San Francisco meeting to May 21 and 22 in Sacramento. The September 10 and 11 Sacramento meeting was relocated to San Francisco.

CONSULTANT CONTRACT FOR JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS

The Commission reviewed the status of the administrative law study, and concluded that it would be desirable to prepare a package that includes both administrative adjudication and judicial review of administrative decisions. The Commission decided to begin the judicial review portion of the study by having a background study prepared.

The Commission unanimously adopted a motion directing the Executive Secretary to execute on behalf of the Commission a contract with Professor Michael Asimow of UCLA Law School to prepare a background study on judicial review of administrative decisions. The study should analyze existing California law relating to judicial review, and should discuss relevant policy and practice concerning the issues identified. The consultant may consider views of agencies, judges, practitioners, and other interested persons, but the consultant should give the Commission his best judgment as to whether existing law should be retained or whether any changes should be made. The contract should call for delivery of the study within a year after execution of the contract or such other reasonable time as is agreed to by the Executive Secretary and the consultant. Compensation for the study is to be in the amount of \$5,000, plus travel expenses in attending Commission meetings and legislative hearings, when requested by the

Commission through the Executive Secretary. Partial payment of one-half the compensation for the study may be made on or before December 31, 1992, (if the completed study has not been delivered before that time) on demonstration to the Executive Secretary of satisfactory completion of at least one-half the study; the remainder of the compensation shall be paid on delivery of the study. The contract should conform to the standard form of contract used by the Law Revision Commission for expert consultants.

1992 LEGISLATIVE PROGRAM

The Commission considered Memorandum 92-13 and the First Supplement to Memorandum 92-13, relating to the 1992 legislative program.

RELATIONS WITH COMMISSION'S LEGISLATIVE MEMBERS

With respect to the difficulty the Commission has had in placing its bills with its current legislative members, the staff reported that we have been unsuccessful in scheduling a meeting between the Chairperson, Executive Secretary, and Assembly Member Friedman to discuss this matter. Commissioner Skaggs has discussed the situation by telephone with Senator Lockyer, who indicates a willingness to help place the Commission's bills. Senator Lockyer also indicated it might be worthwhile to write the Rules Committee again to suggest that Commission bills not be counted against the author for bill count purposes.

ASSEMBLY BILL 1719 (HORCHER)--NONPROBATE TRANSFER OF COMMUNITY PROPERTY

The staff reported that the Public Employees Retirement System and the State Teachers Retirement System have contacted the staff with concern about the provision of AB 1719 that permits a written claim of an adverse party to interrupt the flow of payments on which beneficiaries and their families may rely for support. The staff indicated it has worked out language that would except the public pension plans from the written claim provision.

The Commission felt that excepting the public pension plans is acceptable but should be done only as a last resort. A better approach is to preclude a written claim from disrupting a periodic payment (as opposed to a lump sum payout) from any pension plan, public or private. The Executive Secretary was directed to continue working with the public pension plans to see whether a more refined provision along these lines can be developed.

SENATE BILL 1372 (DEDEH)--MISCELLANEOUS CREDITORS REMEDIES

The Commission approved the proposed changes set out in the First Supplement to Memorandum 92-13.

NONPROBATE TRANSFER TO TRUSTEE NAMED IN WILL

This Commission recommendation has not yet been added to a bill. For the action on this matter, see discussion under Study L-3016.01 in these Minutes.

UNIFORM STATUTORY RULE AGAINST PERPETUITIES

The staff reported that it has not added to the general probate bill the technical change concerning honorary trusts approved by the Commission at the January meeting. The staff has received different opinions on this matter from different law professors and the Beverly Hills Bar Association. The staff plans to defer this matter until opinion coalesces; the Commission approved this approach.

STUDY F-521.1 - COMMUNITY PROPERTY IN JOINT TENANCY FORM

The Commission considered Memorandum 92-17 and the First Supplement to Memorandum 92-17, along with the consultant's background study, relating to community property in joint tenancy form. The Commission's consultant, Professor Jerry Kasner, presented the background study.

The Commission, consultant, State Bar Probate Section representatives, and other persons present at the meeting, had a wide-ranging discussion of issues involved with community property held in joint tenancy form, including the historical development of the legal issues, the differences between the various forms of tenure (including income tax treatment), the impact of the transmutation statute, the expectations of ordinary persons, and the situation in other community property jurisdictions. The discussion also included a range of possible clarifying legislative measures, from community property presumptions and recognition of survivorship rights, to new title forms and writing requirements, and even abolition of spousal joint tenancies.

The Commission concluded that further input on these issues is required, including input from the family law bar and the lending and title insurance industries, in addition to the estate planning perspective. In order to obtain this input, the staff is to prepare and circulate for comment a memorandum indicating in succinct form the key policy issues and proposed solutions that have been suggested. The Commission will schedule this matter for further consideration when broader input has been received.

STUDY F-1000 - FAMILY CODE

The Commission considered Memorandum 92-12 and its First Supplement relating to the explanatory text of the Family Code recommendation, Memorandum 92-18 concerning conforming revisions in other statutes (AB 2641), and Memorandum 92-19 and its First Supplement concerning corrective amendments to the Family Code bill (AB 2650).

EXPLANATORY TEXT

The explanatory text for the Family Code (attached to Memorandum 92-12) was approved with the following revision:

The Commission recognizes that much work remains to be done to improve the statutes and will continue to monitor the experience under the new code with a view toward correcting defects. The new structure should also make the statutes

more accessible both for procedural and substantive revisions. In the course of reviewing California family law, the Commission has been compiling a list of substantive topics and more complicated procedural issues that may merit further study. ~~At this time, the Commission is not proposing substantive revisions consistent with the Legislature's charge but plans to consider future substantive revisions as appropriate.~~

The Commission has reserved the question of whether to undertake the study of substantive revisions of the Family Code.

CONFORMING REVISIONS -- AB 2641

The Commission approved the conforming revisions for amendment into AB 2641 in the form presented in Memorandum 92-18.

FAMILY CODE AMENDMENTS -- AB 2650

The Commission approved the amendments to the Family Code bill (AB 2650) as set out in Memorandum 92-19. In response to comments attached to the First Supplement to Memorandum 92-19, the Commission decided that the existing language and structure of Civil Code Sections 5103, 5125, 5125.1, and 5127 should be restored so that the Family Code bill can move forward. The staff was authorized to work with interested persons to see if any mutually agreeable improvements can be made in the existing language.

STUDY L-521.1 - COMMUNITY PROPERTY IN JOINT TENANCY FORM

See discussion in these Minutes under STUDY F-521.1.

STUDY L-640.10 - LIVING TRUST INDUSTRY

PRESENTATION OF STATE BAR "TRUTH SQUAD"

Kathryn Ballsun, Chair of the Truth Squad of the Executive Committee of the State Bar Estate Planning, Trust and Probate Law Section, addressed the Commission on problems concerning irresponsible promotion of living trusts in California. The Commission also received

a packet of newspaper advertisements and fliers promoting living trusts. Ms. Ballsun reported on the efforts of the bar group to educate the public about advantages and disadvantages of having a will and having a funded living trust. The group requested the Commission's assistance in studying the problem they identify and finding remedies.

The Commission directed the staff to look into the matter and consider whether it would be feasible to require a warning statement on living trusts sold or distributed in California. The use of such statements on power of attorney forms was noted.

STUDY L-708 - SPECIAL NEEDS TRUST FOR
DISABLED MINOR OR INCOMPETENT PERSON

The Commission considered Memorandum 92-20 and the attached staff draft of a recommendation relating to *Special Needs Trust for Disabled Minor or Incompetent Person*. The Commission approved the revisions to the statute and Comments set out in the memorandum.

Section 3604 provides that a special needs trust is subject to continuing jurisdiction of the court. The Commission wanted the section to make clear that, for the purpose of supervising the trust, a superior court may accept a transfer from the state or federal court giving judgment or approving settlement.

The Commission approved the following revision to subdivision (c) of Section 3605 as suggested at the meeting:

(c) At the death of the special needs trust beneficiary or on termination of the trust, ~~if the trustee knows or has reason to believe the beneficiary received services or benefits from the Department of Health Services, Department of Mental Health, or Department of Developmental Services,~~ the trustee shall give notice of the beneficiary's death or the trust termination to the State Department of Health Services, the State Department of Mental Health, and the State Department of Developmental Services as provided in Section 1215, addressed to the director of that department at the Sacramento office of the director. Failure to give the notice prevents the running of the statute of limitations against that department's claim.

The Commission asked the staff to revise subdivision (d) of Section 3605 so reimbursement claims of state agencies will be filed initially with the trustee. If the trustee rejects the claim, the agency should be able to petition the court for an order directing the claim to be paid, rather than having to commence a civil action. The staff should consider what the appeal rights from the order would be.

Terry Ross agreed to submit proposed language for the Comment to make clear that, after a special needs trust is established, Section 3604 provides the exclusive method for challenging the trust, and that Section 15306(b) (liability of trust where beneficiary ineligible for public social services under Division 9 of Welf. & Inst. Code) does not apply.

STUDY L-3016.01 - STANDING TO SUE FOR WRONGFUL DEATH

The Commission considered Memorandum 92-10. The Commission approved the amendment and addition proposed in the memorandum.

STUDY N-106 - IMPARTIALITY OF DECISION MAKER

The Commission considered Memorandum 92-15, relating to the revised draft of decisions concerning the impartiality of the decision maker in administrative adjudication. The Commission made the following changes in the draft. As revised, the draft should be incorporated in the body of the administrative adjudication statute being developed.

§ 642.270. Separation of functions

The Comment to subdivision (b)(3), relating to the right of the prosecutor to advise the decision maker concerning a settlement proposal advocated by the prosecutor, should emphasize that the right is limited to advice in support of the proposed settlement. Reference

might be made to the good faith requirement applicable in labor law, if appropriate citations are provided to the staff by persons familiar with this requirement.

Subdivision (b)(4) was revised to read:

A person who has served as investigator or advocate in an adjudicative proceeding may serve as a supervisor of the decision maker or assist or advise the decision maker in the same proceeding if the proceeding is nonprosecutorial in character and the service, assistance, or advice occurs more than one year after the time the person served as investigator or advocate.

§ 642.810. Scope of chapter [on ex parte communications]

This section was revised to read:

642.810. Nothing in this chapter limits the authority of an agency by regulation to impose ~~greater~~ different restrictions on ex parte communications than are provided in this chapter for a proceeding that is nonprosecutorial in character, so long as the restrictions ensure that the contents of an ex parte communication are disclosed on the record and all parties have an opportunity to address the communication.

The Comment to this section should note that nothing in the chapter precludes an in camera examination of proffered evidence. Cf. Section 646.350 (lodging discovery matters with the court).

The other provisions of the chapter that refer to disclosure of an ex parte communication should be revised to refer to disclosure of the contents of the communication.

§ 642.820. Ex parte communication prohibited

The prohibition on ex parte communications should extend to communications to an advisor of the decision maker, in the manner of 1981 Model State APA § 4-213(b), which provides:

[A]ny presiding officer may receive aid from staff assistants if the assistants do not (i) receive ex parte communications of a type that the presiding officer would be prohibited from receiving or (ii) furnish, augment, diminish, or modify the evidence in the record.

STUDY N-107 - THE PROCESS OF ADMINISTRATIVE ADJUDICATION

The Commission commenced, but did not complete, consideration of Memorandum 92-16 and the attached staff draft of previously decided policy issues concerning the process of administrative adjudication. The Commission made the following decisions with respect to the matters considered.

§ 610.300. Complaint

The staff should investigate other terminology than "complaint", such as "statement of issues", "initial pleading", or some such.

§ 641.130. Variance of statute by regulation

This section or its Comment should be revised to make clear that when a provision of the administrative procedure act permits an agency to vary the provision by regulation, this includes permission to make the provision completely inapplicable.

Subdivision (b) should be revised to more clearly state its intent not to permit OAH proceedings to be varied by regulation notwithstanding a specific statute that permits an agency to vary a provision by regulation.

The word sequence--"an agency by regulation may vary this part"--should be revised for a more natural flow, e.g., "an agency may vary this part by regulation". Similar changes should be made in comparable statutes where rephrasing would be less awkward.

The reference in the Comment to the Office of Administrative Law should be to the Office of Administrative Hearings.

§ 641.310. Regulations governing declaratory decision

Subdivision (c), providing that OAH regulations govern declaratory decisions of an agency unless the agency provides a different rule by regulation, should be revised to provide that the regulations may be adopted by the agency.

The Comment should note that the ability to vary the article by regulation includes the ability to preclude application of the article altogether.

§ 641.320. Declaratory decisions permissive

The statute should make clear that application for a declaratory decision is not required for exhaustion of administrative remedies.

§ 641.340. Applicability of rules governing administrative adjudications

Subdivision (a) should be rewritten to avoid any implication that the provisions of Article 3 do not apply to declaratory decisions.

§ 641.350. Action of agency

Subdivision (c), deeming an application for a declaratory decision denied if the decision is not issued within 60 days, should be revised to recognize agency action under subdivision (a) that may result in a declaratory decision later than 60 days.

§ 642.030. Agency action on application

The staff should review the drafting of this section to ensure that the section requires the agency to hold a hearing on application after denial of a license but does not require the agency to hold a hearing on application after denial of a consumer's request for a rate change.

§ 642.040. Time for agency action

Subdivision (b), requiring the agency to acknowledge receipt of an application and request additional information within 30 days, should be revised to make clear the additional information may be requested from the applicant or from any other source. It should be clear that subdivision (b) does not preclude an agency from requiring further information beyond the 30-day period.

The Comment should make clear that failure of the agency to meet the time limits in this section does not authorize issuance of a license or other action requested in the application. The proper remedy is a writ of mandate to compel the agency to act.

The Comment should note statutes that may provide different times and that override the times in this section, e.g., Department of Real Estate subdivision public reports statutes.

§ 643.210. Proceeding commenced by the complaint

The Commission discussed, but did not resolve, the issue of which party prepares pleadings and defines the scope of the proceeding. Suggestions included that the pleadings are prepared by the agency "or by another person designated by the agency by regulation", and that a denied application may be permitted by the agency in its discretion to substitute for the agency pleading. The staff is to give this matter further consideration; the staff may investigate the federal approach for possible guidance.

§ 643.220. Contents of complaint

The reference in subdivision (a)(1) to "matters to be determined" should refer instead to "issues to be determined".

The staff should further research the verification provision of subdivision (b) to ascertain (1) what its initial intent is and (2) whether it might serve a useful purpose if more liberal pleading by non-agency persons is allowed.

§ 643.230. Service of complaint and other information

Service of an initial paper, particularly in a prosecutorial proceeding, should require more than first class mail, perhaps registered mail without requirement of a return receipt, certified mail, or personal service. Where the person being served is required to keep a current address with the agency, service at that address should be sufficient without more. In the case of an appeals board, where there has been previous agency action, the initiation of proceedings before the appeals board would not be deemed an initial paper for the purpose of this section. The concept of a previous appearance in the proceeding may be useful in this respect.

The form set out in subdivision (b) should be revised to reflect the fact that additional time is allowed for service by mail, in state and out of state.

§ 643.250. Answer

The reference in subdivision (a) to "one or more" answers should be revised to refer to "an" answer, in reliance on the supplemental answer provision of Section 643.260.

Subdivision (d), allowing the agency or presiding officer to grant a hearing despite a failure to answer, should be subject to reasonable notice to the parties. The staff should investigate general provisions on default and setting aside a default.

Subdivision (f), relating to statements in mitigation, should not be subject to the time limits for an answer. The provision should be made into a separate section, and should not be part of the answer provision.

§ 643.260. Amendment of pleadings

The first paragraph of the section should be preceded by an "(a)". The reference to "issuance" of an amended pleading should be revised to provide that the party may "amend or supplement" a pleading. A party should be able to freely amend or supplement before the commencement of the hearing, and thereafter subject to the discretion of the presiding officer.

Subdivision (b) should be revised to apply equally to an amended or supplemental complaint or answer.

§ 643.320. Postponement of time of hearing

The reference to a "right" to a postponement should be replaced by a provision making postponement discretionary with the presiding officer. A request for postponement should be made within 10 business days after discovery of good cause for postponement.

§ 643.330. Venue and change of venue

The last sentence of subdivision (a) should refer to the Third or Fifth Appellate District. An additional provision should be added for hearings in San Diego. The reference to residence should be expanded to include location of an entity.

Subdivision (c) was revised to provide for the presiding officer to rule on change of venue requests. A note to this section should highlight the revision.

The Comment should point out clearly that the section is subject to variance by agency regulation in non-OAH agencies.

§ 643.340. Notice of hearing

The form of notice should be revised to reflect the fact that postponement requests should be directed to the presiding officer. A note should be added to all form sections as a reminder to conform them to any substantive changes made in the statute.

§ 645.010. Mandatory intervention

This section was made discretionary with the presiding officer.

The staff should give further consideration to the time for an intervention petition under subdivision (a). Perhaps the timing of the petition should enter into the presiding officer's determination whether to grant it. If there is a pre-hearing conference, perhaps the petition should be required in advance of it so that the issue can be resolved at the conference.

In subdivision (b), the reference to the petitioner's "other legal interests" was deleted.

§ 645.020. Permissive intervention

This section was deleted.

§ 645.030. Conditions on intervention

Subdivision (b) should relate to limiting "or excluding" use of discovery and other procedures. The staff should also give further drafting consideration to making the limitations or exclusions applicable for, as well as against, the intervenor.

§ 645.040. Order granting, denying, or modifying intervention

The provision of this section requiring an intervention decision 24 hours before the hearing should be revised consistent with the other more flexible timing requirements being developed.

§ 645.060. Participation short of intervention

The reference to "this section" should be corrected to "this chapter". The Comment should be revised to delete the reference to the writing of letters to the agency.

APPROVED AS SUBMITTED _____

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

Date

Chairperson

Executive Secretary