

Revised January 29, 1969

Time

February 7 - 9:00 a.m. - 5:00 p.m.  
February 8 - 9:00 a.m. - 4:00 p.m.

Place

State Bar Building  
1230 West Third Street  
Los Angeles

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Los Angeles

February 7 and 8, 1969

FEBRUARY 7

1. Approval of Minutes of January 9-11 meeting (sent 1/23/69)

Wolford  
Special order  
of business  
at 9:10 a.m.

2. Study 44 - Fictitious Business Name Statute

Memorandum 69-23 (sent 1/21/69)  
Tentative Recommendation (attached to Memorandum)  
Research Study (attached to Memorandum)

3. Study 52 - Sovereign Immunity

Yale  
Special order  
of business  
at 1:30 p.m.

Prisoners and Mental Patients

Memorandum 69-24 (sent 1/21/69)  
Tentative Recommendation (attached to Memorandum)

Stanton  
Special order  
of business  
at 1:40 p.m.

Discretionary Immunity

Memorandum 69-21 (sent 1/21/69)

Wolford  
Special order  
of business  
at 1:45 p.m.

4. Study 65 - Inverse Condemnation

General Philosophy

Memorandum 69-31 (sent 1/21/69)  
"Just How Just Is Just Compensation?" (A Critical  
Comment on the California Law Revision Commission  
Inverse Condemnation Study) (attached to Memorandum)

Ubler  
Special order  
of business  
at 2:00 p.m.

Water Damage

Memorandum 69-15 (sent 1/21/69)  
Note: This is the same Memorandum that was  
considered at the January meeting  
First Supplement to Memorandum 69-15 (sent 1/23/69)  
Part IV - Research Study on Inverse Condemnation (sent  
for January meeting)

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Uhler  
to be considered  
on February 7 if  
time permits;  
otherwise will  
be considered as  
first item on  
February 8

5. Study 36 - Condemnation Law and Procedure  
Procedural Aspects (Cost Allocation)  
Memorandum 69-30 (sent 1/23/69)  
Research Study (attached to Memorandum)

FEBRUARY 8

Yale

6. 1969 Legislative Program

Memorandum 69-29 (enclosed)  
First Supplement to Memorandum 69-29 (sent 1/23/69)  
Printed Recommendations: (enclosed)  
Mutuality of Remedies in Suits for Specific  
Performance  
Powers of Appointment  
Real Property Leases  
Evidence Code No. 4--Revision of the Privileges Article  
Annual Report (3 recommendations)  
Senate Bills 98-105 (enclosed)  
Senate Concurrent Resolutions 16 and 17 (enclosed)

Stanton

7. Study 12 - Jury Instructions

Memorandum 69-22 (sent 1/21/69)  
Printed Recommendation and Study (attached to  
Memorandum)

Yale

8. Study 60 - Representations as to Credit

Memorandum 69-25 (to be sent)  
Tentative Recommendation (attached to Memorandum)

Stanton

9. Study 66 - Quasi-Community Property

Memorandum 69-26 (sent 1/24/69)  
Tentative Recommendation (attached to Memorandum)

Uhler

10. Study 41 - Small Claims Court Law

<sup>33</sup>  
Memorandum 69-27 (to be sent)

Wolford

11. Agenda Topics

Memorandum 69-28 (to be sent)

Stanton

12. Study 47 - Oral Modification of Written Contract

Memorandum 69-32 (sent 1/21/69)  
First Supplement to Memorandum 69-32 (sent 1/23/69)

MEETING SCHEDULE FOR 1969

|   |                                    |
|---|------------------------------------|
| February 7 and 8                        | Los Angeles (State Bar Building)   |
| March 7 and 8                           | San Francisco                      |
| April 11 and 12                         | Los Angeles (State Bar Building)   |
| May 9 and 10                            | San Francisco (State Bar Building) |
| June 6 and 7                            | Los Angeles (State Bar Building)   |
| June 26 (evening), 27, and 28 (morning) | San Diego                          |
| September 4, 5, and 6 (three full days) | Los Angeles (State Bar Building)   |
| October 3 and 4                         | San Francisco (State Bar Building) |
| November 7 and 8                        | Los Angeles                        |
| December 5 and 6                        | San Francisco                      |

MINUTES OF MEETING

of

CALIFORNIA LAW REVISION COMMISSION

FEBRUARY 7 AND 8, 1969

Los Angeles State Bar Building

A meeting of the California Law Revision Commission was held at the Los Angeles State Bar Building on February 7 and 8, 1969.

Present: Sho Sato, Chairman  
Thomas E. Stanton, Jr., Vice Chairman  
Carlos J. Moorhead, Member of the Assembly (February 7)  
John D. Miller  
Lewis K. Uhler (February 7)  
Richard H. Wolford  
William A. Yale

Absent: Alfred H. Song, Member of the Senate  
Roger Arnebergh  
George H. Murphy, ex officio

Messrs. John H. DeMouilly, Executive Secretary, Clarence B. Taylor, Assistant Executive Secretary, Jack I. Horton, Associate Counsel, and John L. Cook, Junior Counsel (February 7), of the Commission's staff were present.

The following observers also were present:

Fictitious Business Name Statute

Morris Barr, Co-Publisher, Metropolitan News  
Melissa Thomas, Los Angeles Daily Journal

Prisoners and Mental Patients

Gerald J. Thompson, Assistant County Counsel, Santa Clara County  
Willard A. Shank, California Attorney General's Office

Inverse Condemnation and Condemnation Law and Procedure

Robert C. Alexander, Department of Public Works  
Douglas Ayer, Stanford Law School  
Robert F. Carlson, Department of Public Works

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Donald L. Clark, San Diego County Counsel's Office  
Gideon Kanner, Los Angeles Attorney  
James T. Markle, Department of Water Resources  
Ken Nellis, Department of Public Works  
Willard A. Shank, California Attorney General's Office  
Terry C. Smith, Los Angeles County Counsel's Office

Leases

Eugene Golden, Buckeye Realty

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ADMINISTRATIVE MATTERS

Minutes of January Meeting. The Minutes of the meeting held January 9, 10, and 11, 1969, were approved as submitted.

Future Program of the Law Revision Commission. The Commission considered Memoranda 69-27 and 69-28 relating to a Washington, D. C. research organization's study of topics that might be considered by the Assembly Judiciary Committee, new agenda topics, and the Commission's output.

The Commission approved the output and expenditures estimates set forth in Memorandum 69-28 and the attached Exhibit.

New Topics. The Commission considered the First Supplement to Memorandum 69-27, which was handed out at the meeting. This memorandum contained a discussion of the suggestion from Michael R. Coghlan that the Financial Responsibility Law be revised to provide in substance that a person who drives without motor vehicle insurance and has an accident not be required to post security (in the form of money or a bond or the equivalent) if he clearly is not at fault in the accident.

The Commission determined that it would not request authority to study the suggested topic.

Consultant on Study on Whether the Law Relating to Counterclaims and Cross-Complaints Should Be Revised. The Executive Secretary advised the Commission that the Judicial Council had determined that this topic is in need of study. Mr. Ralph Kleps has forwarded a preliminary draft

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of a portion of a background study on the problem to the Commission for such assistance as it may provide.

The Executive Secretary suggested that Professor Jack H. Friedenthal, who has prepared background research studies for the Commission on other topics, be retained as a consultant on this topic if it is authorized for study by the Legislature. A motion was adopted that Professor Friedenthal be retained as the research consultant if the study is authorized; that his compensation for preparing the study be \$1,000, and that the contract with him contain the same terms as in other recent research contracts. The Executive Secretary was authorized to execute the contract with Professor Friedenthal on behalf of the Commission.

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STUDY 12 - JURY INSTRUCTIONS

The Commission considered Memorandum 69-22 and the attached printed recommendation and study. After discussion, the Commission determined that this topic should remain on the agenda, that the list of statutes in other states (contained in the printed study) should be brought up-to-date, and that a tentative recommendation should be prepared for consideration at a future meeting.

The tentative recommendation should provide that the procedure for taking instructions to the jury room should be prescribed by rules of the Judicial Council.

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STUDY 36 - CONDEMNATION LAW AND PROCEDURE (PROCEDURAL  
PROBLEMS GENERALLY--COST ALLOCATION)

The Commission considered Memorandum 69-30 (regarding allocation of court costs) and the attached research study by Professor Douglas Ayer.

The staff was directed to send a letter to the State Bar Committee on Condemnation Law and Procedure and to other condemnation attorneys to obtain comments on whether there is a substantial need for a statute providing for payment of attorney's fees. The Commission directed the Executive Secretary to include in the letter a discussion or comparison of the five possible schemes (discretion of trial court, formula recovery, recovery in all cases, percentage recovery of excess over condemnor's offer, and attorney fees awarded to either party depending on responsibility for failing to settle). The Commission expressed interest in receiving comments on the following matters:

(1) Do condemnation actions significantly differ from personal injury and other actions where attorney fees are not awarded? (2) If attorney's fees are to be awarded, should the court's award be binding on the attorney? It was also suggested that the letter touch on the matter of independent appraisers.

The staff was directed to draft a statute permitting the parties to a condemnation proceeding to arbitrate the dispute.

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STUDY 41 - SMALL CLAIMS COURT LAW

The Commission considered Memorandum 69-33 and the attached research study. The Commission determined it would not be desirable to make a study of only the right to appeal without making a comprehensive study of the entire subject of small claims courts. It was concluded that the Legislature has this subject under study and that the resources of the Commission would better be devoted to other topics more in need of study.

The Commission determined that this topic should be dropped from its agenda. A statement to be included in the Annual Report authorizing the dropping of this topic should be prepared for consideration by the Commission.

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STUDY 44 - FICTITIOUS BUSINESS NAME STATUTE

The Commission considered Memorandum 69-23 and the attached tentative recommendation and research study. Letters from the Los Angeles Daily News and the Metropolitan News were also considered. The following actions were taken.

Persons Subject to the Statute

The following are to be exempt from the statute:

- (1) Non-profit associations and corporations.
- (2) Medical and legal partnerships and the staff should examine whether other professional groups can be excluded.

The exemption for foreign commercial and banking partnerships is to be eliminated.

The feasibility of defining "regularly doing business" was discussed. The test of "doing business" was also considered. No revision in the tentative recommendation was made.

Fictitious Business Name Statements

The Commission discussed whether the address given on the statement might be a post office box number. The staff was directed to examine the statute and determine whether street addresses can be required.

Publication Requirement

A motion to delete the publication requirement entirely failed.

The number of required publications was reduced to one.

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The acknowledgement certificate is not to be published.

The residence addresses of the individual or partners should not be included in the published information.

The posting requirement was deleted.

Maintenance of Records

The provision authorizing the county clerk to provide summaries of filings under this statute was approved.

The staff was directed to confer with the county clerks relating to the burden of filing affidavits of publication.

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STUDY 47 - ORAL MODIFICATION OF WRITTEN CONTRACT

The Commission considered Memorandum 69-32 and the First Supplement to that memorandum. After discussion, the Commission directed the staff to prepare background materials on this topic for consideration at a future meeting. The topic is not to be given priority but is to be retained on the Commission's agenda.

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STUDY 50 - LEASES

The Commission considered the First Supplement to Memorandum 69-29 relating to the revision of Civil Code Section 1952(c). The Commission noted a letter submitted by Richard N. Agay.

Section 1952(c) of the Civil Code was revised to read as follows:

(c) After the lessor obtains possession of the property under a judgment pursuant to Section 1174 of the Code of Civil Procedure, he is no longer entitled to the remedy provided under Section 1951.4 unless the lessee obtains relief under Section 1179 of the Code of Civil Procedure.

The Comment to Section 1952(2) was revised to add the substance of the following at the end of the Comment:

Under some circumstances, the court may order that execution upon the judgment in an unlawful detainer proceeding not be issued until five days after the entry of the judgment; if the lessor is paid the amount to which he is found to be entitled within such time, the judgment is satisfied and the tenant is restored to his estate. In such case, since the lessor never obtains possession of the property, the lessor's right to the remedy provided by Section 1951.4 is not affected by the proceeding. If the court grants relief from forfeiture and restores the lessee to his estate as authorized by Code of Civil Procedure Section 1179, the lease statute, including any provision giving the lessor the remedy provided in Section 1951.4, continues in effect.

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STUDY 52 - SOVEREIGN IMMUNITY (PRISONERS AND MENTAL PATIENTS)

The Commission considered Memorandum 69-24 and the attached tentative recommendation. The Commission took special note of a memorandum submitted by Gerald J. Thompson relating to the immunity for county mental health facilities. The Commission deferred action on the points raised in the letter until the tentative recommendation has been sent out for comment and the comments are considered by the Commission.

The following actions were taken.

(1) Section 856.2 was amended to provide that this section does not exonerate the public employee for injuries he inflicts in recapturing an escaped mental patient.

(2) The staff was directed to revise the Comment to clarify the meaning of "inpatient."

(3) The tentative recommendation was approved for distribution. Commissioners Sato and Stanton turned in suggested editorial revisions on the tentative recommendation which are to be considered by the staff before the tentative recommendation is distributed for comment.

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STUDY 52 - SOVEREIGN IMMUNITY (DISCRETIONARY IMMUNITY)

The Commission noted Memorandum 69-21 setting forth the decision in Johnson v. State relating to the general discretionary immunity.

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STUDY 60 - REPRESENTATION AS TO CREDIT

The Commission considered Memorandum 69-25 and the attached tentative recommendations. After discussion, the Commission approved the tentative recommendation (blue cover) to repeal Civil Code Section 1974.

The staff was directed to send out the tentative recommendation to interested persons and organizations for comment. Commissioners Sato and Stanton turned in suggested editorial revisions on the tentative recommendation which are to be considered by the staff before the tentative recommendation is distributed for comment.

STUDY 65 - INVERSE CONDEMNATION

The Commission considered Memorandum 69-31 and the attached memorandum by Mr. Gideon Kanner entitled "Just How Just is Just Compensation?" The Commission considered Memorandum 69-15 and the First Supplement to Memorandum 69-15. Part IV of the research study on inverse condemnation was also considered.

Surface Waters

The Commission generally discussed some of the problems relating to surface water damages. The Commission determined the Keyes rule should be codified. The following problems were identified and the staff was directed to prepare tentative solutions to each of them for consideration at the next meeting.

- (1) Who must plead and prove the reasonableness of the lower landowner's acts?
- (2) Is "reasonableness" a judge or jury question?
- (3) What can reasonably be expected of the lower landowner? Should this turn upon the economic cost of improvements necessary to mitigate damages?

Other Types of Waters

The Commission directed the staff to investigate the possibility of applying the Keyes rule to all forms of water damage.

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STUDY 66 - QUASI-COMMUNITY PROPERTY

The Commission considered Memorandum 69-26 and the attached tentative recommendation. The reference to "earnings and accumulations" on page 3 should be checked since some of the statutes cited refer only to earnings.

After discussion, the Commission approved distribution of the tentative recommendation to interested persons for comment. Commissioners Sato and Stanton turned in suggested editorial revisions on the tentative recommendation which are to be considered by the staff before the tentative recommendation is distributed for comment.