

MINUTES OF MEETING

of

CALIFORNIA LAW REVISION COMMISSION

SEPTEMBER 23-25, 1982

SAN DIEGO

A meeting of the California Law Revision Commission was held in San Diego on September 23, 24, and 25, 1982.

Law Revision Commission

Present:	Robert J. Berton, Chairperson	John B. Emerson
	Beatrice P. Lawson, Vice Chairperson	Debra S. Frank
	Roslyn P. Chasan	David Rosenberg
Absent:	Alister McAlister, Member of Assembly	James H. Davis
	Omer L. Rains, Member of Senate	Bion M. Gregory, Legislative Counsel

Staff Members Present

John H. DeMouilly	Nathaniel Sterling (Sept. 23-24)
Robert J. Murphy III	Stan G. Ulrich

Consultants Present

Russell Niles, Property and Probate Law (Sept. 24-25)
Gerald F. Uelmen, Statutes of Limitation (Sept. 23)

Other Persons Present

Rudolpho Aros, State Bar Legal Service Section, Sacramento (Sept. 23-24)
James D. Devine, State Bar Probate Section, Monterey (Sept. 23-24)
James Goodwin, State Bar Probate Section, San Diego (Sept. 23-24)
William H. Plageman, State Bar Probate Section, Oakland (Sept. 24-25)

ADMINISTRATIVE MATTERS

MINUTES OF JULY 1982 MEETING

The Minutes of the July 22-24, Meeting were approved as submitted by the staff.

BUDGET FOR 1983-84 FISCAL YEAR

The Commission considered Memorandum 82-77 and the draft of the proposed budget for the 1983-84 fiscal year submitted by the staff. The Commission approved the budget as submitted, with the following changes:

Facilities Operations.....Increase from 15 to 17
Consultant and Professional
Services; External.....Decrease from 10 to 8

The reason for this change is that it will cost \$2,000 for the Space Management Division to renegotiate the Commission's office space lease.

Because of the limited funds for printing, the Commission also decided not to include an index in the next bound volume of Commission reports. In addition to the printing funds, this will also save preparation costs and also preparation and printing time. The Commission felt that an index was not an important research tool for users of Commission reports.

SCHEDULE FOR FUTURE MEETINGS

The Commission considered Memorandum 82-98 and adopted the following schedule for future meetings:

November 1982

November 5 (Friday) - 10:00 a.m. - 5:00 p.m. Los Angeles
November 6 (Saturday) - 9:00 a.m. - 12:00 noon

December 1982

No meeting

January 1983

January 21 (Friday) - 10:00 a.m. - 5:00 p.m. San Francisco
January 22 (Saturday) - 9:00 a.m. - 12:00 noon

February 1983

No meeting

March 1983

March 17 (Thursday) - 7:00 p.m. - 10:00 p.m. Los Angeles
March 18 (Friday) - 9:00 a.m. - 5:00 p.m.
March 19 (Saturday) - 9:00 a.m. - 12:00 noon

April 1983

No meeting

May 1983

No meeting

June 1983

June 9 (Thursday) - 7:00 p.m. - 10:00 p.m. San Francisco
June 10 (Friday) - 9:00 a.m. - 5:00 p.m.
June 11 (Saturday) - 9:00 a.m. - 12:00 noon

July 1983

No meeting

August 1983

No meeting

September 1983

September 22 (Thursday) - 7:00 p.m. - 10:00 p.m. San Diego
September 23 (Friday) - 9:00 a.m. - 5:00 p.m.
September 24 (Saturday) - 9:00 a.m. - 4:00 p.m.

1982 LEGISLATIVE PROGRAM

The Commission considered Memorandum 82-76, which the Executive Secretary supplemented orally, making the following report on the 1982 Legislative Program:

Enacted

- Ch. 150, Stats. 1982 - Senate Bill 203 (Increases interest rate to 10 percent as recommended by Commission. Also provides for prejudgment interest in personal injury actions.)
 - Ch. 182, Stats. 1982 - Assembly Bill 2341 (escheat)
 - Ch. 187, Stats. 1982 - Assembly Bill 2331 (holographic wills and oral wills)
 - Ch. 269, Stats. 1982 - Assembly Bill 2643 (pay-on-death accounts)
 - Ch. 497, Stats. 1982 - Assembly Bill 798 (conforming revisions to enforcement of judgments bill) (companion bill to Assembly Bill 707)
 - Ch. 517, Stats. 1982 - Assembly Bill 2750 (conforming revisions to bonds and undertakings statute)(companion bill to Assembly Bill 2751)
 - Ch. 998, Stats. 1982 - Assembly Bill 2751 (bonds and undertakings law)
 - Ch. 1198, Stats. 1982 - Assembly Bill 2332 (prejudgment attachment)
 - Ch. 1268, Stats. 1982 - Assembly Bill 2416 (marketable title)
- Res. Ch. 18, Stats. 1982 - ACR 76 (continues authority to study previously authorized topics)
- Res. Ch. 44, Stats. 1982 - AJR 63 (federal pensions and benefits subject to state marital property law)

Passed Legislature

Assembly Bill 707 (enforcement of judgments)

Dead

Assembly Bill 325 (nonprobate transfers) (This recommendation was effectuated in part by Chapter 269 (AB 2643)--above--which was enacted)

ANNUAL REPORT FOR 1982

The Commission considered Memorandum 82-79 and the attached staff draft of the Annual Report for 1982. The Commission requested that the

draft be revised to include a statement concerning the length of time the Commission has been in existence. As so revised, the Commission approved the annual report, subject to any changes to reflect decisions concerning the recommendations that will be submitted to the 1983 legislative session.

NEW TOPICS

The Commission considered Memorandum 82-87 and the First Supplement thereto, reviewing suggestions for new topics of study. The Commission determined that no new authority is necessary to study whether a notice of rejection of claim by a public entity under the government tort liability act should contain a notice of the procedure for filing a late claim. The staff will draft a recommendation on this subject for Commission consideration when time permits.

The Commission determined, in response to the concern of Judge King about special appearances in family law matters, that its authority to study community property is not sufficiently broad. The Commission decided to request authority to study family law generally. The matter should be submitted to the Legislature by a separate resolution introduced later in the session so that it will not hinder continuation of the Commission's authority to study currently authorized matters.

PRIORITY FOR CONSIDERATION OF TOPICS

The Commission considered Memorandum 82-80 and the First Supplement thereto, relating to priorities for Commission work during 1983. The Commission decided to give top priority to the study of statutes of limitation for felonies, pursuant to legislative directive. Next priority will be probate law and procedure, followed by community property law. The Assistant Executive Secretary should devote approximately half time to the probate study and half time to the community property study. Finally, marketable title should be worked into the schedule on a low priority basis from time to time, as the other studies permit.

STUDY D-301 - CREDITORS' REMEDIES

The Commission considered Memorandum 82-86 and the attached staff draft of a Recommendation Relating to Creditors' Remedies (September 1982), and also the First Supplement to Memorandum 82-86. The Commission approved the recommendation for printing and introduction in the 1983 session of the Legislature, subject to the following revisions:

Code Civ. Proc. § 483.015. Amount to be secured by attachment.

The Comment to this section should be revised to summarize what is meant by the language in subdivisions (b)(2) and (b)(3) referring to a claim "upon which an attachment could be issued."

Code Civ. Proc. §§ 488.455, 700.140. Levy on deposit accounts.

Section 488.455 in the Attachment Law and Section 700.140 in the Enforcement of Judgments Law should be amended to provide that a bond is not required to levy on a deposit account that is a Totten trust or a pay-on-death account. (The language of these amendments is set forth in Exhibit 4 attached to Memorandum 82-83.)

STUDY D-325 - STATUTORY BONDS AND UNDERTAKINGS

The Commission considered Memorandum 82-88 and the attached staff draft of a recommendation for a clean-up bill on statutory bonds and undertakings. The Commission approved the staff draft as submitted.

STUDY F-401 - EMANCIPATED MINORS

The Commission considered Memorandum 82-81 and the attached Recommendation Relating to Emancipated Minors. The Commission approved the Recommendation for printing and submission to the Legislature.

STUDY F-601 - COMMUNITY PROPERTY (DIVISION OF JOINT TENANCY AND TENANCY IN COMMON PROPERTY AT DISSOLUTION OF MARRIAGE)

The Commission considered Memorandum 82-85 analyzing comments received on the tentative recommendation relating to division of joint tenancy and tenancy in common property at dissolution of marriage. The Commission approved the recommendation for printing and submission to the 1983 Legislature, with the changes set out in the memorandum.

STUDY J-600 - DISMISSAL OF CIVIL ACTIONS

The Commission considered Memorandum 82-84 and the attached staff draft of the recommendation relating to dismissal for lack of prosecution, along with a letter from Alan R. Jampol distributed at the meeting (attached to these Minutes as an exhibit) and along with the staff's oral report of the views of the Commission's consultant Garrett H. Elmore. The Commission approved the staff draft for printing and submission to the 1983 Legislature, with the following changes:

Inherent authority. The recommendation should not attempt to codify the doctrine of inherent authority. Rather, the recommendation should simply state that nothing in the statute is intended to affect inherent authority of the court.

Time for service of summons. The recommendation should follow the text of SB 1150 relating to excuse for causes beyond the control of the plaintiff. Failure to make discovery is not an excuse. The time within which service must be made should be four rather than three years. The provision for dismissal after a demand for service should be deleted. The defendant can appear without service if the defendant deems it necessary.

Discretionary dismissal. The article on discretionary dismissal should be restored to the recommendation. A motion for discretionary dismissal can be made if the action is not brought to trial within three, rather than two, years after the action is commenced.

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September 15, 1982

California Law Revision Commission
4000 Middlefield Rd.
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Re: Study J-600: Dismissal for Lack of Prosecution

Dear Ladies and Gentlemen:

I have been periodically receiving announcements from the Commission regarding upcoming topics, and have received a notice of your late September meeting. I particularly note the above study on civil dismissals, and wish to make my own views known to the Commission.

I have been a practicing trial attorney for ten years, and have been on both sides of a number of motions made under CCP §581(a), 583(a) and 583(b). I have seen first-hand the great spectrum of circumstances which have led to a failure to serve a party or to bring a matter to trial for five years, or failure to prosecute a matter for a two-year period, and, quite frankly, sympathize with the subjective beliefs of the Supreme Court as manifested in Hocharian v. Superior Court. It would probably not assist the Commission to outline examples of the reasons for such delays, but, in my opinion, suffice it to say that many such excuses are logically and morally valid.

It seems to me that the trend in many areas of law is away from rigid and inflexible rules to a more flexible approach based upon the circumstances of each particular case. Certainly, the federal courts have been able to control their dockets in a satisfactory manner (many, including myself, feel that federal courts control their dockets in a much better and more efficient manner than do our state courts) without the necessity of a strict time-keyed rule (see F.R. Civ. P. Rule 41(b)).

Frankly, it is my very firm belief as a trial lawyer that an inflexible time-oriented rule is contrary to the best

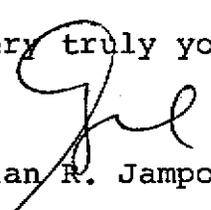
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interests of the judicial system and of the public, and really serves no beneficial purpose. Having a time-keyed rule will on many occasions prevent meritorious claims from coming before the court although such claims may have been delayed by reasons which a court will find proper or beyond the reasonable control of the plaintiff. In addition, there is certainly an implication that action within the time provided will be satisfactory, notwithstanding an unreasonable or unexcused delay or lack of diligence within the time frame of the rule. In addition, the current status of court backlogs, at least in large metropolitan districts such as Los Angeles County, make it virtually impossible for most plaintiffs to bring their cases to trial within two years, and in many cases within five years. This problem will only be aggravated by the passage of Proposition 8.

Despite the mania for predictability in the law, it is my belief that such predictability can be obtained within the limits of a flexible rule, and does not require an absolute outside period. I firmly believe that a federal-type flexible rule, if judiciously applied by the courts and properly utilized by litigants, will serve the purposes of expedition without the unfortunate side effects mentioned.

The two, three and five-year rules are products of bygone eras, and do not presently have any direct nexus to present civil practice, at least in the large metropolitan courts. Some effort ought to be made to preserve discretion in the trial court in appropriate cases, although guidelines could certainly be promulgated (as, for example, CCP § 2019(b)(2) relative to protective orders).

Very truly yours,



Alan R. Jampol

ARJ:db

STUDY L-601 - NONPROBATE TRANSFERS

The Commission considered Memorandum 82-83, reviewing comments received on the tentative recommendation relating to nonprobate transfers. The Commission approved the recommendation for printing and submission to the 1983 Legislature with the changes set out in the memorandum and with the additional change that the reference in Section 6303(b)(2) to a modification agreement "in a form satisfactory to the financial institution" is replaced by a provision that "if the financial institution has a form for this purpose, it may require that the form be used."

STUDY L-625 - PROBATE LAW AND PROCEDURE (TENTATIVE
RECOMMENDATION RELATING TO WILLS AND INTESTATE
SUCCESSION)

The Commission considered the following materials concerning wills and intestate succession: Memorandum 82-91 and the attached staff draft of a comprehensive statute and Comments, the First through Fifteenth Supplements to Memorandum 82-70, Memorandum 82-100 (required period of survival to take as survivor), Memorandum 82-93 (contractual arrangements relating to death), Memorandum 82-95 (ademption), First Supplement to Memorandum 82-95 (time for determination of class when possession is postponed), Memorandum 82-96 (California statutory will), Memorandum 82-99 (family protection), and Memorandum 82-101 (share for child omitted from will).

The Commission decided to abandon the decimal numbering system for the proposed statute, and to use whole numbers instead. This will require that the new provisions on wills and intestate succession be placed after Division 4 of the Probate Code. The staff was directed to renumber the sections of the proposed statute accordingly.

The Commission reviewed the draft statute and made the following decisions:

§ 110.030. Recapture by surviving spouse of certain quasi-community property

The Commission saw some merit in revising Section 110.030 to provide for equitable defenses to the recapture provisions and to give the court discretion to decline to permit recapture. The Commission asked

the staff to look at comparable provisions in the Idaho statute and to report back to the Commission.

§ 111.040. Waiver enforceable as of right

The Commission revised the second sentence of Comment to Section 111.040 to change "[a] waiver is enforceable unless . . ." to "[t]he court shall enforce the waiver unless"

§ 114.040. Survival of joint tenants

The Commission revised proposed Section 114.040 as follows:

114.040. (a) As used in this section, "joint tenants" includes owners of property held under circumstances that entitled one or more to the whole of the property on the death of the other or others.

(b) If property is held by two joint tenants and both of them have died and it cannot be established that one survived the other by 120 hours, the property held in joint tenancy shall be administered upon or distributed, or otherwise dealt with, one-half as if one joint tenant had survived and one-half as if the other joint tenant had survived.

(c) If property is held by more than two joint tenants and all of them have died and it cannot be established that any of them survived the others by 120 hours, the property held in joint tenancy shall be divided into as many portions as there are joint tenants and the share of each joint tenant shall be administered upon or distributed, or otherwise dealt with, as if that joint tenant had survived the other joint tenants.

(d) Nothing in this article limits or affects any right a joint tenant or other person may have to withdraw funds from a joint account or other multiple-party account in a financial institution; whether or not the person making the withdrawal has at the time of withdrawal survived another party to the account by 120 hours party to a joint account or other multiple-party account in a financial institution may have to withdraw funds from the account, whether or not the withdrawal is made within 120 hours after the death of another party to the account. If a person having the right to do so withdraws funds from a joint account or other multiple-party account within 120 hours after the death of another party to the account and subdivision (b) or (c) applies, the amount to which subdivision (b) or (c) applies is the amount remaining in the account after the withdrawal .

The Commission decided that a codepositor should have immediate access to funds on deposit in a money market fund or with a brokerage house, notwithstanding the 120-hour survival requirement. This could be accomplished either by revising subdivision (d) or by broadening the definition of "account" (Section 100.015) or "financial institution" (Section 100.150). The staff should identify all sections in the draft statute where the defined terms "account" and "financial institution"

are used and report back to the Commission. The staff should consider whether any provisions other than Section 114.040 should be broadened to include money market funds and the like.

§ 114.510. Petition for purpose of determining survival

The Commission revised subdivision (e) of proposed Section 114.510 as follows:

114.510. A petition may be filed under this article for any one or more of the following purposes:

(e) To determine for the purposes of a case governed by the law in effect prior to January 1, 1985, former Sections 296 through 296.8 whether persons have died other than simultaneously.

§ 114.540. Notice of hearing

The Commission revised proposed Section 114.540 as follows:

114.540. (a) The clerk shall set the petition for hearing by the court. At least 10 days before the date set for the hearing of the petition by the court, the petitioner shall cause notice of the hearing to be personally served on the executor or administrator of each other person the priority of whose death is in issue or to their attorneys if they have appeared by attorney in the estate proceeding. If the representative of any such other person is also the petitioner then, in lieu of personal service upon him or her, the notice of hearing shall be mailed to the heirs and devisees of such other person, so far as they are known to the petitioner, at least 10 days before the date of the hearing.

(b) Notice of the hearing on the petition shall be given for the period and in the manner required by Section 1200.5 to all of the following (other than persons joining in the petition):

(1) The executor or administrator of each person the priority of whose death is in issue if there is an executor or administrator for such person.

(2) All devisees of each person the priority of whose death is in issue.

(3) All known heirs of each person the priority of whose death is in issue.

(4) All persons (or their attorneys, if they have appeared by attorneys) who have requested special notice as provided in Section 1202 in the proceeding in which the petition is filed or who have given notice of appearance in person or by attorney in that proceeding.

(c) Proof of giving of notice as required by this section shall be made at or before the hearing.

§ 201.010. Execution of witnessed will

The Commission decided that Section 201.010 should be modified in two respects:

(1) Those who witness the will should understand that the instrument being witnessed is a will.

(2) As an alternative to the two-witness requirement, the testator should be able to have the will witnessed by a notary public.

The staff was directed to revise the section accordingly.

§ 201.030. Who may witness a will

The Commission was concerned that a beneficiary under the will might be precluded from challenging on grounds of undue influence a gift under the will to one who witnessed the will by a no-contest clause in the will to the effect that one who contests the will shall take nothing under the will. The Commission decided to include a provision in the proposed new law that, notwithstanding any provision in the will, a beneficiary may, without forfeiting any benefits under the will, contest the claim of another beneficiary who witnessed the will and is needed as a witness to establish the validity of the will.

The Comment to Section 201.030 should note that undue influence may, of course, be inferred from the circumstances of the particular case.

§ 204.050. Anti-lapse

The Commission reversed its earlier decision to expand the anti-lapse statute to apply to any predeceased devisee, whether or not related to the testator. The Commission decided to keep existing California law which applies the anti-lapse statute only if the named devisee is related to the testator by blood, without regard to whether the blood relationship is close or remote. The Commission did not adopt the UPC rule which applies the anti-lapse statute only if the devisee is a close relative of the testator.

§ 204.090. Scope of disposition to a class; afterborn member of class

The Commission thought the staff-proposed revision to Section 204.090 set forth in the First Supplement to Memorandum 82-95 did not go far enough, and should be broadened to deal with more kinds of class gifts than those treated in the draft. Professor Niles offered to furnish to the staff a redrafted section drawn from the Restatement after consulting with Professor Dukeminier.

§ 204.210. Conditional disposition

§ 204.220. Condition precedent

§ 204.230. Condition subsequent

Proposed Sections 204.210, 204.220, and 204.230 (continuing the substance of existing Sections 141-143) appear to be incomplete, over-exact, poorly drafted, and inconsistent with the Civil Code. See Civil Code §§ 708-709. Professor Niles agreed to write a critique of these sections and Section 204.350 for the staff.

§ 208.050. Filing of certificate in probate and other proceedings

The Commission revised proposed Section 208.050 as follows:

208.050. (a) A certificate of the Secretary of State issued pursuant to Section 208.040 ~~shall~~ may be filed with the ~~court~~:

~~(1) In court in proceedings for probate of a will or for administration, at a time before any distribution is made or before the time for filing claims expires, whichever is earlier.~~

~~(2) In or in any other proceeding under this code in which the existence of a will is relevant, promptly after the commencement of the proceeding relevant .~~

(b) This section becomes operative on January 1, 1989. Failure to file the certificate of the Secretary of State does not affect the validity of the proceeding .

§ 220.030. Intestate share of heirs other than surviving spouse

The Commission decided to add a subdivision (e) to proposed Section 220.030 to give the decedent's stepchildren a right to inherit as a last resort before the property escheats. This right would not extend to issue or other relatives of the stepchildren.

§ 252.010. Persons for whom family allowance may be made

The Commission decided to revise subdivision (b) of Section 252.010 as follows:

(b) Other adult children of the decedent who were actually dependent in whole or in part upon the decedent for support. The following may be given such reasonable family allowance out of the estate as the court in its discretion determines is necessary for their maintenance according to their circumstances during the administration of the estate.

(1) Other adult children of the decedent who were actually dependent in whole or in part upon the decedent for support.

(2) A parent of the decedent who was actually dependent in whole or in part upon the decedent for support.

§ 252.020. Petition and notice

The Commission approved the version of Section 252.020 set forth in the attachment to Memorandum 82-91 (comprehensive statute). This version continues more extensive notice provisions enacted by the 1982 Legislature (chapter 520).

§§ 253.010-253.070. Family maintenance

After considering the unanimous opposition of the Executive Committee of the State Bar Estate Planning, Probate and Trust Law Section, the Commission decided to delete the proposed provisions for family maintenance (Sections 253.010-253.070). The Commission thought a better approach would be to permit the court to hold the estate open (see Prob. Code § 1025.5) in order to continue family allowance, but only if the recipient needs the family allowance to pay for necessities of life (including education so long as pursued to advantage). The staff was directed to draft provisions to accomplish this for Commission consideration. The staff should consider whether some time limit should be imposed on an extended family allowance award. The State Bar agreed to assist the staff in drafting appropriate revisions to the family allowance provisions.

§ 254.010. Share of omitted spouse

The Commission revised proposed Section 254.010 as follows:

254.010. Except as provided in Section 254.020, if a testator fails to provide by will for his or her surviving spouse who married the testator after the execution of the will, the omitted spouse shall receive a share in the estate consisting of the following property in the estate:

(a) The one-half of the community property that belongs to the testator under Section 110.010.

(b) The one-half of the quasi-community property that belongs to the testator under Section 110.020.

(c) ~~All~~ One-half of the separate property of the testator if the testator dies leaving neither issue, parent, brother, sister, nor issue of a brother or sister.

(d) A share of the separate property of the testator equal to whichever of the following is the greater amount if the testator dies leaving surviving issue, parent, brother, sister, or issue of a brother or sister:

(1) ~~One-half~~ of the separate property of the testator.

(2) All of the separate property of the testator which does not pass to the testator's surviving issue, parent, brother, sister, or issue of a brother or sister, under the testator's will or under Section 254.110.

The staff was directed to give additional thought to how the rules of abatement (Prob. Code §§ 91, 750-753) operate in this context, particularly where there also is a claim of a pretermitted child. The staff should present some examples of specific cases for Commission consideration to illustrate how the scheme will work.

§ 254.110. Share of pretermitted child

The Commission decided to revise proposed Section 254.110 to abandon the scheme to provide a pretermitted child with a share equal to the average of the amounts received by the other children, and to substitute an intestate share as under existing law (Prob. Code § 90).

§ 351.5. Lost will not presumed revoked

The Commission decided to delete proposed Section 351.5, which provided that "[i]f after the testator's death the testator's will cannot be found, there is no presumption that the testator destroyed the will with intent to revoke it." This deletion would leave the California decisional law rule unchanged that if the will was in the testator's possession immediately before death, the testator was competent until death, and after death the will cannot be found, there is a rebuttable presumption that the testator destroyed the will with intent to revoke it.

STUDY L-625 - PROBATE LAW (DISCLAIMER OF TESTAMENTARY
AND OTHER INTERESTS)

The Commission considered Memorandum 82-94 and the attached Tentative Recommendation Relating to Disclaimer of Testamentary and Nontestamentary Interests (August 8, 1982). The Commission approved the recommendation for printing and to be introduced as a bill in the 1983 session of the Legislature, subject to the revisions discussed below. The recommendation is to be reviewed at the November 5-6 meeting of the Commission at which time the State Bar will be given an opportunity to suggest additional revisions.

Prob. Code § 190.230. Disclaimer on behalf of minor or decedent. Executors and administrators should be permitted to make disclaimers without the necessity of prior court approval where administration is under the Independent Administration of Estates Act, Probate Code §§ 591-591.7.

Prob. Code § 190.270. Disclaimer irrevocable and binding. The staff should consider adding a statement to the Comment to this section to make clear that the binding effect of a disclaimer has no effect on the passage of the disclaimed interest under Section 190.280.

STUDY L-626 - PROBATE LAW AND PROCEDURE
(MISSING PERSONS)

The Commission considered Memorandum 82-89 and the attached Recommendation Relating to Missing Persons. The Commission made the following revision to the Recommendation:

§ 1308. Recovery of property by missing person upon reappearance

1308. If the missing person reappears, the missing person may recover all of the following:

(a) Property property of the missing person's estate in the hands of the executor or administrator.

(b) Property of the missing person's estate or its proceeds in the hands of distributees, or the value of distributions received by them, to the extent that any recovery from distributees is equitable in view of all of the circumstances. No action for recovery may be brought against a distributee after the expiration of five years from the date of the property is distributed.

The Commission approved the Recommendation as thus revised for printing and submission to the Legislature.

STUDY L-627 - PROBATE LAW AND PROCEDURE
(NOTICE IN LIMITED CONSERVATORSHIP PROCEEDINGS)

The Commission considered Memorandum 82-90 and the attached Recommendation Relating to Report of Assessment of Proposed Limited Conservatee. The Commission revised the Recommendation to provide that a copy of the report should be mailed five days before the hearing, instead of the ten days provided in the proposed legislation. The Commission approved the Recommendation as thus revised for printing and submission to the Legislature.

STUDY L-703 - APPOINTMENT OF HEALTH CARE
REPRESENTATIVE

The Commission considered Memorandum 82-82 and the attached staff draft of the Recommendation Relating to Appointment of a Health Care Representative (July 30, 1982). After considering the written comments attached to the memorandum and the remarks of persons attending the

meeting, the Commission decided to postpone any decision on whether to drop this subject. The draft recommendation should be sent to the Estate Planning, Trust and Probate Law Section and the Legal Services Section of the State Bar so that their views can be obtained. The staff should also distribute the draft to other groups that may be interested in this subject. The Commission will decide whether to propose legislation relating to the appointment of health care representatives after the draft statute has received further review.

STUDY M-100 - STATUTES OF LIMITATIONS FOR FELONIES

The Commission considered Memorandum 82-78, with the attached progress report of Professor Gerald F. Uelmen, the Commission's consultant on statutes of limitations for felonies. The Commission also heard an oral presentation by Professor Uelmen. The Commission plans to receive the consultant's study and to become educated concerning its contents at the March 1983 meeting. At the June 1983 meeting the Commission will invite interested persons and groups to attend and will begin actively to make policy decisions on the statutes of limitations for felonies.

APPROVED AS SUBMITTED _____

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

Date

Chairperson

Executive Secretary