

Note. Changes may be made in this tentative agenda. For meeting information, call (415) 497-1731

January 5, 1977

<u>Times</u>	<u>Place</u>
February 3 - 7:00 p.m. - 10:00 p.m.	Hyatt House Hotel
February 4 - 9:00 a.m. - 5:00 p.m.	Room 1219
February 5 - 9:00 a.m. - 12:00 noon	Los Angeles International Airport

TENTATIVE AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Los Angeles

February 3-5, 1977

February 3

1. Minutes of December 2-3, 1976, Meeting (enclosed)
2. Administrative Matters

Report on Publications

Memorandum 77-5 (to be sent)

Report on 1977 Legislative Session

Memorandum 77-6 (to be sent)

3. Study 63.70 - Evidence (Psychotherapist-Patient Privilege)
Memorandum 76-18 (enclosed)
4. Study 77.600 - Nonprofit Corporations (Background Materials Prepared by Professor Hone)
Memorandum 77-4 (enclosed)

February 4 and 5

5. Study 39.160 - Attachment
Memorandum 77-1 (to be sent)
6. Study 39.250 - Creditors' Remedies (Exemptions)
Memorandum 77-2 (to be sent)
Draft Statute (attached to Memorandum)
7. Study 39.200 - Enforcement of Judgments (Comprehensive Statute)
Memorandum 77-3 (to be sent)
Draft Statute (attached to Memorandum)

MINUTES OF MEETING

of

CALIFORNIA LAW REVISION COMMISSION

FEBRUARY 3, 4, AND 5, 1977

Los Angeles

A meeting of the California Law Revision Commission was held in Los Angeles on February 3, 4, and 5, 1977.

Present: John N. McLaurin, Chairman
Howard R. Williams, Vice Chairman
John J. Balluff, February 3 and 4
John D. Miller
Thomas E. Stanton, Jr.

Absent: Alister McAlister, Member of Assembly
Bion M. Gregory, ex officio

Members of Staff Present:

John H. DeMouilly Stan G. Ulrich

Consultants Present:

Professor Stefan A. Riesenfeld, Creditors' Remedies,
February 4 and 5

The following persons were present as observers on days indicated:

February 3

Frank Austin, Senate Judiciary Committee, Sacramento
James S. Graham, Law Offices, Richard Singer, San Diego

February 4

Frank Austin, Senate Judiciary Committee, Sacramento

February 5

Frank Austin, Senate Judiciary Committee, Sacramento

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ADMINISTRATIVE MATTERS

Minutes of December 2 and 3, 1976, Meeting

The Minutes of the December 2 and 3, 1976, Meeting were approved as submitted by the staff.

Report on Publications

The Executive Secretary reported orally that the Annual Report had been sent to the printer and that the staff was in the final stages of preparation of the Recommendation Relating to Nonprofit Corporation Law for the printer.

Report on 1977 Legislative Program

The Executive Secretary made an oral report on the 1977 Legislative Program as follows:

Nonprofit Corporations --2 bills -- now in preparation. The Commission has indicated its desire that these bills be introduced as soon as possible. [Legislative Counsel preparing bills for introduction.]

Unlawful Detainer Proceedings --Introduced as AB 13. Copies of the amended bill were handed out at the meeting. The first hearing on the bill is scheduled for February 10. [Bill has passed the Assembly.]

Sister State Money Judgments -- Introduced as AB 85. First hearing on the bill is scheduled for February 10. [Bill has been reported "do pass as amended" by Assembly Judiciary Committee; Assemblyman McAlister has had bill placed on Assembly inactive file pending further study of a committee amendment to the bill.]

Wage Garnishment -- Sent to Legislative Counsel's office on December 9, 1976; draft of bill in hands of Assemblyman McAlister for introduction. [Bill was introduced by Assemblyman McAlister and is AB 393.]

Resolution to Continue Authority -- Introduced as ACR 4. Amended to drop tort liability study. Set for hearing on February 10. [Resolution has passed the Assembly.]

Liquidated Damages -- Sent to Legislative Counsel's office on December 15, 1976. [Bill is now being jacketed for introduction by Assemblyman McAlister.]

STUDY 39.160 - ATTACHMENT

The Commission considered Memorandum 77-1 concerning possible amendments to the Attachment Law and a letter from Mr. Bernard Shapiro concerning general assignments for the benefit of creditors which was distributed at the meeting (attached to these minutes as Exhibit 1). The staff was directed to draft proposed legislation to deal with several of these problems for consideration at the next meeting. The Commission made the following decisions:

§ 481.050. "Chose in action" defined; attachment of insurance policy

The decision regarding whether to amend Section 481.050 (which defines "chose in action") to deal with the problem raised by Javorek v. Superior Court, 17 Cal.3d 629, 552 P.2d 728, 131 Cal. Rptr. 768 (1976), concerning the attachment of the obligation to indemnify and defend under a liability insurance policy, should await further developments in the courts.

§ [482.060]. Court commissioners

A provision authorizing the use of court commissioners to determine issues arising under the Attachment Law should be drafted. This provision should not designate all judicial duties under the Attachment Law as subordinate judicial duties suitable to be performed by court commissioners, but should list specific duties and exclude those duties that have previously met with objections from the State Bar and, on constitutional grounds, from the Legislative Counsel. After approval by the Commission, this provision will be distributed for comment with a view toward introducing legislation in the 1978 session of the Legislature.

§§ 486.090, 486.110. Lien of temporary protective order in relation to bankruptcy proceedings and general assignments for the benefit of creditors

Section 486.090 should be amended to provide that the temporary protective order expires upon the commencement of proceedings under the Bankruptcy Act or other provision for the ratable distribution of the defendant's assets to creditors upon the defendant's insolvency or upon the making of a general assignment for the benefit of creditors. This provision would restore the substance of a portion of former Section 542b.

§§ 488.320, 488.360, 688. Use of keeper to permit operation of going business after judgment

The staff was directed to draft a bill with an urgency clause for introduction in the current session of the Legislature to restore the law in existence prior to December 31, 1976, which required that personal property of a going business (other than money or a vehicle required to be registered under the Vehicle Code) be levied upon by placing a keeper in the business for two days subject to the consent of the debtor. The Commission requested further information on the meaning of the portion of subdivision 3 of former Section 542 that read "personal property, other than money, or a vehicle required to be registered under the Vehicle Code belonging to a going concern."

§ 488.360(c). Scope of lien on inventory obtained by filing in office of Secretary of State

The Commission requested more information on the problem of the scope of the lien on inventory acquired by filing in the office of the Secretary of State under Section 488.360(c) which was discussed in Memorandum 77-1.

Study 39.160 - Exhibit 1

LAW OFFICES

Minutes

February 3, 4, and 5, 1977

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JOHN A. MOE, II
EDITH R. WARKENTINE
CHRISTOPHER RAHTZ

January 31, 1977

LEONARD G. LEIBOW
(1937-1975)

IN REPLY REFER TO:

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Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
School of Law
Stanford, California 94305

RE: ATTACHMENTS - CCP §486.110

Dear John:

Memorandum 77-1 under the subject Study 39.160-Attachment, dated January 27, 1977, highlights a significant problem in the area of insolvency planning. Mr. Joseph Wein's letter of January 13, 1977, attached to Memorandum 77-1, deserves immediate attention.

The provision of the interim law, CCP § 542(b) dissolving the temporary restraining order upon the filing of a petition under the Bankruptcy Act or the execution of an assignment for the benefit of creditors should be retained under present law. As Mr. Wein states, it is true that under certain circumstances an attachment could be invalidated in the event of bankruptcy but that additional effort should not be required.

It is at least as important to dissolve the effect of the temporary protective order in § 486.110 upon the filing of a general assignment for the benefit of creditors. The filing of a general assignment constitutes an act of bankruptcy and may be superseded within 4 months by the filing of an involuntary petition. Nevertheless, the creditor community favors assignments for the benefit of creditors over straight bankruptcy in many liquidation cases. I believe that the Commission's position that "... general assignments may prefer some creditors over others...." leaves something to be desired. Perhaps some confusion was created in this field by the opinion of the Supreme Court of California in Bumb v. Bennett, 51 Cal.2d 294, 333 P.2d 23 (1958). That case insulated the estate of an assignee for the benefit of creditors against assignments but

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it should be noted that the case did not deal with a general assignment.

The very terms of a general assignment for the benefit of creditors require that the estate be held for the benefit of all of the creditors and the assignee is directed to distribute the estate ratably among the creditors, but, of course, the assignee must recognize priorities established by law. The general creditor body, usually through a creditors' committee, satisfies itself concerning the desirability of the general assignment within 4 months of its execution because the general assignment is vulnerable to an involuntary petition in bankruptcy during that period. If the lien of the temporary protective order under § 486.110 is not dissolved by reason of the execution of the general assignment, creditors will be forced to file an involuntary petition within 4 months lest the attaching creditor receive a preference.

The failure to dissolve the temporary protective order upon the making of a general assignment will cause mischief in this important field. It is hoped that the Commission will reconsider its position and reinstate the language contained in the interim law as recommended by Mr. Wein.

Cordially,



BERNARD SHAPIRO

BS:smt

cc: ✓ Stan G. Ulrich, Esq.
Harold Marsh, Jr., Esq.
Joseph Wein, Esq.
Mr. Richard Kaufman, CMA

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STUDY 39.200 - ENFORCEMENT OF JUDGMENTS (COMPREHENSIVE STATUTE)

The Commission began its consideration of Memorandum 77-3 and the attached staff draft of the Enforcement of Judgments Law. The Commission considered Chapter 1 (Short Title; Definitions) in general, and Chapter 2 (General Provisions) and Article 1 (Interrogatories to Judgment Debtor; Examination of Judgment Debtor, Third Person Indebted to Judgment Debtor, and Additional Witnesses) of Chapter 5 on a section-by-section basis. The Commission made the following decisions:

Chapter 1. Short Title; Definitions

§ 701.110 et seq. Definitions

The definitions in this title should be self-sufficient and should not cross-refer to definitions in the Attachment Law. The staff should reconsider whether it is useful to define "court." "Chose in action" should not be limited to business property, as it is in the Attachment Law.

Chapter 2. General Provisions

§§ 702.110-702.150. Enforcement of different types of judgments

Sections 702.110 through 702.150 should be combined into one section. It should be made clear that Title 9 applies to the enforcement of judgments of the described types entered in courts of this state.

§ 702.160. Property subject to judgment lien or attachment lien

Section 702.160 should be deleted because it is unnecessary in light of the provisions of Section 703.130 and provisions in Chapter 7 (Exemptions From Enforcement of Money Judgments) (attached to Memorandum 77-2).

§§ 702.170-702.190. Time for enforcement of judgment

Subdivision (a) should specifically state the type of judgment to which it applies--judgments for the payment of money and for the possession or sale of real or personal property. Subdivision (b) should be deleted. The provisions concerning the time within which such judgments may be enforced should be revised in accordance with the following principles:

(1) The basic period during which a judgment may be enforced should be 20 years. This period is not to be subject to extension except as indicated infra.

(2) The 20-year period should be tolled when enforcement of the judgment is stayed.

(3) The rule in Alonso Investment Corp. v. Doff, 17 Cal.3d 539 (1976), permitting enforcement after the expiration of the 10-year period provided by Section 681 under a writ of execution issued within the 10-year period, should be continued and applied to all enforcement procedures applicable to the specified types of judgments. Hence, a writ of execution, a writ of possession, a writ of restitution, or a writ of enforcement issued within the 20-year period would be enforceable for one year from the date of its issuance, making the judgment enforceable for a maximum period of 21 years less one day (not counting the time when enforcement was stayed). The staff will have to give further consideration to the manner of applying the rule in Alonso Investment Corp. v. Doff to supplementary procedures.

(4) The duration of the judgment lien should be coextensive with the time for enforcement of a writ of execution. If a writ is issued which would be enforceable during the 21st year, the statute should provide a recording procedure for extending the judgment lien for such additional time.

(5) Subdivision (e) of Section 702.180 which precludes actions on judgments should be continued in the redrafted provision.

(6) The provision applicable to enforcement of installment judgments provided in Section 702.190 will have to be modified to conform with these principles.

§ 702.200. Stay of enforcement without bond

This section should codify the rule in Industrial Indemnity Co. v. Levine, 49 Cal. App.3d 698, 122 Cal. Rptr. 712 (1975), which held that an abstract of judgment may be recorded to obtain a judgment lien even though enforcement of the judgment was stayed.

§ 702.220. Enforcement after death of judgment debtor

In subdivision (c), the words "of the judgment debtor" should be added after "executor or administrator."

§ 702.250. Manner of mailing notice

The staff should consider putting this section in Chapter 1 or in a more prominent position in Chapter 2. The draft statute should be checked to see whether it provides more frequently for the use of first class or registered mail. This section should also provide that, where notice may be made by mail, it may be delivered personally.

§ 702.270. Deposit of fees prior to performance of duty by levying officer

The staff should consult with some levying officers to determine the existing practice regarding the payment of fees so that this section may be improved. It was suggested that subdivision (b) is too rigid in that it seems to require the levying officer to make a written demand where an oral demand would be sufficient and where a written demand would take too much time. Section 488.050 in the Attachment Law should be conformed to this provision as revised.

§ 702.290. Request for notice of sale

The words "of execution or a writ of enforcement" should be deleted from subdivisions (a), (b), and (c) so that this section will also apply to writs of possession and writs of restitution. The Comment should note that the judgment debtor receives notice of levy and notice of sale as a matter of course. The staff should note in this Comment or add a general provision to the effect that the writ includes attachments thereto.

[§ 702.320. Liability of levying officer]

The existing scheme of specifying particular actions which do not make the levying officer liable should be retained. The proposed provision (see p.3 of Memorandum 77-3) that would have shielded the levying officer from liability for the performance of a duty under Title 9 is too broad.

Chapter 5. Supplementary Procedures for the
Enforcement of a Money Judgment

The staff should draft provisions for the creation, effect, and duration of liens under the various procedures in Chapter 5.

Article 1 of Chapter 5. Interrogatories to Judgment Debtor;
Examination of Judgment Debtor, Third Person Indebted
to Judgment Debtor, and Additional Witnesses

§ 705.120. Examination of judgment debtor

Subdivision (b) should be revised to permit the judgment creditor to examine the judgment debtor within 120 days after written interrogatories have been propounded pursuant to Section 705.110 since the answers to interrogatories may be unsatisfactory.

§ 705.160. Order applying property to satisfaction of judgment

The duty of the debtor of the judgment debtor to claim exemptions on behalf of the judgment debtor, arising out of subdivision (a) of Section 705.160, should be elaborated. The phrase "applied toward the satisfaction of the judgment" in Section 705.160 should be clarified. It should be provided or noted in the Comment that a levying officer or receiver is generally required to take possession of the property to be applied toward the satisfaction of the judgment.

§ 705.170. Arrest of person ordered to appear

Subdivision (b) should be revised to read substantially as follows:

(b) Where a judgment debtor who has been served by a person described in subdivision (a) with an order to appear for an examination fails to appear, reasonable attorney's fees incurred in the examination proceedings are a recoverable item of costs.

This change deletes the liability of third persons for attorney's fees for failure to appear at an examination. The Comment should state that this section does not affect any right to attorney's fees the parties may have under a contract or statute.

§ 705.180. Appearance at examination by representatives of corporation, partnership, or association

The staff should consider replacing the word "association" with "entity" in order to include trusts within the scope of this section. If the phrase "corporation or a partnership or other unincorporated association" appears elsewhere in this statute, a general provision or definition should be considered.

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§ 705.190. Qualifications of referee

The requirement that a referee be a member of the State Bar for at least five years should be deleted--membership in the State Bar should be sufficient. The Commission decided not to pursue the matter regarding referee fees raised by Mr. Raymond Greenberg (see Exhibit 4, attached to Memorandum 77-3) at this time.

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STUDY 39.250 - ENFORCEMENT OF JUDGMENTS (EXEMPTIONS)

The Commission began its consideration of Memorandum 77-2 relating to the basic policy of the exemption laws. The Commission made the following decisions:

Dwelling exemption. The dwelling exemption should be retained at its present amount; however, the preliminary part of the recommendation eventually drafted should note that a lower exemption for mobilehomes and vessels is arguably justifiable because the expense of ownership of land is not necessarily involved. There should not be a special allowance for persons who rent dwellings. The staff should study the homestead provisions in the Civil Code with a view toward eliminating the recorded homestead in favor of the claimed homestead.

Personal effects, furnishings, wearing apparel. Personal effects, household furnishings, wearing apparel, and the like, should be exempt if the judgment debtor's interest in the particular item does not exceed \$300. If the interest of the judgment debtor exceeds \$300, the item is nonexempt and there should be no exemption of proceeds from the sale of such an item. The staff should consider the relationship between the exemption statutes and the community property laws.

Tools of trade. The existing exemption for tools of a trade should be retained.

Transportation. The exemption for a mode of transportation should be \$1,500.

Deposit accounts, money. Money which the judgment debtor can reach, other than the loan or cash surrender value of an insurance policy, should be exempt in the amount of \$2,000. This would replace the exemption of savings and loan accounts and credit union accounts provided by existing law.

Unpaid wages, retirement and pension benefits, annuities. It was suggested that this type of asset be exempt in the amount provided in the wage garnishment recommendation.

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STUDY 63.70 - EVIDENCE (PSYCHOTHERAPIST-PATIENT PRIVILEGE)

The Commission considered Memorandum 76-18 and the materials attached to that memorandum. The following decisions were made by the Commission.

Section 1010. Definition of "psychotherapist"

Section 1010 of the Evidence Code should be amended to read in substance as follows:

1010. As used in this article, "psychotherapist" means:

(a) A person authorized, or reasonably believed by the patient to be authorized, to practice medicine in any state or nation ~~who devotes, or is reasonably believed by the patient to devote,~~ a substantial portion of his time to the practice of psychiatry; while engaged in the diagnosis or treatment of a mental or emotional condition.

(b) A person licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code; Code or licensed or certified as a psychologist under the laws of another state.

(c) A person licensed as a clinical social worker under Article 4 (commencing with Section 9040) of Chapter 17 of Division 3 of the Business and Professions Code, when he such person is engaged in applied psychotherapy of a nonmedical nature.

(d) A person who is serving as a school psychologist and holds a credential authorizing such service issued by the state.

(e) A person licensed as a marriage, family and child counselor under Chapter 4 (commencing with Section 17800) of Part 3, Division 5 of the Business and Professions Code.

(f) A person licensed as a licensed educational psychologist under Chapter 4 (commencing with Section 17800) of Part 3, Division 5 of the Business and Professions Code.

(g) A person who is serving as a psychiatric social worker in a mental health services facility of the State of California, or a person who is serving as a psychiatric social worker with substantially the same qualifications and duties as a state psychiatric social worker in a mental health services facility provided by the county or qualifying for reimbursement under the California medical assistance program under Section 14021 of the Welfare and Institutions Code, or under Title XVIII of the Federal Social Security Act and regulations thereunder, when such person is engaged in applied psychotherapy of a nonmedical nature.

Section 1011. Definition of "patient"

No changes were made in the existing section.

Section 1012. Definition of "confidential communication"

This section is to be amended to add the substance of the language of the proposed Federal Rules of Evidence, the relevant portion of the section to read as follows:

by means which, sofar as the patient is aware, discloses the information to no third persons other than those who are present to further the interest of the patient in the consultation, or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the psychotherapist was consulted, or persons who are participating in the diagnosis and treatment under the direction of the psychotherapist, including members of the patient's family, and includes a diagnosis made and the advice given by the psychotherapist in the course of that relationship.

The Comment to the amended section should note that the addition of the underscored language will make clear that the scope of the section covers joint therapy and family counseling.

Section 1013. "Holder of the privilege" defined

No changes were made in this section.

Section 1014. Psychotherapist-patient privilege

The last paragraph of this section should be relocated as a separate section and should be checked to be sure that a medical corporation is covered. See last paragraph of Section 994.

Section 1015. When psychotherapist required to claim privilege

No change was made in this section. However, the relationship of this section and subdivision (c) of Section 1014 should be reviewed in connection with the overall study of the Evidence Code since comparable provisions are found in other privileges. Perhaps "entitled" should be inserted for "authorized" in Section 1015. If some revision or clarification of Section 1014 or Section 1015 or both is needed, comparable revisions or clarifications will be needed in the comparable sections in the other privileges.

Sections 1016-1027. Exceptions to privilege

No changes were made in these sections.

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Section 1028. Privilege in criminal proceedings

The Commission determined that this section should be recommended for repeal.

Further Work on This Subject

The staff is to prepare a tentative recommendation that will reflect the decisions summarized above for a future meeting.