

MINUTES OF MEETING

of

CALIFORNIA LAW REVISION COMMISSION

MARCH 30 AND 31, 1979

Asilomar

A meeting of the California Law Revision Commission was held at Asilomar (Pacific Grove) on March 30 and 31, 1979.

Law Revision Commission

Present:	Howard R. Williams, Chairman	George Y. Chinn
	Beatrice P. Lawson, V. Chairman	Ernest M. Hiroshige
	Judith Meisels Ashmann	Laurence N. Walker
Absent:	Omer L. Rains, Senate Member	Jean C. Love
	Alister McAlister, Assembly Member	Bion M. Gregory, <u>Ex Officio</u>

Staff Members Present

John H. DeMouilly	Robert J. Murphy III
Nathaniel Sterling	

Consultant Present

Garrett H. Elmore, Guardianship-Conservatorship

State Bar Subcommittee on Guardianship-Conservatorship Member Present

William S. Johnstone, Jr., Pasadena

Other Invited Participants Present

March 30

W. Allen Bidwell, Los Angeles County Counsel's Office, Los Angeles  
David Blonder, Attorney, Los Angeles  
Norval Fairman, CalTrans - Legal, San Francisco  
Thomas Haughton, Attorney, Los Angeles  
Richard Kaufman, Credit Managers Ass'n of So. California, Los Angeles  
Arthur Levy, Student and Summer Staff Member (1978), Berkeley  
Harold Marsh, Nossaman, Krueger & Marsh, Los Angeles  
G. Sinclair Price, Cal. Bankers Ass'n, San Francisco  
Kathy Rogers, Paralegal, San Francisco  
Vernon D. Stokes, Att'y for Board of Trade, San Francisco  
Paul Thunemann, Board of Trade, San Francisco

March 31

W. Allen Bidwell, Los Angeles County Counsel's Office, Los Angeles  
Norval Fairman, CalTrans - Legal, San Francisco  
G. Sinclair Price, Cal. Bankers Ass'n, San Francisco

ADMINISTRATIVE MATTERS

Minutes of February Meeting

The Minutes of the February 9, 1979, Meeting were approved as submitted.

Legislative Program

The Executive Secretary made the following report on the legislative program:

1979 LEGISLATIVE PROGRAM

SENT TO FLOOR IN SECOND HOUSE

AB 11 (Wage garnishment procedure)

SENT TO FISCAL COMMITTEE IN SECOND HOUSE

AB 135 (Ad valorem taxes when property taken for public use)

Reported "do pass" by Senate Judiciary Committee on March 27.

ACR 8 (Continues authority to study existing topics, authorizes dropping of one topic, authorizes study of two new topics)

Reported "do pass" by Senate Judiciary Committee on March 27.

SENT TO FLOOR IN FIRST HOUSE

AB 212 (Probate Code construction)

Reported "do pass" by Assembly Judiciary Committee on March 28.

AB 617 (Effect on attachment of bankruptcy or assignment for benefit of creditors)

Reported "do pass" by Assembly Judiciary Committee on March 28.

HEARD BY POLICY COMMITTEE IN FIRST HOUSE BUT ACTION DEFERRED

AB 145 (Undertaking for costs)

Heard by Assembly Judiciary Committee on January 24. Bill not approved at hearing but put over to March 21 for further hearing along with AB 478 (McAlister) which was heard at same time. AB 478 is the substance of the prior Commission recommendation which would revitalize the unconstitutional statutes. On March 21, AB 478 was referred to interim study and AB 145 was not put to a vote and may be set for one more hearing if Assemblyman McAlister so requests.

AB 261 (Guardianship-conservatorship revision)

Heard by Assembly Judiciary Committee on March 28. Reset for hearing on May 2.

AB 167 (Conforming revisions to guardianship-conservatorship revision)

Heard by Assembly Judiciary Committee on March 28. Reset for hearing on May 2.

SET FOR HEARING IN POLICY COMMITTEE IN FIRST HOUSE

AB 714 (Confessions of judgment)

Set for hearing by Assembly Judiciary Committee on April 18.

TO BE INTRODUCED

Quiet title

Assemblyman McAlister will introduce a bill on this subject as soon as it is delivered by the Legislative Counsel.

Contract for Indexing Volume 14

The Commission considered Memorandum 79-15, relating to indexing for Volume 14 of the Commission's Reports, Recommendations, and Studies. The Commission authorized the Executive Secretary, after consultation with the chairperson, to make a contract in an amount not to exceed \$675 with a qualified indexer to prepare an index for the approximately 500-page guardianship-conservatorship recommendation for Volume 14. This amount includes approximately \$50 to cover the cost of two trips of the indexer to the Commission's office, one trip to confer with the staff before commencing work on the index, and a second trip to deliver the completed index.

Consultant for Community Property Study

The Executive Secretary reported that our consultant on creditors' remedies aspects of community property, Professor Susan Westerberg Prager, did not deliver the study at the scheduled time of March 1, but that after consultation with the Chairperson, the time was extended to early July. In light of this experience and the Commission's determination to give its general study of community property problems high priority, the Executive Secretary requested authority to negotiate a contract with a qualified consultant.

The staff was directed, in consultation with the Chairperson and Commissioner Love, to recommend for Commission approval at the next meeting a contract with a consultant for the preparation of a study on the equal management and control problems and other problems under the community property system. The compensation for the study should take

into account the amount available in the current budget for research consultants and the willingness of the proposed consultant to prepare the necessary study for the amount available. Bill Johnstone suggested a possible consultant on this topic: William S. (Gus) McClanahan, a retired trust officer, United California Bank, and an author for CEB, contributor of various articles on tax, probate, and trust law to various legal periodicals, and editor of the State Bar section news letter. He has an office in Century City.

STUDY D-400 - ASSIGNMENT FOR BENEFIT OF CREDITORS

The Commission considered Memorandum 79-8 and the First Supplement thereto relating to assignments for the benefit of creditors. The Commission also considered a letter from Hal L. Coskey, a copy of which is attached, and heard comments from representatives of the Credit Managers Associations of California, the San Francisco Board of Trade, the Credit Managers Association of Southern California, and from David Blonder, an attorney active as an assignee.

The persons present at the meeting generally expressed the viewpoint that assignments for creditors operate well and are carried out by qualified and responsible assignees such as creditors' associations and attorneys. Concern was stated that a regulatory scheme would increase costs and render assignments less effective. Although some aspects of assignments could be improved, legislation is being introduced to improve the position of the assignee in some respects. The persons present stated that they were aware of only few or rare occurrences of problems with assignments, insufficient in their opinion to warrant general regulatory legislation.

The Commission noted that it has received complaints concerning assignments only from one law firm, and that it has no evidence of widespread dissatisfaction or frequently recurring problems with assignments. In light of this situation, the Commission requested the staff to prepare for Commission consideration a draft of a tentative recommendation to repeal the existing assignment statute, which is unused, and to solicit comments concerning whether any other legislation is needed.

**COSKEY, COSKEY & BOXER**

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TOBIAS COSKEY (1896-1974)  
HAL L. COSKEY  
SANDOR T. BOXER

March 23, 1979

ARTHUR A. GREENBERG  
CARL GRUMER  
B. PAUL HUSBAND

California Law Revision Commission  
Stanford Law School  
Stanford, California 94305

Attention: Nathaniel Sterling, Esq.

Re: Assignment for Benefit of Creditors

Dear Mr. Sterling:

My schedule will not permit attendance at the meeting of the Commission set for March 30 in Pacific Grove. Hopefully, the assignment for benefit of creditors legislation will be considered at another meeting in Los Angeles and/or San Francisco at which time I will be able to appear.

I would like to submit the following comments. In preparing these comments, it became evident that at this stage of the process, it would be extremely helpful if there could be an interchange of ideas between the commission and those interested in the legislation.

There appear to me at this time to be two basic problems with assignments for the benefit of creditors:

1. The balancing of the rights of creditors to control the disposition of their assets with the present right of a debtor to choose the assignee who will represent creditors in the liquidation.

2. The absence of a ready forum to expeditiously resolve disputes which occur during the administration of an assignment.

The legislation proposed by the commission attempts to deal with many of the problems caused by the present system in

California where the debtor chooses the assignee. Proposed Section 3460 would appear to be the key, and we believe should be changed to balance the rights now given to a debtor with the rights of a creditor to control the choice of an assignee.

Under the present system, a professional assignee for the benefit of creditors obtains his cases from debtors. In many cases, an assignment is made before creditors are even aware that there has been contemplation of such a procedure. They have no say in the choice of the assignee. In addition, the representation of debtors in insolvency matters is concentrated among a very few attorneys. The end result is that the debtors and their counsel have an undue influence on the administration of the assignment of an estate. By no means do I wish to impugn the integrity of any counsel for a debtor or an assignee. What we are talking about here is similar to what is referred to in athletics as the "homecourt advantage." Assuming all factors are equal, it is to the economic interest of the assignee to resolve the situation in favor of the debtor who is the only entity from whom new cases will come. An assignee who acquired a reputation of being overly-zealous in the protection of the rights of creditors would have a good deal of difficulty in obtaining assignment cases from debtors and their attorneys.

Again, I want to emphasize that we are not talking about abuses of discretion or anything sinister. What we are talking about is who gets the benefit of the doubt in a close situation.

It may well be that creditors would not be satisfied with the speed with which a certain assignee has closed cases, or with that assignee's determination of exempt assets or with the method of liquidation chosen by the assignee or the amount of expenses incurred by the assignee. As to each of these items, the assignee could have exercised his best discretion in the utmost of goodfaith, and the dissatisfaction of the creditors could be attributed simply to a difference of opinion. If creditors were given a right by election to choose or remove the assignee, a right similar to that given in the present statute, there would be a modicum of control to creditors. In the close situation, an assignee could feel secure in knowing that a decision to the distaste of the debtor would not be the end of assignments for that assignee, because creditors, as well as debtors, were the source of those assignments.

The lack of a ready forum to determine disputes between the assignee and third parties, including taxing authorities, can unduly extend the administration of an assignment estate. The new bankruptcy act gives extensive authority to the bankruptcy court, and should expedite bankruptcy proceedings. Some forum should be made available to determine the tax claims in an assignment, as well as the amount of a contested claim. If the assignee must resort to the superior courts, the delay in the distribution to creditors will far outweigh any benefits that can come from an assignment. Furthermore, the anticipated delay will give the opponent of the assignee an unfair negotiating advantage.

The following are comments about specific sections of the proposed legislation:

§3452: We question the advisability of assignments becoming so close to bankruptcy that discharges are given. Most assignments are made by corporations which are not interested in a discharge. The number of individuals who make assignments does not appear to be sufficient to merit the problems which are raised by this aspect. There is also a serious constitutional question.

§3453: We question the constitutionality of the stay provided.

§3455(4) (c): What does making "available" mean? Must the creditor go to the assignee's office? Can the creditor obtain a copy of the list of creditors without undue delay by paying the assignee?

§3461: The provision for an undertaking would simply appear to be adding an expense to the estate without giving any benefit. If creditors have concern over the financial responsibility of the assignee chosen by the debtor, they should have a right to remove that assignee.

§3462: The compensation provided would not be fair to an assignee. An assignee could take a case with full expectation that there would be a dividend to creditors, only to be surprised by an income tax audit, or some other factor completely beyond his control and without his knowledge at the beginning, which would mean that he would work for nothing.

§3468: With the expanded jurisdiction of the bankruptcy court, the avoidance of transfers should be left to that proceeding. The state courts are not equipped to handle such litigation, and the assignment would simply be bogged down in state court calendars.

§3469: This section illustrates the dilemma in which the assignee finds himself. In making this determination under §3469 as the act is drawn, the assignee must bear in mind new business from new debtors.

§3470: What purpose is the publication of a notice? It would appear that such publication would simply add to the expense of the estate without any concomitant benefit.

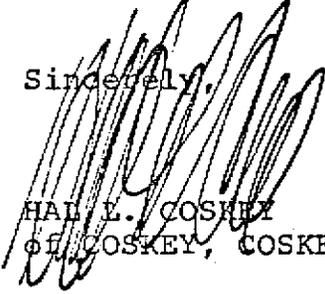
§3471: What is going to happen to claims which do not fit the criteria?

§3474: The intent of this section is fine, but what constitutes "a detailed final accounting" is going to be up to the individual assignee. This section again illustrates a problem that can be avoided if the assignee realizes that creditors are going to have something to say about whether or not the assignee continues to handle assignments.

I have just lightly touched the area of the assignee granting discharges. I would strongly recommend that out-of-court assignments not become involved in giving discharges to debtors. There are going to be many conflicts between the act and the bankruptcy code, and time does not permit an exploration of that facet at this point.

Again, I would like to request the opportunity to discuss this matter with the commission at a mutually convenient time.

Sincerely,



HAL E. COSKEY  
OF COSKEY, COSKEY & BOXER

STUDY F-100 - GUARDIANSHIP-CONSERVATORSHIP REVISION

The Commission considered various suggested revisions of AB 261 and 167. These bills were introduced to effectuate the Commission's Recommendation Relating to Guardianship-Conservatorship Law (November 1978). The Executive Secretary reported actions taken with respect to AB 261 prior to and at the Assembly Judiciary Committee hearing on March 28, 1979. These actions are noted under the particular section or sections below. The Commission also considered Memorandum 79-12, Memorandum 79-13, Memorandum 79-14, Memorandum 79-16, Memorandum 79-17, Memorandum 79-18, and Memorandum 79-19. The actions taken with respect to the various matters raised in the listed memoranda are noted below. Except where otherwise noted below, the actions were taken with respect to matters raised in Memorandum 79-17. If a particular matter noted in Memorandum 79-17 did not result in action to change the proposed legislation, the matter is not, in most instances, noted below.

The Commission noted that the reaction to the bill was very favorable and that the Assembly Judiciary Committee appears satisfied with the bill with one exception. Accordingly, the Commission adopted the general policy of not making changes in the bill unless they were considered to be clear improvements in existing language or were desirable changes from the standpoint of policy that would not create opposition to the bill.

§ 1450. Petitions, reports, and accounts to be verified

In response to a suggestion of Mr. Collier, Section 1450 was revised to read in substance:

1450. Except as otherwise specifically provided, all of the following shall be verified:

- (a) A petition, report, or account filed pursuant to this division.
- (b) An objection or response filed pursuant to this division to a petition, report, or account.

The requirement that an objection to an account be under oath in Section 2622 should be deleted as unnecessary in view of this revision.

§ 1454. Appointment and qualifications of court investigator

The Executive Secretary reported that, at the March 18 hearing, the Assembly Judiciary Committee expressed concern that AB 261 does not sufficiently prescribe the qualifications of the person to be appointed as the court investigator. After some discussion, the Commission determined to respond to this concern by revising Section 1454 to read as follows:

1454. (a) The court shall appoint a court investigator when one is required for the purposes of a proceeding under this division. The person appointed as the court investigator shall be a ~~person trained in law who is~~ an officer or special appointee of the court with no personal or other beneficial interest in the proceeding.

(b) The person appointed as court investigator shall have the following qualifications:

(1) The training or experience, or both, necessary (i) to make the investigations required under this division, (ii) to communicate with and deal with persons who are or may be the subject of proceedings under this division, and (iii) to perform the other duties required of a court investigator.

(2) A demonstrated sufficient knowledge of law so as to be able to inform proposed conservatees and conservatees of the nature and effect of a conservatorship proceeding and their rights, to answer their questions, and to inform conservators concerning their powers and duties.

§ 1456. Judicial council forms

A new section was added to read:

1456. The Judicial Council may prescribe the form of the applications, notices, orders, and other documents required by this division. Any such form prescribed by the Judicial Council is deemed to comply with this division.

Comment. Section 1456 is new. See also Section 1464 (form of notice); Cal. Const. art. VI, § 6 (Judicial Council shall adopt rules for court administration, practice, and procedure, not inconsistent with statute); Gov't Code § 68511 (Judicial Council may prescribe by rule the form and content of forms used in the courts of this state).

§ 1461. Notice to Director of Mental Health or Director of Developmental Services

In response to a suggestion from Mr. Anderson, the following technical revisions were made in Section 1461:

(1) The reference to Section 2211 was changed to refer to Section 2212.

(2) References to Sections 2421 and 2422 were added.

§ 1470. Appointment of counsel

In response to a question raised by Mr. Collier, the following subdivision was added to this section:

(d) The court may make an order under subdivision (c) requiring payment by a parent or parents of the minor only after the parent or parents, as the case may be, have been given notice and an opportunity to be heard on whether the order would be just under the circumstances of the particular case.

§§ 1471-1472. Appointment of legal counsel

Prior to the March 28 hearing, it was agreed to amend Section 1471 to require appointment of legal counsel in any case listed in Section 1471 where requested by the conservatee or proposed conservatee, whether or not the conservatee or proposed conservatee opposes the proceeding or is the petitioner. As thus revised, Section 1471 will continue existing law. The amendment of Section 1471 would revise paragraphs (1), (2), (3), and (5) of subdivision (a) to read:

(1) A proceeding to establish a conservatorship or to appoint a proposed conservator ~~where the proposed conservatee opposes the establishment of the conservatorship or opposes the appointment of the proposed conservator~~.

(2) A proceeding ~~by the conservatee~~ to terminate the conservatorship.

(3) A proceeding ~~by the conservatee~~ to remove the conservator.

\* \* \* \* \*

(5) A proceeding to obtain an order authorizing removal of a temporary conservatee from the temporary conservatee's place of residence ~~where the temporary conservatee opposes such removal~~.

Subdivision (b) of Section 1471 should be revised to conform.

§ 1511. Notice of hearing

In response to a suggestion from Mr. Pieper, subdivision (c) was revised to read:

(c) Notice shall be given by mail sent to their addresses stated in the petition, or in such manner as may be authorized by the court, to all of the following (other than the petitioner or persons joining in the petition):

\* \* \* \* \*

(2) The relatives named in the petition except that if the petition is for the appointment of a guardian of the estate only the court may dispense with the giving of such notice to some or all of such relatives .

§ 1513. Investigation and report by court-designated officer

In response to a suggestion from Mr. Lindgren, the last sentence of subdivision (b) of Section 1513 was revised to read:

The report may be received in evidence upon stipulation of counsel for all such persons who are present at the hearing or, if such a person is present at the hearing but is not represented by counsel, upon consent of the person .

§ 1543. Report on suitability of guardian

The last sentence of this section should be conformed to the revision made in Section 1513.

§ 1601. Termination by court order

In response to a suggestion from Mr. Anderson, this section was revised to read:

1601. Upon petition of the guardian, a parent, or the ward, ~~and after such notice as the court may require,~~ the court may make an order terminating the guardianship if the court determines that it is no longer necessary that the ward have a guardian or that it is in the ward's best interest to terminate the guardianship. Notice of the hearing shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

§ 1820. Filing of petition

The Commission considered Memorandum 79-14 and revised Section 1820 to read:

1820. (a) A petition for the appointment of a conservator may be filed by any of the following:  
(1) The proposed conservatee.  
(2) The spouse of the proposed conservatee.

(3) A relative of the proposed conservatee.

(4) Any interested state or local entity or agency of this state or any interested public officer or employee of this state or of a local public entity of this state.

~~(4)~~ (5) Any other interested person or friend, ~~other than a creditor,~~ of the proposed conservatee.

(b) [no change in this subdivision]

(c) A creditor of the proposed conservatee may not file a petition for appointment of a conservator unless the creditor is a person described in paragraph (2), (3), or (4) of subdivision (a).

§ 1823. Citation to proposed conservatee

Subdivision (b)(6) of Section 1823 was revised to read:

(6) The proposed conservatee has the right to choose and be represented by legal counsel and has the right to have legal counsel appointed by the court if ~~the proposed conservatee opposes the petition and is~~ unable to retain legal counsel.

§ 1825. Attendance of proposed conservatee at hearing

The Executive Secretary reported that paragraph (3) of subdivision (a) (permitting the proposed conservatee to be excused by the court if the court investigator reports that the proposed conservatee is unwilling to attend the hearing and does not oppose the establishment of the conservatorship or the proposed conservator) is to be deleted according to the direction of the Assembly Judiciary Committee at the March 28 hearing unless some means can be provided in the bill to provide standards that will provide assurance that court investigators will be competent to inform proposed conservatees concerning their rights. The Commission decided to retain Section 1825 without deleting paragraph (3) of subdivision (a) because the Commission proposed to add a new subdivision (b) to Section 1454 to prescribe more precisely the qualifications required in order to serve as a court investigator.

§ 1826. Information to proposed conservatee by court investigator; investigation and report

In response to a suggestion from Mr. Anderson, subdivision (b) was revised to read:

(b) Inform the proposed conservatee of the contents of the citation, of the nature, purpose, and effect of the proceeding, and of the right of the proposed conservatee to oppose the proceeding,

to attend the hearing, to have the matter of the establishment of the conservatorship tried by jury, and to be represented by legal counsel if the proposed conservatee so chooses, and to have legal counsel appointed by the court if unable to retain legal counsel .

In response to a suggestion from Mr. Anderson, subdivision (j)(2) was revised to read:

(2) ~~Willingness~~ Whether the proposed conservatee is not willing to attend the hearing, does not wish to contest the establishment of the conservatorship, and does not object to the proposed conservator or prefer that another person act as conservator .

§ 1828. Information to proposed conservatee by court

In response to a suggestion by Mr. Anderson, the first portion of Section 1828 was revised to read:

1828. (a) Except as provided in subdivision (c), prior to the establishment of a conservatorship of the person or estate, or both, the court shall inform the proposed conservatee of all of the following ~~so far as relevant to the allegations made and the determinations requested in the petition :~~

(1) The nature and purpose of the proceeding.

(2) The establishment of a conservatorship is a legal adjudication of the conservatee's inability properly to provide for the conservatee's personal needs or to manage the conservatee's own financial resources, or both, depending on the allegations made and the determinations requested in the petition, and the effect of such an adjudication on the conservatee's basic rights.

§ 1845. Petitions by conservatee [new]

The Commission considered a suggestion by the Deputy County Counsel of Orange County that a provision comparable to Welfare and Institutions Code Section 5364 (limitation on repeated petition by conservatee) be included in the proposed legislation. After some discussion, the Commission decided not to include the provision. It was felt that there was no showing of the need for the provision in Probate Code conservatorships and that the inclusion of such a provision in AB 261 might give rise to objections to the bill.

§ 1850. Court review of conservatorship

The staff reported that, prior to the March 28 hearing of the Assembly Judiciary Committee, it was agreed to amend subdivision (b)(2) of Section 1850 to read:

(b) This chapter does not apply to either of the following:

\* \* \* \* \*

(2) A conservatorship of the estate for a nonresident of this state where the conservatee is not present in this state.

This amendment was made in response to a request from a representative of former Assemblyman Lanterman.

§ 1853. Failure to locate conservatee; removal of conservator on failure to produce conservatee; petition to appoint

Prior to the hearing of the Assembly Judiciary Committee on March 28, it was agreed to restore the existing sanction--termination of the conservatorship--if the conservatee is not produced at the hearing on review of the conservatorship. The section should, however, be revised to place the duty to produce the conservatee on the conservator of the person if there is one; the conservator of the estate should have no more than a duty to disclose the whereabouts of the conservatee if known.

§§ 1870-1898. Legal capacity of conservatee

The Executive Secretary reported that the Assembly Judiciary Committee, at the hearing on AB 261 on March 28, determined that the establishment of a conservatorship should remove the powers of the conservatee with respect to transactions affecting estate property (other than as provided in Section 1871) except to the extent that the court by order grants the conservatee powers with respect to estate property that the conservatee otherwise would not have. The bill is to be amended to reflect this decision. All other powers in the conservatee as proposed by AB 261 (Sections 1871, 1880-1881) are to be retained as proposed by the Commission. This change was made in response to a request from the California Bankers Association. The Commission considered this to be a basic change in the bill, but the Commission determined to continue to recommend the bill notwithstanding the change.

§ 1874. Conservatee adjudged to be seriously incapacitated

If the concept of adjudging a conservatee to be seriously incapacitated is retained in the statute, the proposed conservatee or conservatee should be given an express right to a jury trial on this issue.

§§ 1900-1901. Capacity of conservatee to marry

The Commission considered Memorandum 79-12 which contained provisions relating to the right of the conservatee to marry. The Commission disapproved Section 1900 as proposed by the staff because that section was based on the former concept of adjudging a conservatee to be seriously incapacitated in an appropriate case. Instead, it was determined that the appointment of a conservator should have no effect on the capacity of the conservatee to marry. Whether the conservatee has the capacity to marry should be determined by the rules of law otherwise applicable. Section 1901 as proposed was revised. The provisions were approved in substance in the following form:

Article 3. Capacity of Conservatee to Marry

§ 1900. Effect of appointment of conservator

1900. The appointment of a conservator of the person or estate or both does not affect the capacity of the conservatee to marry.

Comment. Section 1900 is new. Under prior law, the court could adjudicate the conservatee to be incompetent to make binding contracts by providing in the order of appointment of a conservator that the conservatee was a person "for whom a guardian could be appointed." See the Comment to Section 1874. If such an adjudication was made, the conservatee may also have lacked capacity to marry, and any marriage attempted by the conservatee after such an adjudication may have been subject to annulment by the conservator. See W. Johnstone & G. Zillgitt, California Conservatorships §§ 1.28-1.29, at 14-16 (Cal. Cont. Ed. Bar 1968); cf. Conservatorship of Roulet, 23 Cal.3d 219, 228, \_\_\_ P.2d \_\_\_, \_\_\_, \_\_\_ Cal. Rptr. \_\_\_, \_\_\_ (1979) (one found to be gravely disabled under Lanterman-Petris-Short Act faces "possible loss" of right to marry). Section 1900 eliminates the uncertainty under prior law by making clear that the appointment of a conservator does not deprive the conservatee of the capacity to marry. Whether the conservatee has the capacity to marry is to be determined by the rules of law that would be applicable had no conservatorship been established. See also Section 1901 (court determination of conservatee's capacity to marry).

§ 1901. Court determination of conservatee's capacity to marry

1901. (a) The court may by order determine whether the conservatee has the capacity to enter into a valid marriage, as provided in Part 5 (commencing with Section 4000) of Division 4 of the Civil Code, at the time the order is made.

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(b) A petition for an order under this section may be filed by the conservator of the person or estate or both, the conservatee, any relative or friend of the conservatee, or any other interested person. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

Comment. Section 1901 is new. Under prior law, a conservator in doubt about the conservatee's capacity to marry could seek instructions from the court under former Section 1860. See W. Johnstone & G. Zillgitt, California Conservatorships § 1.28, at 15 (Cal. Cont. Ed. Bar 1968). Section 1901 continues the authority of the court to determine the conservatee's capacity to marry and provides procedural detail. As to procedures available after the conservatee marries, see Civil Code Sections 4212 (action to test validity of marriage), 4400-4457 (proceeding to have marriage adjudged a nullity). Under Civil Code Section 4426, the conservator is authorized to commence annulment proceedings.

§ 2103. Effect of court authorization, approval, or confirmation

The Commission considered the problem raised by court commissioner Frank Dana of Los Angeles, caused by the rule in California that an order approving and settling a guardian's intermediate account is not conclusive but may be reviewed and corrected on a subsequent accounting. The Commission concluded that an account where there is full disclosure should be final, but that the account should not be final as to any item with respect to which there is misrepresentation as to any material fact or omission of a material fact. After considerable discussion, the Commission determined that Section 2103 should be revised in substance as follows:

2103. (a) Unless reversed on appeal, a judgment, order, or decree made pursuant to this division is final and releases the guardian or conservator and the sureties from all claims of the ward or conservatee and of any persons affected thereby based upon any act or omission directly authorized, approved, or confirmed in the judgment, order, or decree. For the purposes of this section, "order" includes an order settling an account of the guardian or conservator, whether an intermediate or final account.

(b) This section does not apply where the judgment, order, or decree is obtained by fraud or conspiracy or by misrepresentation contained in the petition or account or in the judgment, order, or decree as to any material fact. For the purposes of this subdivision, misrepresentation includes but is not limited to the omission of a material fact.

Comment. Section 2103 continues the substance of former Section 2103 (conservatorship) except that new Section 2103 applies to inaction approved by the court as well as to action. See also Conservatorship of Harvey, 3 Cal.3d 646, 477 P.2d 742, 91 Cal. Rptr. 510 (1970) (protection extended to the conservator's attorney). New Section 2103 supersedes former Section 1557.2 (guardianship) which applied only to orders authorizing purchases of real estate or investments.

The second sentence of subdivision (a) is new and adopts the rule that--except in the cases described in subdivision (b)--the rule of finality applies to an order settling an intermediate account. This changes the rule of former guardianship law pursuant to which an order settling an intermediate account could be re-opened and reexamined under some circumstances at the behest of the ward. See, e.g., In re Estate of DiCarlo, 3 Cal.2d 225, 44 P.2d 562 (1935); Estate of Joslin, 165 Cal. App.2d 330, 332 P.2d 151 (1958). The rule under former conservatorship law was unclear. W. Johnstone & G. Zillgitt, California Conservatorships § 2.19, at 39 (Cal. Cont. Ed. Bar 1968).

§ 2252. Powers and duties of temporary guardian or conservator

Subdivision (a) of Section 2252 was revised to read:

2252. (a) Except as otherwise provided in subdivisions (b) and (c), a temporary guardian or temporary conservator has only the power and authority, and only the duties, of a guardian or conservator that are necessary to provide for the temporary care, maintenance, or support of the ward or conservatee and that are necessary to conserve and protect the property of the ward or conservatee from loss or injury.

§ 2321. Waiver of bond by conservatee

In response to a suggestion of Mr. Bottomley, Section 2321 was revised to read:

2321. In a conservatorship proceeding, where the conservatee, having sufficient capacity to do so, has waived the filing of a bond, the court in its discretion may dispense with the requirement that a bond be filed or may permit the filing of a bond in an amount less than otherwise would be required under Section 2320.

§ 2323. Dispensing with requirement of bond where small estate

The Commission considered Memorandum 79-16 and made conforming changes in Section 2323 so that the section will read:

§ 2323. Small estate

2323. (a) The court may dispense with the requirement of a bond if it appears likely that the estate will satisfy the conditions of subdivision (b) of Section 2628 for its duration.

(b) If at any time it appears that the estate does not satisfy the conditions of subdivision (b) of Section 2628, the court may require the filing of a bond.

Comment. Section 2323 expands former Section 1480.3 to cover the estate of a conservatee as well as the estate of a minor and to cover a small estate, regardless whether consisting in its entirety of public benefit payments. See Welf. & Inst. Code §§ 10002, 11006.5.

§ 2351. Care, custody, control, and education

The Commission considered Memorandum 79-12 (proposal for limited conservatorships for developmentally disabled adults). The Commission determined not to adopt the concept proposed by the committee of the Barristers of the Los Angeles County Bar Association but, in response to the proposal, determined to revise Sections 2351 and 2352 to give the court desirable flexibility in the determination of the powers and duties of the conservator of the person.

Section 2351 and the Comment thereto were revised to read:

2351. (a) Subject to subdivision (b), the guardian or conservator has the care, custody, and control of, and has charge of the education of, the ward or conservatee.

(b) Where the court determines that it is appropriate in the circumstances of the particular conservatee, the court, in its discretion, may limit the powers and duties that the conservator would otherwise have under subdivision (a) by an order stating:

(1) The specific powers that the conservator does not have with respect to the conservatee's person and reserving the powers so specified to the conservatee; or

(2) The specific powers and duties the conservator has with respect to the conservatee's person and reserving to the conservatee all other rights with respect to the conservatee's person that the conservator otherwise would have under subdivision (a).

(c) An order under this section (1) may be included in the order appointing a conservator of the person or (2) may be made, modified, or revoked subsequently upon notice given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

Comment. . . .

Subdivisions (b) and (c) are new and give the court flexibility to fashion an order appropriate to the circumstances of the particular conservatee. Subdivision (b) has been added because the broad power given the conservator under subdivision (a) often will be more than is required, for example, where the conservator is

appointed on voluntary petition of a developmentally disabled adult and because subdivision (b) gives the court authority that may be useful in other types of cases where a voluntary or involuntary conservatorship is established. Under subdivision (b), for example, the court has discretion to make an order allowing the conservatee to fix his or her own residence or to make decisions concerning his or her own education.

§ 2352. Residence of ward or conservatee

The Commission considered Memorandum 79-12, Memorandum 79-17, and Memorandum 79-18. As a result of such consideration, Section 2352 was revised to read:

2352. (a) The guardian or conservator may fix the residence ~~and domicile~~ of the ward or conservatee at:

(1) Any place within this state without the permission of the court.

(2) A place not within this state if permission of the court is first obtained.

(b) An order under paragraph (2) of subdivision (a) shall require the guardian or conservator either to return the ward or conservatee to this state, or to cause a guardianship or conservatorship proceeding or its equivalent to be commenced in the place of the new residence, when the ward or conservatee has resided in the place of new residence for a period of four months or such longer or shorter period as is specified in the order.

~~(b)~~ (c) The guardian or conservator shall promptly mail to the court notice of all changes in the residence ~~and domicile~~ of the ward or conservatee.

(d) This section does not apply where the court has made an order under Section 2351 pursuant to which the conservatee retains the right to fix his or her own residence.

Comment. Subdivision (a) of Section 2352 continues the substance of the third sentence of former Section 1500 and the last portion of the first sentence of former Section 1851. Subdivision (b) is new. Subdivision (c) supersedes subdivision (c) of former Section 1500 and subdivision (b) of former Section 1851. The word "residence" replaces the phrase "residence and domicile" which appeared in the former provisions. For the purposes of Section 2352, "residence" means domicile. The exception provided in subdivision (d) is new and conforms to subdivision (b) of Section 2351.

§ 2353. Medical treatment of ward

The following additional subdivision was added to this section:

(d) Nothing in this section requires the consent of the guardian for medical or surgical treatment for the ward in any case where the ward alone may consent to such treatment under other provisions of law.

The Comment to Section 2353 should refer to the provisions noted in Memorandum 79-17 on pages 24-25 which authorize a ward alone to consent. The Comment also should make reference to situations where treatment is mandatory under public health laws.

§ 2420. Support, maintenance, and education

In response to suggestions by Mr. Norman, subdivisions (a) and (c) of Section 2420 were revised to read:

2420. (a) Subject to Section 2422, the guardian or conservator shall apply the income from the estate, so far as necessary, to the comfortable and suitable support, maintenance, and education of the ward or conservatee (including care, treatment, and support of a ward or conservatee who is a patient in a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services) and of those legally entitled to support, maintenance, or education from the ward or conservatee, taking into account the value of the estate and the condition of life of the persons required to be furnished such support, maintenance, or education.

\* \* \* \* \*

(c) When the amount paid by the guardian or conservator for the purpose described in subdivision (a) ~~is not disproportionate to the value of the estate or the condition in life of the person to whom the payment is made~~ satisfies the standard set out in that subdivision, and the payments are supported by proper vouchers or other proof satisfactory to the court, the guardian or conservator shall be allowed credit for such payments when the accounts of the guardian or conservator are settled.

§ 2423. Payment of surplus income to relatives of conservatee

In response to a suggestion from Mr. Bottomley, the first portion of subdivision (a) of Section 2423 was revised to read:

2423. (a) On petition of the conservator, the conservatee, the spouse of the conservatee, or a relative within the second degree of the conservatee, the court may by order authorize or direct the conservator to pay and distribute surplus income of the estate  $\mp$  or any part of such surplus income  $\mp$  (not used for the support, maintenance, and education of the conservatee and of those legally entitled to support, maintenance, or education from the conservatee)  $\mp$  to the spouse of the conservatee and to such relatives within the second degree of the conservatee whom the conservatee would, in the judgment of the court, have aided but for the existence of the conservatorship. . . .

§§ 2430-2431. Payment of debts

Section 2430 was amended by the Assembly Judiciary Committee at the March 28 hearing to require the guardian or conservator to pay all debts incurred by the ward or conservatee before the establishment of the guardianship or conservatorship. This decision applied only to legally enforceable debts; the guardian or conservator still is required to interpose all available defenses, including lack of capacity where appropriate.

To accomplish this direction, subdivision (b) of Section 2430 should be revised to read:

(b) The payments provided for by ~~paragraphs (1) and paragraph~~ (3) of subdivision (a) are not required to be made to the extent such payments would impair the ability to provide necessities of life to the ward or conservatee and the spouse and minor children of the ward or conservatee.

To conform to this decision, it would appear that subdivision (a) of Section 2431 should be deleted.

Perhaps the Comment should include a statement that the guardian or conservator is authorized to file a petition for bankruptcy of the ward or conservatee.

§ 2459. Life insurance; medical, retirement, and other plans and benefits

At the suggestion of Ms. Whartenby, subdivision (b)(3) of Section 2459 was revised to read:

(3) Mutual fund and other dividend reinvestment plans ~~initiated by the conservatee prior to the establishment of the conservatorship~~ .

At the suggestion of the staff, the following additional subdivision was added to Section 2459 for clarity:

(f) Nothing in this section limits the power of the guardian or conservator to make investments as otherwise authorized by this division.

§ 2525. Abatement of petition if civil action pending

Section 2525 was revised as follows:

2525. If a civil action is pending with respect to a petition filed pursuant to this article and jurisdiction has been obtained

in the court where the civil action is pending, upon request of any party to the civil action the court shall abate the petition until the conclusion of the civil action.

§ 2542. Terms of sale

Subdivision (a) of Section 2542 was revised as follows:

2542. (a) All sales shall be for cash or for part cash and part deferred payments. ~~In no case shall credit exceed 20 years from the date of sale.~~ Except as otherwise provided in Sections 2544 and 2545, the terms of sale are subject to the approval of the court.

§ 2551. Borrowing money and giving security therefor

At the suggestion of Mr. Collier, the following sentence was added to subdivision (a) of Section 2551:

The guardian or conservator shall apply the money to the purpose or purposes specified in the order.

§ 2580. Petition to authorize proposed action [involving substituted judgment]

A new paragraph (11) was added to subdivision (b) of Section 2580 as follows:

(b) The action proposed in the petition may include, but is not limited to, the following:

\* \* \* \* \*

(11) Making an election or an election and agreement referred to in Section 202.

The revision to Section 202 of the Probate Code proposed in AB 167 should be withdrawn.

§ 2602. Order to file inventory or account or to show cause

New Section 2602 was approved to provide as follows:

2602. (a) If the guardian or conservator fails to file an inventory and appraisal or any account within the time allowed by law or by court order, upon request of the ward or conservatee, the spouse or any relative or friend of the ward or conservatee, or any interested person, the court shall order the guardian or conservator to file the inventory and appraisal or to file the account, as the case may be, within such time as the order prescribes or to show cause why the guardian or conservator should not be removed. The person who requested the order shall serve it upon

the guardian or conservator in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as is ordered by the court.

(b) If the guardian or conservator fails to file the inventory and appraisalment or to file the account as required by the order within the time prescribed in the order, unless good cause is shown for not doing so, the court, on its own motion or on petition, may remove the guardian or conservator, revoke the letters of guardianship or conservatorship, and enter judgment accordingly, and order the guardian or conservator to file an accounting and to surrender the estate to the person legally entitled thereto.

(c) Nothing in this section precludes any other remedies to enforce the timely filing of an inventory and appraisalment or any account.

Comment. Section 2602 is new. The section is similar to Section 1853 and provides a procedure for requiring an inventory and appraisalment or accounting short of removing the guardian or conservator. See also Section 2650 (removal of guardian or conservator for failure to file an inventory or to render an account within the time allowed by law or by court order).

§ 2610. Filing inventory and appraisalment

Subdivision (a) of Section 2610 was revised as follows:

2610. (a) Within 90 days after appointment, or within such further time as the court for reasonable cause upon ex parte petition of the guardian or conservator may allow, the guardian or conservator shall file with the clerk of the court an inventory and appraisalment of the estate, made as of the date of the appointment of the guardian or conservator.

§ 2615. Consequences of failure to file inventory

The first sentence of Section 2615 was revised as follows:

2615. If a guardian or conservator fails to file any inventory required by this article within the time prescribed by law or by court order, the guardian or conservator is liable for damages for any injury to the estate, or to any interested person, resulting from the failure timely to file the inventory. . . .

§ 2620. Presentation of account for settlement and allowance

Subdivision (b) of Section 2620 was revised as follows:

(b) The account shall state the period covered by the account and contain a summary showing all of the following:

(1) If the first account, the amount of appraisalment; if a subsequent account, the amount chargeable from the prior account.

(2) The amount of any supplemental appraisalment filed within the period covered by the account.

(3) The amount of cash receipts, excluding ~~principal items~~ amounts reported under paragraph (4) .

(4) The gains on sales or other increases in assets, if any.

(5) The amount of cash disbursements, excluding ~~principal items~~ amounts reported under paragraph (6) .

(6) The losses on sales or other decreases in assets, if any.

(7) The amount of property on hand.

Subdivision (e) of Section 2620 was revised as follows:

(e) The petition requesting approval of the account may include additional requests for authorization, instruction, approval, or confirmation authorized by this division, including but not limited to a request for any order authorized under Chapter 8 (commencing with Section 2640) .

§ 2622. Objections to account

The requirement that an objection to an account be under oath should be deleted as unnecessary in view of the revision made to Section 1450.

§ 2628. Affidavit in lieu of accounting in case of small estate [new]

The Commission discussed Memorandum 79-16 and determined to add the following new section and Comment to the proposed legislation and to revise Section 2323 to conform.

§ 2628. Affidavit in lieu of accounting in case of small estate

2628. (a) As used in this section, "public benefit payments" means payments received or to be received under either or both of the following:

(1) Part 3 (commencing with Section 11000) of, or Part 5 (commencing with Section 17000) of, Division 9 of the Welfare and Institutions Code.

(2) Subchapter II (commencing with Section 401) of, or Part A of Subchapter XVI (commencing with Section 1382) of, Chapter 7, Title 42, United States Code.

(b) In lieu of accounting as otherwise required by this article, the guardian or conservator may follow the procedure provided by this section if all of the following conditions are satisfied:

(1) The estate at the beginning and end of the accounting period consisted of property of a total net value of less than two thousand dollars (\$2,000).

(2) The income of the estate for each month of the accounting period, exclusive of public benefit payments, was less than one hundred fifty dollars (\$150).

(3) All income of the estate, if not retained, was spent for the benefit of the ward or conservatee.

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(c) The guardian or conservator may file with the court at the time the account is otherwise required to be presented an affidavit stating the amount of public benefit payments received by or on behalf of the conservatee, and the other income of the estate, for each month covered by the account and stating that all the conditions prescribed in subdivision (b) are satisfied.

(d) If an affidavit is filed under subdivision (c), the ward or conservatee or any interested person may petition the court for an order requiring the guardian or conservator to present an account as otherwise required by this article or the court on its own motion may make such an order. An order under this subdivision may be made ex parte or on such notice of hearing as the court in its discretion requires.

Comment. Section 2628 is designed to reduce expense of administration of small estates. In determining whether the monthly income of the estate satisfies the small estate requirements, income from public benefit payments is excluded. These payments are: (1) state aid and medical assistance (Welf. & Inst. Code §§ 11000-15520), (2) county aid and relief to indigents (Welf. & Inst. Code §§ 17000-17410), (3) federal old age, survivors, and disability insurance benefits (42 U.S.C. §§ 401-431 (1970 & Supp. V 1976)), and (4) federal supplemental security income for the aged, blind, and disabled (42 U.S.C. §§ 1381-1383c (1970)). See Review of Selected 1976 California Legislation, 8 Pac. L.J. 165, 188 (1977).

§ 2633. Account where relationship terminates before filing inventory

New Section 2633 was approved to provide as follows:

2633. Subject to Section 2630, where the guardianship or conservatorship terminates before the inventory of the estate has been filed, the court, in its discretion and upon such notice as the court may require, may make an order that the guardian or conservator need not file the inventory and appraisement and that the guardian or conservator shall file an account covering only those assets of the estate of which the guardian or conservator has possession or control.

Comment. Section 2633 is new. The section authorizes the court, for example, to dispense with an inventory and appraisement where the conservatee dies a few days after the appointment of the conservator. This will permit the court, in its discretion, to waive an inventory and permit an accounting of assets actually marshalled. It avoids the need to inventory estate assets--such as stocks, oil rights, real property--where the conservator has not yet taken possession or control of the asset and it would be unnecessary to incur the additional fees that would be earned by the conservator and to cause the delay in turning matters over to the executor of the deceased conservatee.

§ 2640. Petition by guardian or conservator of estate

Paragraph (3) of subdivision (a) of Section 2640 was revised as follows:

2640. (a) At any time after the filing of the inventory and appraisal, but not before the expiration of 90 days from the issuance of letters, the guardian or conservator of the estate may petition the court for an order fixing and allowing compensation to any one or more of the following:

\* \* \* \* \*

(3) The attorney for services rendered to that time by the attorney to the guardian or conservator of the person or estate or both.

The Assembly Judiciary Committee at the March 28 hearing directed that the substance of the following additional sentence be added to the Comment to Section 2640: "The court should allow compensation where instructions are sought unless the court determines that petitioning for instructions was not reasonably necessary under the circumstances."

§ 2650. Causes for removal

Subdivisions (f) and (g) of Section 2650 were revised as follows:

2650. A guardian or conservator may be removed for any of the following causes:

\* \* \* \* \*

(f) Having such an interest adverse to the faithful performance of duties that there is an unreasonable risk that the guardian or conservator will fail faithfully to perform duties .

(g) In the case of a guardian of the person or a conservator of the person, ~~failure to comply with the provisions~~ acting in violation of any provision of Section 2356.

§ 2653. Hearing on petition for removal

The Assembly Judiciary Committee at the March 28 hearing agreed with the Commission that there should not be a jury trial provided on the issue of removal of the conservator.

§ 2660. Resignation

The staff agreed prior to the Assembly Judiciary Committee hearing on March 28 to revise the first portion of the third sentence of Section 2660 to read:

The court ~~may~~ shall allow such resignation when it appears proper, to take effect ~~at~~ at such time as the court ~~may~~ shall fix, and may . . . .

§ 2700. Request for special notice

Subdivision (b) of Section 2700 was revised as follows:

(b) The request for special notice shall be so entitled and shall set forth the name of the person and the address to which notices shall be sent. If the request is for all of the matters referred to in subdivision (a), the request may refer generally to the provisions of this section. If the request is for less than all of the matters set forth in subdivision (a), the request shall state specifically each of the matters of which special notice is requested.

§ 2750. Appealable orders

Section 2750 was revised to add new subdivisions (m), (n), and (o) to read:

2750. An appeal may be taken from the making of, or the refusal to make, a judgment, order, or decree doing any of the following:

\* \* \* \* \*

(m) Allowing or denying a petition of the guardian or conservator to resign.

(n) Removing or discharging the guardian or conservator.

(o) Discharging a surety on the bond of a guardian or conservator.

The staff had agreed prior to the March 28 hearing of the Assembly Judiciary Committee to add new subdivision (m). The addition of the two additional new subdivisions was considered desirable by the Commission.

§ 2751. Stay

Subdivision (b) of Section 2751 was revised as follows:

(b) ~~For~~ Notwithstanding that an appeal is taken from the judgment, order, or decree, for the purpose of preventing injury or loss to person or property, the trial court may direct the exercise of the powers of the guardian or conservator, or may appoint a temporary guardian or conservator of the person or estate, or both, to exercise the powers, from time to time, as though no appeal were pending. All acts of the guardian or conservator, or temporary guardian or temporary conservator, pursuant to the directions of the court made under this subdivision are valid, irrespective of the result of the appeal.

§ 3002. Community property

The following was added to the Comment to Section 3002:

The property may be community property notwithstanding that title is held in some other form. W. Johnstone & G. Zillgitt, California Conservatorships § 4.11, at 113 (Cal. Cont. Ed. Bar 1968). See also 7 B. Witkin, Summary of California Law Community Property §§ 49-50, at 5140-42 (8th ed. 1974).

§ 3023. Determination of validity of homestead or character of property

Subdivision (c) of Section 3023 was revised as follows:

(c) If a civil action is pending with respect to the issue and jurisdiction has been obtained in the court in which the civil action is pending, upon request of any party to the civil action, the court shall abate the hearing until the conclusion of the civil action.

§ 3053. Separate property owned by both spouses subject to homestead

The staff was directed to add a statement in the Comment to Section 3053 that, as used in Section 3053, "homestead property" does not include community property subject to a homestead.

§ 3101. Nature of proceeding

Subdivision (d) of Section 3101 was revised as follows:

(d) In a proceeding under this chapter, the court may determine ~~the validity of a~~ whether the property that is the subject of the proposed transaction is subject to a valid homestead and whether the property that is the subject of the proposed transaction is community property or the separate property of either spouse, but such determination shall not be made in the proceeding under this chapter if the court determines that the interest of justice requires that the determination be made in a civil action.

§ 3150. Bond

The staff was directed to include a cross-reference to Section 2334 (court may require further security on petition or on its own motion) in the Comment to Section 3150.

§§ 3200-3210. Medical treatment for adult without conservator

A provision comparable to Section 2356 should be added to the provisions relating to medical treatment for an adult without a conservator.

SEC. 5. No mandated local costs [page 172 of AB 261 as amended 2/27/79]

The staff was directed to add a sentence to Section 5, a plus section in AB 261, to make clear that the section does not relieve the state of the duty to make reimbursements for costs incurred under existing law and that the "no reimbursement" provision of Section 5 is limited to the effect of the enactment of AB 261.

STUDY K-100 - EVIDENCE OF MARKET VALUE

The Commission considered Memorandum 79-10 reviewing the comments received on the tentative recommendation relating to evidence of market value. The Commission also heard the oral comments of Norval Fairman, representing CalTrans, to the effect that if the Commission proposes changes in the evidence of market value rules in the process of extending the rules to noncondemnation cases, the Commission should distribute the proposed changes widely for comment so that affected people can make their views known.

The Commission approved the tentative recommendation, without substantive change, for printing (after necessary editorial revisions are made) and submission to the 1980 session of the Legislature.

APPROVED AS SUBMITTED \_\_\_\_\_

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Executive Secretary