

## CALIFORNIA LAW REVISION COMMISSION

4000 MIDDLEFIELD ROAD, SUITE D-2  
 PALO ALTO, CA 94303-4739  
 (415) 494-1335



07/28/92

<b>DATE:</b> • September 10 & 11	<b>PLACE:</b> • Oakland
<ul style="list-style-type: none"> <li>• September 10 (Thursday) 10 am - 5 pm</li> <li>• September 11 (Friday) 9 am - 4 pm</li> </ul>	Oakland Airport Hilton 1 Hegenberger Road Oakland, CA 94621 (510) 635-5000
<p><b>NOTE:</b> Changes may be made in this agenda, or the meeting may be rescheduled, on short notice. IF YOU PLAN TO ATTEND THE MEETING, PLEASE CALL (415) 494-1335 AND YOU WILL BE NOTIFIED OF LATE CHANGES.</p> <p>Individual items on this agenda are available for purchase at the prices indicated or to be determined. Prices include handling, shipping, and sales tax. Orders must be accompanied by a check in the proper amount made out to the "California Law Revision Commission".</p>	

**FINAL AGENDA***for meeting of***CALIFORNIA LAW REVISION COMMISSION**Thursday, September 10, 1992

1. MINUTES OF JULY 9-10, 1992, COMMISSION MEETING (sent 8/7/92)
2. ADMINISTRATIVE MATTERS

Budget Matters

Memorandum 92-48 (NS) (to be sent)

Proposed Meeting Schedule

Memorandum 92-49 (NS) (sent 7/22/92) (\$5.50)

New Topics

Memorandum 92-53 (NS) (enclosed) (\$8.50)

Communications from Interested Persons

3. 1992 LEGISLATIVE PROGRAM

Memorandum 92-45 (NS) (to be sent)

4. STUDY H-501 - QUIETING TITLE TO PERSONAL PROPERTY

Revised Draft of Recommendation

Memorandum 92-47 (NS) (sent 7/22/92) (\$5.50)

5. STUDY J-02.01/D-02.01 - CONFLICTS OF JURISDICTION MODEL ACT

Special                    Presentation by James Wawro of ABA Committee  
Order of                Memorandum 92-51 (RJM) (sent 7/22/92) (\$8.50)  
Business                First Supplement to Memorandum 92-51 (to be sent)  
at 11:00

6. STUDY F-1001 - FAMILY CODE TECHNICAL AND MINOR SUBSTANTIVE REVISIONS

Inclusion of 1992 Legislation in Family Code

Memorandum 92-33 (SU et al.) (enclosed)

First Supplement to Memorandum 92-33 (to be sent)

Miscellaneous Technical Revisions

Memorandum 92-61 (SU) (to be sent)

Disposition of Sunset Provisions

Memorandum 92-43 (PKM) (to be sent)

First Supplement to Memorandum 92-33 (to be sent)

District Attorney Support Enforcement

Memorandum 92-54 (PKM) (to be sent)

Domestic Violence Prevention Statutes

Memorandum 92-56 (PKM) (to be sent)

General Definitions

Memorandum 92-57 (RJM) (enclosed)

Review of Property Definitions

Memorandum 92-62 (RJM) (to be sent)

Support of Adult Children

Memorandum 92-63 (RJM) (enclosed)

7. STUDY F-521.1/L-521.1 - COMMUNITY PROPERTY IN JOINT TENANCY FORM

Draft of Tentative Recommendation

Memorandum 92-46 (NS) (sent 7/28/92) (\$8.50)

First Supplement to Memorandum 92-46 (to be sent)

8. STUDY L-659.01 - INHERITANCE INVOLVING ADOPTED CHILD (PROBATE CODE § 6408)

Memorandum 92-52 (RJM) (sent 7/22/92) (\$8.50)  
First Supplement to Memorandum 92-52 (to be sent)

9. STUDY L-608 - DEPOSIT OF ESTATE PLANNING DOCUMENTS WITH ATTORNEY

Results of State Bar Negotiations  
Memorandum 92-39 (RJM) (sent 7/22/92) (\$8.50)

10. STUDY L-3044 - COMPREHENSIVE POWERS OF ATTORNEY STATUTE

Revised Draft  
Memorandum 92-50 (SU) (to be sent)

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Friday, September 11, 1992

11. STUDY N-100 - ADMINISTRATIVE ADJUDICATION

Combined Draft of Statute  
Memorandum 92-37 (NS) (sent 6/18/92) (\$25.00)

Staff Note. We will continue consideration of the combined draft commencing with pages 87-108, and then cover pages 1-54.

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MEETING SCHEDULE

Scheduled

August 1992

No Meeting

September 1992

Sep. 10 (Thur.)

10:00 a.m. - 5:00 p.m.

Sep. 11 (Fri.)

9:00 a.m. - 4:00 p.m.

Oakland

October 1992

Oct. 29 (Thur.)

10:00 a.m. - 5:00 p.m.

Oct. 30 (Fri.)

9:00 a.m. - 4:00 p.m.

Sacramento

November 1992

No Meeting

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MINUTES OF MEETING  
of  
CALIFORNIA LAW REVISION COMMISSION  
SEPTEMBER 10-11, 1992  
OAKLAND

A meeting of the California Law Revision Commission was held in Oakland on September 10-11, 1992.

Commission:

Present:	Arthur K. Marshall Chairperson	Christine Byrd Daniel M. Kolkey Edwin K. Marzec (Sept. 10) Forrest A. Plant Colin Wied
	Sanford Skaggs Vice Chairperson	
Absent:	Bill Lockyer Senate Member Terry B. Friedman Assembly Member	Bion M. Gregory Legislative Counsel

Staff:

Present:	Nathaniel Sterling Pamela K. Mishey (Sept. 10)	Stan Ulrich Robert J. Murphy III (Sept. 10)
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Consultants:

Michael Asimow, Administrative Law (Sept. 11)  
Edward G. Halbach, Jr., Probate Law (Sept. 10)  
Jerry Kasner, Community Property (Sept. 10)

Other Persons:

Larry Alamao, California Department of Real Estate, Sacramento (Sept. 11)  
Seymour R. Appleby, California Probate Referees Association, Hayward (Sept. 10)  
Wilbert Bennett, California Attorney General, San Francisco (Sept. 11)  
Herb Bolz, Office of Administrative Law, Sacramento (Sept. 11)  
William M. Chamberlain, California Energy Commission, Sacramento (Sept. 11)  
Michael Cohn, Office of Administrative Hearings, San Francisco (Sept. 11)  
Frieda Gordon Daugherty, Executive Committee, Family Law Section, Los Angeles County Bar Association, Women Lawyers' Association of Los Angeles Family Law Section, Association of Certified Family Law Specialists, Los Angeles (Sept. 10)

Monica Dell'Osso, Executive Committee, State Bar Estate Planning, Trust and Probate Law Section, Oakland (Sept. 10)  
Barbara DiFranza, Association of Certified Family Law Specialists San Jose (Sept. 10)  
M. Jeffrey Fine, California Unemployment Insurance Appeals Board, Sacramento (Sept. 11)  
Bill Heath, California School Employees Association, San Jose (Sept. 11)  
Derry Knight, California Department of Consumer Affairs, Sacramento (Sept. 11)  
Iris Mitgang, Legislative Chair, Association of Certified Family Law Specialists, Walnut Creek (Sept. 10)  
George O. Nielsen, Executive Committee, State Bar Family Law Section, California Family Support Council, San Francisco (Sept. 10)  
Dick Ratliff, California Energy Commission, Sacramento (Sept. 11)  
Miles J. Rubin, Executive Committee, Family Law Section, Los Angeles County Bar Association, Los Angeles (Sept. 10)  
Willard Shank, California Public Employment Relations Board, Sacramento (Sept. 11)  
Jed Somit, North Committee on Adoptions, Family Law Section, Oakland (Sept. 10)  
Thomas J. Stikker, Executive Committee, State Bar Estate Planning, Trust and Probate Law Section, San Francisco (Sept. 10)  
Robert Sullivan, Executive Committee, State Bar Estate Planning, Trust and Probate Law Section, Fresno (Sept. 10)  
Prof. Louise Ellen Teitz, University of Illinois College of Law, Champaign, Illinois (Sept. 10)  
Robert E. Temmerman, Executive Committee, State Bar Estate Planning, Trust and Probate Law Section, Campbell (Sept. 10)  
Olive Warner, Executive Committee, Probate, Trust and Estate Planning Section, Los Angeles County Bar Association, Los Angeles (Sept. 10)  
Jim Wawro, Los Angeles (Sept. 10)

MINUTES OF JULY 9-10, 1992, COMMISSION MEETING

The Minutes of the July 9-10, 1992, Commission meeting were approved with the following corrections:

On page 5, line 12, delete the first "tax".

On page 9, line 14, delete the first comma.

On page 9, line 24, replace "his" with "this".

On page 12, line 6, replace "provided" with "provide".

On page 12, line 18, after "to" insert "be".

On page 12, line 21, replace "observing exhibits" with "insuring that exhibits are able to be observed".

ADMINISTRATIVE MATTERS

New Officers

Commissioner Marshall assumed duties as chairperson and Commissioner Skaggs as vice chairperson. The Chairperson on behalf of the Commission presented Commissioner Marzec, outgoing chairperson, a plaque in appreciation of his distinguished service.

Budget Matters

The Executive Secretary noted that the memorandum scheduled as 92-48 (budget matters) was not written because of the lateness of adoption of the state budget. The Executive Secretary made the following report on the Commission's 1992-93 budget.

(1) The budget bill as enacted includes full funding for the Commission as proposed in the Governor's budget, less \$7,000, for a total of \$546,000. The \$7,000 reduction represents 50% of the amount scheduled for travel expenses, a reduction that was applied to most state agencies. That reduction is unallocated and may be taken out of budget categories other than travel if necessary.

(2) A proposal to eliminate 167 attorney positions from state service, including one in the Law Revision Commission, was not enacted. Interim hearings on the role of attorneys in state service will be held, and we have responded to a questionnaire concerning usage of state attorneys.

(3) The Law Revision Commission was excepted from the proposal to unfund all state advisory boards and commissions. The Department of Finance is conducting a review of all state advisory boards and commissions. At an appropriate time we will present to the Department material concerning the importance and cost effectiveness of the Commission.

(4) We anticipate a further budget reduction of 15% during the fiscal year. This will cause us to lose our administrative assistant. As a result, staff productivity will be lower as attorneys devote time to administrative work.

The Commission discussed the possibility of waiving per diems if necessary to cope with further reductions, and noted that when we have

looked into this in the past it didn't help the agency's budget and would cost an undue amount to account for. Other possibilities include obtaining law student assistance on a free basis, and receiving donation of administrative services from private firms (Commissioner Skaggs has raised this possibility with the staff).

Meeting Schedule

The Commission considered Memorandum 92-49 and the proposed meeting schedule for the remainder of 1992 and for 1993. The Commission approved the following schedule of meetings:

<u>October 1992</u>		<u>Sacramento</u>
Oct. 29 (Thur.)	10:00 a.m. - 5:00 p.m.	
Oct. 30 (Fri.)	9:00 a.m. - 4:00 p.m.	
<u>November 1992</u>	No Meeting	
<u>December 1992</u>		<u>Sacramento</u>
Dec. 10 (Thur.)	10:00 a.m. - 5:00 p.m.	
Dec. 11 (Fri.)	9:00 a.m. - 4:00 p.m.	
<u>January 1993</u>		<u>Los Angeles</u>
Jan. 28 (Thur.)	10:00 a.m. - 6:00 p.m.	
Jan. 29 (Fri.)	9:00 a.m. - 4:00 p.m.	
<u>February 1993</u>	No Meeting	
<u>March 1993</u>		<u>Sacramento</u>
Mar. 25 (Thur.)	10:00 a.m. - 5:00 p.m.	
Mar. 26 (Fri.)	9:00 a.m. - 4:00 p.m.	
<u>April 1993</u>	No Meeting	
<u>May 1993</u>		<u>Sacramento</u>
May 13 (Thur.)	10:00 a.m. - 5:00 p.m.	
May 14 (Fri.)	9:00 a.m. - 4:00 p.m.	
<u>June 1993</u>	No Meeting	
<u>July 1993</u>		<u>Sacramento</u>
July 22 (Thur.)	10:00 a.m. - 5:00 p.m.	
July 23 (Fri.)	9:00 a.m. - 4:00 p.m.	
<u>August 1993</u>	No Meeting	
<u>September 1993</u>		<u>Sacramento</u>
Sep. 23 (Thur.)	10:00 a.m. - 5:00 p.m.	
Sep. 24 (Fri.)	9:00 a.m. - 4:00 p.m.	

October 1993            No Meeting

November 1993

Los Angeles

Nov. 18 (Thur.)        10:00 a.m. - 6:00 p.m.

Nov. 19 (Fri.)         9:00 a.m. - 4:00 p.m.

December 1993        No Meeting

New Topics

The Commission considered Memorandum 92-53 relating to new topics proposed for study by the Commission. Activation of topics the Commission requests authority to study would be subject to availability of Commission resources and allowance of Commission priorities.

Shareholder rights and corporate director responsibilities. The Commission agreed to request authority to study this matter. The description of this topic should note that the focus of the study concerning the demand requirement in a shareholder derivative action would be to determine whether standards should be clarified and codified. The resolution to authorize the study should list the demand requirement and the business judgment rule as separate items, since the business judgment rule is a defense to other actions besides shareholder derivative actions.

Unfair Business Practices. The Commission agreed to request authority to study this matter. The description of this topic should note that the issues and problems include res judicata and collateral estoppel effect "on the public".

Uniform Unincorporated Nonprofit Association Act. The staff should research how well the existing California statutes are operating and whether there are any problems in the cases or otherwise.

1992 LEGISLATIVE PROGRAM

The Commission considered Memorandum 92-45, containing the final report on the 1992 legislative program. No action was taken on this matter.

D-02.01 - CONFLICTS OF JURISDICTION  
AND ENFORCEMENT OF FOREIGN JUDGMENTS

See Study J-02.01.

F-521.1 - COMMUNITY PROPERTY IN JOINT TENANCY FORM

The Commission considered Memorandum 92-46 and its First Supplement, along with letters distributed at the meeting from J. Robert Foster of Morgan Hill and Roger W. Poyner of Los Gatos (Exhibits pp. 1-2), relating to community property in joint tenancy form. The Commission reviewed the draft tentative recommendation attached to the memorandum and requested the staff to make a revised version that is phrased in a more neutral manner as between joint tenancy and community property. The focus of the statute should be to ensure that people make a knowing decision when they take title as joint tenants, rather than to discourage use of joint tenancy.

Among the suggestions made at the meeting that the staff should take into consideration in making a revised draft are:

Title of Recommendation

The title "community property in joint tenancy form" should not be used since it tends to confuse the issue being addressed.

§ 860. Transmutation of community property to joint tenancy

This section might be rephrased along the lines that in order to get joint tenancy property the transmutation statute must be followed or joint tenancy is not obtained. This phrasing would replace the concept that property held in joint tenancy form is not joint tenancy unless transmutation has occurred. This would be a difference in emphasis, rather than change in direction.

Under this formulation, title would mean what it says, subject to a showing that title was not taken knowingly. The safe harbor form would then make the joint tenancy title immune from challenge.

The draft might require the declaration of joint tenancy to be signed, rather than merely "accepted" as permitted in the transmutation statute.

§ 861. Advice concerning form of title

This section could be revised simply to refer to any person who provides a title form, without cataloging the types of occupation this might include.

§ 862. Form of transmutation

The form of transmutation should be made less prejudicial towards joint tenancy tenure:

•The word "warning" could be changed to "notice".

•The advice form should present a more balanced comparison of the advantages and disadvantages of joint tenancy and community property, including joint tenancy's avoidance of creditors and community property's double stepdown in basis if property has declined in value.

•The notice might state, "Do not sign this declaration unless you are willing to give up your community property rights."

•The term "transmute" should be replaced by a more understandable term such as "change" or "convert".

Clearing Title After Death of Spouse

The statute could help effectuate a simple means of clearing title to property after the death of a spouse, by affidavit in the same manner as joint tenancy. See Probate Code Section 13540 (right to deal with and dispose of community property after 40 days).

Scope of Statute

The Commission's consultants suggested broader coverage for the statute—for example personal property ought to be covered expressly, transmutation of separate property to joint tenancy might be included, and mixed community/separate property issues ought to be addressed.

STUDY F-1001 - FAMILY CODE (GENERAL MATTERS)

The Commission received a set of proposals concerning treatment of employee benefit plans and deferred compensation in marital dissolution proceedings prepared by Barbara A. DiFranza, President of the Association of Certified Family Law Specialists (on file in Commission office). It was noted that the proposals would involve substantive changes that might not be appropriate at this stage of the Family Code project. The staff will review the materials to determine if any noncontroversial, technical changes would be appropriate for inclusion in the 1993 Family Code bill.

STUDY F-1010 - FAMILY CODE (PRELIMINARY PROVISIONS AND DEFINITIONS)

The Commission considered Memorandum 92-57 concerning general definitions and Memorandum 92-62 concerning property definitions and their usage throughout the Family Code:

General definitions (Memorandum 92-57): The Commission approved the staff recommendation to add the following new section to the general definitions in the Family Code:

Fam. Code § 110 (added). "Person"

110. "Person" includes a natural person, firm, association, organization, partnership, business trust, corporation, or public entity.

Comment. Section 110 is new and is drawn from Evidence Code Section 175 and Government Code Section 17.

Property definitions (Memorandum 92-62). The Commission approved technical amendments to Family Code sections, as set out in Exhibit 3 to the Memorandum. The Commission revised the suggested amendments to Sections 930 and 1000 as follows:

Fam. Code § 930 (technical amendment). Enforcement of debts

930. Except as otherwise provided by statute, this part governs the liability of separate property and property in the community estate ~~property~~ and the personal liability of a married person for a debt enforced on or after January 1, 1985, regardless of whether the debt was incurred before, on, or after that date.

Comment. Section 930 is amended to change "separate and community estate property" to "separate property and property in the community estate." This amendment is clarifying and is nonsubstantive.

Fam. Code § 1000 (technical amendment). Liability for death or injury

1000. (a) A married person is not liable for any injury or damage caused by the other spouse except in cases where the married person would be liable therefor if the marriage did not exist.

(b) The liability of a married person for death or injury to person or property shall be satisfied as follows:

(1) If the liability of the married person is based upon an act or omission which occurred while the married person was performing an activity for the benefit of the community, the liability shall first be satisfied from the community estate ~~property~~ and second from the separate property of the married person.

(2) If the liability of the married person is not based upon an act or omission which occurred while the married person was performing an activity for the benefit of the community, the liability shall first be satisfied from the separate property of the married person and second from the community estate ~~property~~.

(c) This section does not apply to the extent the liability is satisfied out of proceeds of insurance for the liability, whether the proceeds are from property in the community estate ~~property~~ or from separate property. Notwithstanding Section 920, no right of reimbursement under this section shall be exercised more than seven years after the spouse in whose favor the right arises has actual knowledge of the application of the property to the satisfaction of the debt.

Comment. Subdivision (b) of Section 1000 is amended to change "community estate property" to "community estate" in the two places where it appears. "Community estate" is a defined term. See Section 901. In subdivision (c), "community estate property" is changed to "property in the community estate." These amendments are clarifying and are nonsubstantive.

The Commission was concerned about use of the undefined term "community estate" in Family Code Section 1101 and its possible implication that a spouse's fiduciary duty applies to quasi-community property. The Commission asked the staff to consult with the State Bar Family Law Section and other interested persons on this language and on Family Code definitions generally, and to try to arrive at a consensus on definitions and usage.

STUDY F-1100.11 -- FAMILY CODE  
(SUPPORT OF ADULT CHILDREN)

The Commission considered Memorandum 92-63 concerning support of adult children. The Commission approved the amendments set out in Exhibit 1 to the Memorandum, including the amendment to Family Code Section 150. The Commission declined to broaden Section 150 as discussed in the staff note after the section, or to broaden Section 2337 as discussed in the Memorandum.

STUDY F-1100.51 -- FAMILY CODE  
(DISTRICT ATTORNEY SUPPORT ENFORCEMENT)

The Commission considered Memorandum 92-54 and the First Supplement concerning moving the provisions for district attorney support enforcement. The Commission discussed the proposal of the district attorneys' Family Support Council that federal money might be obtained for a project to revise and update the Welfare and Institutions Code provisions for district attorney enforcement of support. The Commission felt that, given the State's budget problems, the staff should investigate whether it might be possible to enter a joint project, while maintaining the Commission's independence. The Commission authorized the staff to pursue a joint project as outlined in the First Supplement. If some type of joint project were possible, the Commission would intend to have legislation prepared for the 1994 legislative session. The staff should also consult with Assemblywoman Speier's office concerning this matter.

STUDY F-1120 -- FAMILY CODE  
(DOMESTIC VIOLENCE PREVENTION STATUTES)

The Commission considered Memorandum 92-56 concerning the consolidation and reorganization of the statutes dealing with domestic violence. The Commission deferred consideration of the issue of

whether Welfare and Institutions Code Section 213.5 should be consolidated with the provisions in Division 10, until the Commission determines whether the dependency provisions will be moved into the Family Code. In the interim, the staff will add a cross-reference to Welfare and Institutions Code Section 213.5 in the Comment to Family Code Section 6200. The Commission approved the staff draft for circulation as a tentative recommendation.

STUDY F-1170 -- FAMILY CODE (IMPLEMENTATION OF  
1992 FAMILY LAW LEGISLATION)

The Commission considered Memorandum 92-33 and the First Supplement concerning inclusion of 1992 family law legislation in the Family Code. The Commission approved the memorandum as submitted, noting that the task is a technical one of merging 1992 legislation into the new statutory scheme without changing its substance. Several Commissioners expressed the concern that conforming revisions, particularly ones involving substantive changes in the law, might be thought to be Commission recommendations, even though the Commission has not reviewed the substance of these new statutes. The staff will include a statement where relevant, to the effect that the recommended legislation is technical in nature and that the Commission has not reviewed the substance.

STUDY F-1180 -- FAMILY CODE (TECHNICAL AND  
MINOR SUBSTANTIVE REVISIONS)

The Commission considered Memorandum 92-43 concerning provisions subject to sunset clauses and Memorandum 92-61 concerning miscellaneous technical revisions:

Disposition of sunset provisions (Memorandum 92-43). The staff updated the status of the two pending bills mentioned in the memorandum. The staff reported that one bill had died, that the other

had been enrolled, but not yet chaptered, and that the enrolled bill operated as anticipated in the staff draft. The Commission approved the proposed revisions for inclusion in the 1993 Family Code bill.

Miscellaneous technical revisions. The Commission approved the proposed revisions for inclusion in the 1993 Family Code bill.

STUDY H-501 - QUIETING TITLE TO PERSONAL PROPERTY

The Commission considered Memorandum 92-47 and the attached revised draft of the recommendation relating to quieting title to personal property. The draft was approved for printing and submission to the Legislature.

STUDY J-02.01 - CONFLICTS OF JURISDICTION AND  
ENFORCEMENT OF FOREIGN JUDGMENTS

The Commission considered Memorandum 92-51, attached staff draft of a Tentative Recommendation on *Conflicts of Jurisdiction and Enforcement of Foreign Judgments*, and First Supplement. The Commission also heard an oral presentation from James Wawro and Professor Louise Teitz. The Commission made the following decisions:

(1) The draft should include a provision that a party who appears solely to oppose an application for designation of an adjudicating forum does not thereby make a general appearance. *Cf.* Code Civ. Proc. § 418.10(d).

(2) Section 1721(a) should be revised as recommended in the First Supplement to limit it to the case where at least one proceeding is in a foreign country, thus not applying where all the proceedings are in sister states.

The Commission was concerned that the provision in Section 1722(a) that the court must consider any "written agreement between the parties designating the forum for litigating the dispute" might undesirably weaken the effect of a contractual forum selection clause. The staff should consider the effect of this factor on forum selection clauses,

and whether this factor should be deleted or whether there should be a separate provision in the draft on forum selection clauses. Cf. Code Civ. Proc. § 1713.4(b)(5).

There was concern that, under the staff draft, a foreign court might have to apply the proposed new California statute to rule on an application to designate an adjudicating forum. To address this concern, the staff should develop an alternative proposal, to be considered as a possible substitute for the Model Act. The alternative proposal would provide:

(1) If the California court determines that another forum should be the adjudicating forum, the California court could stay the California action while the foreign action proceeds. See generally 5 B. Witkin, *California Procedure Pleading* § 1063, at 477 (3d ed. 1985). Whether to stay the action would be based on the same factors as in the draft for determining an adjudicating forum.

(2) If the California court determines that California should be the adjudicating forum and a foreign judgment is obtained in a parallel proceeding, the California court could stay enforcement of the foreign judgment while the California action proceeds. When judgment is obtained in the California action, the foreign judgment could be refused enforcement under Section 1713.4(b)(4) (conflicting judgment).

The staff should bring a revised draft back for Commission consideration. If approved by the Commission, it would be sent as a "staff study" to the International Law Section of the State Bar, the International Law Section of the Los Angeles County Bar, and others for review and comment.

STUDY L-521.1 - COMMUNITY PROPERTY IN JOINT TENANCY FORM

See Study F-521.1.

STUDY L-659.01 - PARENT-CHILD RELATIONSHIP  
FOR INTESTATE SUCCESSION

The Commission considered Memorandum 92-52 and First Supplement on Probate Code Section 6408. The Commission decided to revise subdivision (c) of Section 6408 along the lines shown below, and not to make other substantive revisions to Section 6408:

(c) Neither If a child has been adopted by someone other than the spouse or surviving spouse of a parent, neither a parent nor a relative of a parent (~~except for the issue of the child or a wholeblood brother or sister of the child or the issue of that brother or sister~~) inherits from or through a the child on the basis of the relationship of parent and child ~~if the child has been adopted by someone other than the spouse or surviving spouse of that parent~~, except for:

(1) The issue of the child.

(2) A wholeblood brother or sister of the child or the issue of that brother or sister where the requirements of paragraphs (1) and (2) of subdivision (b) are satisfied.

The Comment would say subdivision (c) is reorganized for clarity, and no substantive change is intended.

The staff should consider whether "wholeblood" should be defined in this context. Does it include adoptive siblings in the child's family of origin? Professor Halbach suggested replacing "wholeblood brother or sister of the child" with "child born to or adopted by both parents of the child".

STUDY N-100 - ADMINISTRATIVE ADJUDICATION

The Commission considered Memorandum 92-37 and pages 1-54 and 87-108 of the combined draft of the administrative adjudication statute. The Commission also received from Mr. Bolz of the Office of Administrative Law a report on "Regulatory Determinations Program 'Result'"; copies of the report may be obtained from Mr. Bolz.

The Commission made the following decisions concerning the draft.

§ 600. Short title

The Comment should note that the division as presently drafted covers only adjudication and not rulemaking. When it is expanded to include rulemaking, provisions on the scope, etc., may require revision.

§ 610.190. Agency

The staff should compare the definition of "agency" in Section 11000 to see whether it provides useful material.

§ 610.310. Decision

Subdivision (b) relating to the precedential effect of a decision should be coordinated with the general provisions on precedent decisions.

§ 610.370. Local agency

The note in the Comment that the division does not apply to local agencies may need revision to the extent judicial review provisions are applied to local agencies.

§ 612.130. Application of division notwithstanding exemption

This section was deleted. Any exemptions from this division should be for specific functions and not a blanket exemption for everything the agency does.

§ 612.160. Suspension of statute when necessary to avoid loss of federal funds or services

The staff should check general statutes for the Governor's authority to suspend in case of an emergency.

§ 613.110. Voting by agency member

This section should be broadened to allow agencies maximum flexibility to vote by mail or otherwise; agency members should not be required to be physically present to cast a vote.

§ 613.220. Mail

This section should be broadened to recognize mail delivery services such as Federal Express and possibly facsimile transmission or other electronic means. In that case, failure of a person to receive notice should be treated as prima facie evidence of good cause for failure to attend the noticed hearing, and reopening would be appropriate.

§ 613.230. Extension of time

Service or notice "by mail" should include other means of delivery under Section 613.220.

§ 613.310. Self representation

The reference to "legal counsel" should be changed to "an attorney".

§ 641.130. Modification or inapplicability of statute by regulation

Subdivision (c) should refer to a statute "that governs the matter expressly".

Subdivision (d) should permit adoption of regulations "not inconsistent" with this part.

§ 641.210. Regulations governing declaratory decision

The draft should provide that OAH model regulations apply to agencies automatically unless the agency adopts a different rule. The draft might provide that if an agency varies the model regulations, it should adopt a comprehensive set to govern it. The staff should explore with OAL the possibility of automatic inclusion of OAH regulations in the regulations of each agency, or alternatively a central collection of administrative hearing regulations of all agencies in one volume of the code of regulations.

Transitional problems in mass adoption of regulations could be addressed by having existing regulations remain in effect until final regulations are adopted, or by allowing interim operation regulations to become effective immediately, subject to later OAL review. The staff should confer with OAL to see about developing a workable scheme.

§ 643.310. Adoption of stricter limitations

OAH agencies should be permitted to adopt stricter limitations under this section.

§ 643.320. When separation required

Public contracts rules should be checked to see whether this and other provisions are workable.

§ 643.340. Staff assistance for presiding officer

The word "aid" should be replaced by "assistance".

§ 648.510. Scope of article

The reference in this section to an opportunity to "address" an ex parte communication should be revised to refer instead to "comment" on the communication, consistent with Section 648.510. A comparable revision should be made in other sections if inconsistent terminology is used.

§ 648.520. Ex parte communications prohibited

The reference in subdivision (a) to the "merits of a contested matter" should be deleted. Subdivision (b) should be expanded to provide that an ex parte communication is permissible concerning matters of practice and procedure that are not in controversy.

§ 648.540. Disclosure of ex parte communication received

A provision should be added to the statute that where regulations permit the disclosure of an ex parte communication by the person making the communication, the presiding officer should review the disclosure for accuracy.

The second paragraph of the Comment should be checked against the statute for accuracy--do ex parte communications with assistants need to be disclosed on the record?

§ 648.550. Disqualification of presiding officer

The Comment to this section should cross-refer to the disqualification procedure.

§ 648.610. Misconduct in proceeding

Violation of the 648.520 prohibition on ex parte contacts should be added to this section as a ground for discipline of a party.

§ 648.620. Contempt

The presiding officer or the reviewing authority, rather than a party, should be able to certify facts to the court for contempt.

§ 648.630. Monetary sanctions for bad faith actions or tactics

This section should be revised to make clear that review may be had of an order denying as well as an order granting sanctions.

§ 649.110. Proposed and final decisions

The section or Comment should note that the time periods are subject to special statute as well as agency regulation. The Comment should explain that a case is "submitted" when the hearing record is closed in the sense that evidence has been taken and briefs submitted, or as otherwise specified by agency regulations.

§ 649.120. Form and contents of decision

Subdivision (a) was revised to read:

A proposed decision or final decision shall be in writing and shall include a statement of the factual and legal basis and reasons for the decision as to each of the principal controverted issues.

§ 649.150. Time proposed decision becomes final

The introductory clause should be examined to determine whether the word "proposed" might be deleted.

Subdivision (a) should refer to issuance of a proposed decision by the presiding officer rather than the agency head.

The presiding officer should include a proof of service on the agency head. The Comment to subdivision (d) should note that an OAH agency may not provide for a longer time.

§ 649.210. Availability and scope of review

Subdivision (b) should be revised to permit OAH agencies to adopt regulations concerning administrative review. The subdivision should refer to proposed and final decisions.

The staff should give further consideration in this and other sections to the construction "an agency by regulation may mandate" vs. "an agency may by regulation mandate" vs. "an agency may mandate by regulation". An alternative formulation might be "an agency's regulations may mandate" or "by regulation an agency may mandate".

§ 649.220. Initiation of review

The decision should note its effective date. The time to initiate administrative review of the decision should be before the effective date or, if the decision does not note its effective date, within 30 days after delivery of the decision.

The agency, at the time it serves a decision on the party, should notify the party of the time for seeking judicial review. Failure to give the notice should extend the time for judicial review to six months.

§ 649.230. Review procedure

The last clause of subdivision (d) should be revised to refer to provisions "that would apply to the presiding officer in the hearing".

§ 649.310. Application of article

This section was deleted.

§ 649.320. Precedential effect of decision

A decision that is not precedential should not be "expressly" relied on. The phrase "by an agency to the detriment of any person" was deleted from this section.

§ 649.330. Designation of precedent decision

This section should be limited to decisions or parts of decisions that are of general application are likely to recur, and should preclude judicial review of a designation or a failure to designate a

decision as precedential. The Comment should cross-refer to Government Code Section 11347.5, and should note that agencies are encouraged but not required to express precedent decisions in the form of regulations.

§ 649.340. Index of precedent decisions

The staff will draft for Commission review a number of suggestions made to improve this section--(1) the index is annually updated, (2) the index is available by subscription, (3) availability of the index is noted annually in the California Regulatory Notice Register.

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

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chairperson

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

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September 4, 1992

Law Revision Commission  
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SEP 08 1992

Mr. Nat Sterling  
CALIFORNIA LAW REVISION COMMISSION  
4000 Middlefield Road Suite D-2  
Palo Alto, CA 94303-4739

File: \_\_\_\_\_  
Key: \_\_\_\_\_

Re: Memorandum 92-46  
Community Property in Joint Tenancy Form  
(Draft of Tentative Recommendation)

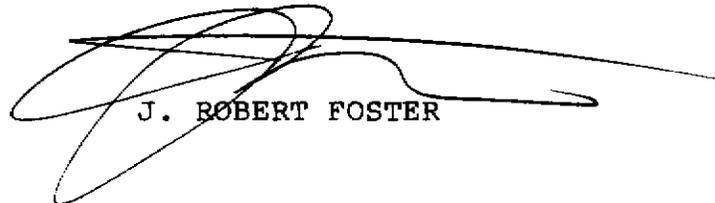
Dear Mr. Sterling:

I have received a copy of Bob Temmerman's letter to you dated September 2, 1992, concerning the above. Like Bob, I am writing this letter in my individual capacity as a Certified Specialist in Estate Planning, Probate and Trust. I am a member of Team 2, and I disagree with the Executive Committee action. I second Bob's thoughts in that letter, and believe that the tentative recommendation that you propose is excellent and I support the same.

Therefore, I think it should go out for circulation and comment.

Sincerely,

RUSCONI, FOSTER, THOMAS & WILSON



J. ROBERT FOSTER

JRF/bbr  
cc: Bob Temmerman

ROGER W. POYNER  
ATTORNEY AT LAW

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September 8, 1992

Law Revision Commission  
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SEP 9 1992

File: \_\_\_\_\_  
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Mr. Nat Sterling  
California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

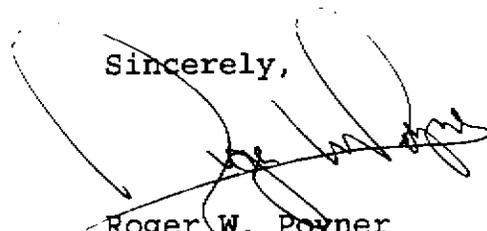
RE: Community Property in Joint Tenancy Form

Dear Mr. Sterling,

In reviewing Memorandum 92-74 I would agree that it's approach to resolving the problem presented would be the most practical. Almost every day I must explain to a client or prospective client that joint tenancy property held as such by a married couple is not community property, unless... And then follows a discussion appropriate to their situation. The fact that joint tenancy property owned by a married couple is not community property is both difficult to explain and hard to justify.

I do not have a better suggestion than that which is contained in the memorandum. Such a proposed major change in California law deserves wide exposure not only to attorneys, but to other interest groups as well such as the title insurance and real estate professionals.

Sincerely,

  
Roger W. Poyner