

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

June 2, 1977

<u>Time</u>	<u>Place</u>
June 9 - 7:00 p.m. - 10:00 p.m.	Howard Johnson Motor Lodge
June 10 - 9:00 a.m. - 5:00 p.m.	5990 Green Valley Circle
June 11 - 9:00 a.m. - 12:00 noon	Culver City, CA 90230

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Los Angeles

June 9-11, 1977

1. Minutes of May 12-14, 1977, Meeting (sent 5/27/77)
2. Administrative Matters
 - Obtaining Suggestions for New Topics
 - Report on 1977 Legislative Program Generally
 - Handout at meeting
3. Study 39.200 - Enforcement of Judgments (Comprehensive Statute)
 - Redemption
 - Memorandum 77-35 (sent 5/27/77)
 - Third-Party Rights
 - Memorandum 77-36 (sent 5/27/77)
 - Generally
 - Memorandum 77-3 (sent 1/21/77)
 - Draft Statute (attached to Memorandum)

Note. We will cover Sections 705.210-705.720,
708.110-711.110 of the draft statute.
4. Study 63.80 - Revisions of the Psychotherapist-Patient Privilege
 - Memorandum 77-38 (sent 5/27/77)
5. Study 79 - Parol Evidence Rule
 - Memorandum 77-39 (sent 6/1/77)

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION
JUNE 9 AND 10, 1977
Los Angeles

A meeting of the California Law Revision Commission was held in Los Angeles on June 9 and 10, 1977.

Present: Howard R. Williams, Vice Chairman
Beatrice P. Lawson
Jean C. Love
John D. Miller
Thomas E. Stanton, Jr.

Absent: John N. McLaurin, Chairman
George Deukmejian, Member of Senate
Alister McAlister, Member of Assembly
Bion M. Gregory, Ex. Officio

Members of Staff Present:

John H. DeMouilly
Stan G. Ulrich

Nathaniel Sterling
Robert J. Murphy III

Minutes
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ADMINISTRATIVE MATTERS

Minutes of May Meeting Approved

The Minutes of the May 12, 13, and 14, 1977, meeting were approved as submitted by the staff.

Report of 1977 Legislative Program

The Commission received the following report on the 1977 legislative program from the staff:

Adopted or Enacted

- Res. Ch. 17, Statutes of 1977 - Continues authority to study previously authorized topics; authorizes Commission to drop two topics.
Ch. 49, Statutes of 1977 (AB 13) - Damages in Unlawful Detainer Actions

Sent to Floor in Second House

- AB 85 - Enforcement of Sister State Money Judgments
AB 570 - Liquidated Damages
AB 1007 - Use of Keepers on Writs of Execution

Approved by Policy Committee in Second House

- AB 393 - (Wage Garnishment) (This bill was amended by the Senate Judiciary Committee to reinstate the federal standard for determining the amount to be withheld and to restore the "common necessities" exception to the hardship exception. The bill was opposed by the California Association of Collectors and the California Bankers Association. Assemblyman McAllister intends to request that the Assembly not accept the Senate amendments and that a conference committee be appointed.)

Set for Hearing in Second House

- SB 221 - (Effect on Attachment of Bankruptcy or General Assignment for Benefit of Creditors) (This bill has been amended to insert the legislation recommended by the Law Revision Commission with a couple of technical changes.)

No Action to Be Taken in 1977

- SB 623 - Nonprofit Corporations (conforming revisions) (Bill set for hearing on May 3 but not taken up because not enough favorable votes; bill not set for second hearing.)
SB 624 - Nonprofit Corporations (comprehensive statute) (Bill set for hearing on May 3 but not taken up because not enough favorable votes; bill not set for second hearing.)

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Obtaining Suggestions for New Topics

The Commission approved the substance of an item for inclusion in the State Bar Reports and legal newspapers and a letter, to be sent under the signature of the Chairman, to the Deans of the California Law Schools for distribution to the members of the faculties thereof.

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STUDY 39.200 - ENFORCEMENT OF JUDGMENTS (COMPREHENSIVE
STATUTE--THIRD-PARTY RIGHTS)

The Commission considered Memorandum 77-36 relating to the rights of third persons whose property is levied upon by a judgment creditor. The Commission reaffirmed its prior decisions to continue the substance of existing levy provisions and the separation between third-party claims proceedings and examination proceedings. The Commission decided that the right of a debtor on a security agreement to obtain a statement of the amount of the unpaid indebtedness and a list of collateral from the secured party pursuant to Commercial Code Section 9208 should be extended to the judgment creditor of the debtor.

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STUDY 39.200 - ENFORCEMENT OF JUDGMENTS (COMPREHENSIVE STATUTE--
REDEMPTION ALTERNATIVES)

The Commission considered Memorandum 77-35 relating to alternatives to permitting redemption from execution sales of real property. The Commission adopted the staff recommendation to provide for the delay of sales of real property for 90 days, analogous to the three-month delay in commencement of proceedings under a power of sale in a mortgage or deed of trust. The preliminary part of the recommendation should note the other alternatives to redemption that the Commission has considered.

STUDY 39.200 - ENFORCEMENT OF JUDGMENTS (COMPREHENSIVE STATUTE)

The Commission concluded its consideration of Memorandum 77-3 and the attached staff draft of the Enforcement of Judgments Law. Articles 2 through 7 of Chapter 5 and Chapters 8 through 1 were tentatively approved subject to the following decisions:

CHAPTER 5. SUPPLEMENTARY PROCEDURES FOR THE
ENFORCEMENT OF A MONEY JUDGMENT

Article 2. Creditor's Suit

§ 705.210. "Obligor" defined

Section 705.210 should be revised to read substantially as follows:

705.210. As used in this article, "obligor" means a person claimed by the judgment creditor to be indebted to the judgment debtor or to possess or control personal property in which the judgment debtor has an interest.

§ 705.220. Venue for creditor's suit; joinder of debtor

It should be made clear that the judgment debtor is not an indispensable party in a creditor's suit. The judgment creditor should not be prevented from bringing a creditor's suit because of the inability to join the judgment debtor. The provision in subdivision (b) that the residence of the judgment debtor is not to be considered in the determination of proper venue should be subject to contractual provisions for place of trial.

§ 705.230. Time for bringing creditor's suit

The four-year period for bringing a creditor's suit is too long since it potentially has the effect of making the obligor liable for nearly four years after the judgment debtor could no longer sue the obligor. The staff should consider what shorter period of time would be an appropriate grace period for the bringing of a creditor's suit after the statute of limitations has run on the original obligation. A corresponding provision should be added to the portion of the Code of Civil Procedure providing statutes of limitation.

§ 705.250. Application of property to judgment

This section should make clear that, if the obligor has transferred the property which is adjudged to be the judgment debtor's, the obligor

is liable to the judgment creditor in the amount of the judgment debtor's interest.

Article 3. Receiver to Enforce Judgment

§ 705.310. Appointment of receiver

The staff should determine whether this remedy is currently restricted to superior courts. The Comment should indicate how the provision differs from prior law. The standard for appointment of a receiver stated in subdivision (a) should be changed to permit the appointment where it is "a reasonable method to obtain a fair and orderly satisfaction of the judgment" rather than "the most reasonable method."

Article 4. Collection of Judgment Where Judgment Debtor is Creditor of Public Entity

§§ 705.430, 705.440

In order to avoid confusion of these procedures with the provisions requiring a person to file a claim with a public entity within a certain time as a prerequisite to suit, the word "claim" appearing in Sections 705.430 and 705.440 should be replaced with "request for payment" or "authorization for payment" or some other term. The staff should ascertain the views of the State Controller's office on this proposed change.

§ 705.470. Exemptions

The Comment to this section should contain a discussion of the relationship between the exemption provisions and this article.

Article 5. Charging Orders

§ 705.510. Charging Orders

Subdivisions (a) and (b) should be combined. The word "specific," pertaining to partnership property, should be omitted.

Article 6. Liens on Causes of Action and Judgments

§ 705.610. Application for lien on cause of action and judgment

The staff should determine the relation between a lien granted under this article and an attorney's contingent fee. More detail concerning the method of realizing on the lien should be specified in the

statute. It should also be made clear that the lien is subject to any available exemptions. The staff should prepare amendments to the provisions concerning the filing of partial satisfactions of judgments to provide for filing by the judgment creditor on behalf of the judgment debtor's judgment debtor which would then be binding on the judgment debtor.

§ 705.630. Compromise, settlement, satisfaction before judgment

This section should be revised to permit settlement pursuant to court approval obtained after a hearing on noticed motion so that the lienholder is not in a position to force the judgment debtor to proceed with the action despite the conviction of the judgment debtor that it is advisable to settle.

§ 705.640. Other liens preserved

The meaning of subdivision (b) which preserves liens on causes of action obtained before the action is commenced should be clarified. The provision should be reworded to state that the granting of a lien under this article does not affect any prior lien, rather than that such prior liens are continued.

Article 7. Assignment orders

§ 705.710. Order assigning rights to future payments

The list of types of property in subdivision (a) should be tabulated. The provision pertaining to surplus amounts from spendthrift trusts should refer to Civil Code Section 859. The last clause of subdivision (b) relating to the rendering of services without adequate compensation should be further researched to determine its origin. The Comment should state that this article is not intended to make assignable any asset that is not already assignable. The statement in the Comment summarizing Civil Code Section 859 should be corrected.

§ 705.720. Modifying or setting aside assignment order

It should be made clear whether and to what extent assignment orders may be retroactively modified.

CHAPTER 8. ENFORCEMENT OF JUDGMENT FOR POSSESSION OF
PERSONAL PROPERTY

§ 708.120. Contents of writ of possession

The staff should conduct further research into whether judgments for possession of personal property should always be required to state the value of the property which, when the property cannot be found, may be substituted for the property. The staff should investigate whether the determination of value is a matter entitling the defendant to a jury trial.

§ 708.130. Delivery and execution of writ

The staff should check the effect of the incorporation of the procedures provided in Section 514.010 (prejudgment writ of possession) to see if the authority it provides is broad enough to deal with the problems that may arise after judgment. It may be best to state the rules applicable after judgment in this article rather than incorporate the prejudgment provisions.

§ 708.140. Property in private place

This section should be revised to permit the application for an order to permit seizure of property located in a private place to be made on noticed motion.

§ 708.180. Issuance of order directing transfer

Issuance of an order directing transfer should be an alternative to issuance of a writ. The statute should also make clear that the turnover order must be served personally in order to make it enforceable by contempt.

CHAPTER 9. ENFORCEMENT OF JUDGMENT FOR POSSESSION
OF REAL PROPERTY

§ 709.110. Application for writ of restitution

The writ provided by this chapter should be called a writ of possession of real property rather than a writ of restitution.

CHAPTER 10. ENFORCEMENT OF JUDGMENT FOR SALE OF PROPERTY

§ 710.110. Application for writ of enforcement

The writ provided by this chapter should be called a writ of sale rather than a writ of enforcement.

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§ 710.130. Delivery and execution of writ

To the extent necessary, this section should incorporate the provisions in Chapter 8 for obtaining possession of personal property to be sold.

CHAPTER 11. ENFORCEMENT OF JUDGMENT BY CONTEMPT

§ 711.110. Enforcement by contempt

It should be made clear that if the order or judgment is to be enforceable by contempt it must be personally served.

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STUDY 63.70 - EVIDENCE OF MARKET VALUE OF PROPERTY

The Commission briefly discussed a staff suggestion that a questionnaire be prepared for review at the July meeting soliciting the views of interested persons and organizations as to whether any change should be made in the rule that excludes evidence of sales to persons having the right of eminent domain and, if so, the nature of the change that should be made in the existing rule. The Commission suggested that the staff prepare such a questionnaire for review at the July meeting.

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STUDY 63.80 - REVISIONS OF THE PSYCHOTHERAPIST-PATIENT
PRIVILEGE

The Commission considered Memorandum 77-38 and the attached staff draft of a tentative recommendation relating to revisions of the psychotherapist-patient privilege.

The tentative recommendation was approved for distribution for comment after the following changes were made:

(1) Subdivision (a) of Section 1010 of the Evidence Code is not to be amended; the existing language of this subdivision is to be retained.

(2) Subdivision (b) of Section 1010 of the Evidence Code was revised to add "or nation" after the word "state" in the subdivision as set out in the tentative recommendation.

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STUDY 79 - PAROL EVIDENCE RULE

The Commission considered Memorandum 77-39 and the attached literature concerning the parol evidence rule. The Commission requested the staff to research experience under Uniform Commercial Code Section 2-202 and to prepare a memorandum with the results of the research. The memorandum should contain an analysis of the problems involved in adopting a provision comparable to the Uniform Commercial Code provision for contracts generally, including the extent to which it would change existing California law concerning such matters as the rule governing admissibility of evidence of a collateral agreement, whether integration is a judge or jury question, how questions of interpretation would be handled, and the effect of the parol evidence rule on wills. If the analysis appears fruitful, the staff should prepare a draft of a tentative recommendation to conform the parol evidence rule for contracts generally to that prevailing under the Uniform Commercial Code.

APPROVED

Date

Chairman

Executive Secretary