

Admin.

October 12, 1999

**Memorandum 99-59****1999-2000 Annual Report (Staff Draft)**

---

Attached to this memorandum is a draft of the Commission's 1999-2000 *Annual Report*. If approved, the staff will send it to the printer later in the year, subject to any revisions needed to reflect Commission action at the meeting.

Several reports on Commission bills are included in the appendices. These reports set out new and revised Comments that were approved during the year in connection with the Commission's legislative program. Several brief recommendations will also be included to save printing costs, but are not included here because they have not been finalized.

Much of the Annual Report language is the same or similar to past reports. The material concerning the Legislative Program and Major Studies in Progress depends on decisions the Commission will make concerning topics and priorities at this meeting (see Memorandum 99-58).

The report includes a place for mention of any activities by Commissioners related to the Commission's work, such as any speeches you have given or articles published since the last Annual Report. (See p. 1023.) If any Commissioner has something of this nature to be noted in the Annual Report, please give it to the staff for inclusion.

Respectfully submitted,

Stan Ulrich  
Assistant Executive Secretary

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

**Staff Draft**

1999-2000 Annual Report

California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

Cite this pamphlet as *1999-2000 Annual Report*, 29 Cal. L. Revision Comm'n Reports \_\_\_\_ (1999). This is publication #206.

## SUMMARY OF WORK OF COMMISSION

### **Recommendations Enacted in the 1999 Legislative Session**

In 1999, four bills effectuating the Commission's recommendations were enacted relating to the following subjects:

- Health care decisions for adults without decisionmaking capacity
- Uniform Principal and Income Act
- Consent regulations and other noncontroversial regulations
- Administrative agency advisory interpretations
- Trial court unification follow-up

A bill relating to valuation evidence in eminent domain proceedings remains in the Assembly as a two-year bill.

### **Recommendations to the 2000 Legislature**

In 1999, the Commission plans to submit recommendations on the following subjects to the Legislature:

- Administrative rulemaking
- Air resource technical revisions
- Family Code enforcement technical revisions
- Goodwill issues in eminent domain
- Administrative mandamus
- Family consent in health care decisionmaking
- Miscellaneous probate issues
- Settlement negotiations.
- Trial court unification followup

### **Commission Activities Planned for 2000**

During 2000, the Commission will work on the following major topics: mechanics lien law, implementation of Bankruptcy Code Chapter 9 (adjustment of debts of governmental entities), general assignments for the benefit of creditors, selected issues in eminent domain and inverse condemnation, Evidence Code changes required by electronic communications, rules of construction for trusts, and issues in judicial administration resulting from trial

court unification. The Commission will consider other subjects as time permits, including shifting of attorney fees between litigants, selected issues in probate law, statutes of limitation in legal malpractice actions, public records law, and the Uniform Unincorporated Nonprofit Association Act.

## CONTENTS

	<i>Page</i>
1999-2000 ANNUAL REPORT .....	—
Introduction .....	687
2000 Legislative Program .....	688
Major Studies in Progress .....	689
Calendar of Topics for Study .....	692
Topics for Future Consideration .....	693
Function and Procedure of Commission .....	696
Background Studies .....	697
Recommendations .....	697
Official Comments .....	698
Publications .....	700
Electronic Publication and Internet Access .....	701
Electronic Mail .....	701
Personnel of Commission .....	702
Commission Budget .....	704
Other Activities .....	704
Legislative History of Recommendations .....	706
Report on Statutes Repealed by Implication or Held Unconstitutional .....	708
Recommendations .....	709
 APPENDICES	
1. Statute Governing the California Law Revision Commission .....	1101
2. Calendar of Topics Authorized for Study .....	1201
3. Legislative Action on Commission Recommendations (Cumulative) .....	1301
4. Report of the California Law Revision Commission on Chapter 145 of the Statutes of 1999 (Assembly Bill 846): <i>Uniform Principal and Income Act</i> .....	4-1

Page

5. Report of the California Law Revision Commission on Chapter 344 of the Statutes of 1999 (Senate Bill 210): *Trial Court Unification Follow-Up* . . . . . 5-1

6. Report of the California Law Revision Commission on Chapter \_\_\_ of the Statutes of 1999 (Assembly Bill 486): *Administrative Rulemaking* . . . . . 6-1

7. Report of the California Law Revision Commission on Chapter \_\_\_ of the Statutes of 1999 (Assembly Bill 891): *Health Care Decisions for Adults Without Decisionmaking Capacity* . . . . . 7-1

8. Report on *Reorganization of Environmental and Natural Resource Statute* (June 1999) . . . . . 8-1

[ 9. Recommendation on xxxxxxxxxxxx (\_\_\_ 1999) . . . . . ]

[ 10. Recommendation on xxxxxxxxxxxx (\_\_\_ 1999) . . . . . ]

[ 11. Recommendation on xxxxxxxxxxxx (\_\_\_ 1999) . . . . . ]

COMMISSION PUBLICATIONS . . . . .

STATE OF CALIFORNIA

---

CALIFORNIA LAW REVISION COMMISSION

4000 MIDDLEFIELD ROAD, ROOM D-1  
PALO ALTO, CA 94303-4739  
650-494-1335

ASSEMBLY MEMBER HOWARD WAYNE, Chairperson  
SANFORD M. SKAGGS, Vice Chairperson  
BION M. GREGORY  
ARTHUR K. MARSHALL  
EDWIN K. MARZEC  
COLIN W. WIED

October 15, 1999

To: The Honorable Gray Davis  
*Governor of California*, and  
The Legislature of California

In conformity with Government Code Section 8293, the California Law Revision Commission herewith submits this report of its activities during 1999 and its plans for 2000.

Four bills introduced in 1999 to effectuate the Commission's recommendations were enacted. One bill became a two-year bill. A concurrent resolution recommended by the Commission was adopted.

The Commission is grateful to the members of the Legislature who carried Commission-recommended bills:

- Assembly Member Ackerman (Uniform Principal and Income Act)
- Assembly Member Elaine Alquist (health care decisionmaking)
- Assembly Member Howard Wayne (administrative rulemaking)
- Senate Judiciary Committee (trial court unification follow-up)

The Commission held five two-day meetings and a one-day meeting during 1999. Meetings were held in Los Angeles, Sacramento, San Diego, and San Francisco.

Respectfully submitted,

Howard Wayne



*Chairperson*



## 1999-2000 ANNUAL REPORT

### Introduction

The California Law Revision Commission was created in 1953 as the permanent successor to the Code Commission and given responsibility for a continuing substantive review of California statutory and decisional law.<sup>1</sup> The Commission studies the law to discover defects and anachronisms and recommends legislation to make needed reforms.

The Commission assists the Legislature in keeping the law up to date by:

- Intensively studying complex and sometimes controversial subjects
- Identifying major policy questions for legislative attention
- Gathering the views of interested persons and organizations
- Drafting recommended legislation for legislative consideration

The Commission's efforts enable the Legislature to focus on significant policy questions in a recommendation rather than on the technical issues which can be resolved in the process of preparing background studies, working out intricate legal problems, and drafting implementing legislation. The Commission thus helps the Legislature accomplish needed reforms that otherwise might not be made because of the heavy demands on legislative time. In some cases, the Commission's report demonstrates that no new legislation on a particular topic is needed, thus relieving the Legislature of the need to study the topic.

The Commission consists of:

- A Member of the Senate appointed by the Rules Committee
- A Member of the Assembly appointed by the Speaker
- Seven members appointed by the Governor with the advice and consent of the Senate
- The Legislative Counsel, who is an ex officio member

---

1. See Gov't Code §§ 8280-8298 (statute establishing Law Revision Commission) (Appendix 1 *infra* pp. \_\_\_\_). See also *1955 Report* [Annual Report for 1954] at 7, 1 Cal. L. Revision Comm'n Reports (1957).

The Commission may study only topics that the Legislature has authorized. The Commission now has a calendar of 20 topics.<sup>2</sup>

Commission recommendations have resulted in the enactment of legislation affecting 19,697 sections of the California statutes: 3,633 sections amended, 9,059 sections added, and 7,005 sections repealed. The Commission has submitted over 315 recommendations to the Legislature. Nearly 95% of these recommendations have been enacted in whole or in substantial part.<sup>3</sup>

The Commission's recommendations, reports, and other selected materials are published in softcover and later collected in hardcover volumes. Recent materials are also available through the Internet. A list of past publications and information on obtaining copies are at the end of this Annual Report.<sup>4</sup>

### **2000 Legislative Program**

In 2000, the Commission plans to submit recommendations to the Legislature concerning the following subjects:

#### **Administrative Law**

*Administrative Rulemaking.* The Commission will recommend omnibus revision of the Administrative Procedure Act's rulemaking provisions to improve clarity, eliminate procedural discrepancies, and make other technical and minor substantive improvements.

*Administrative Mandamus.* The Commission will recommend changes relating to notice of time for judicial review, venue, and exhaustion of remedies in administrative mandamus.

#### **Civil Procedure and Judicial Administration**

*Settlement Negotiations.* The Commission will recommend comprehensive revision of the law to protect confidentiality of communications made during settlement negotiations.

---

2. See list of topics under "Calendar of Topics Authorized for Study" in Appendix 2 *infra* pp. \_\_\_\_.

3. See "Legislative Action on Commission Recommendations" in Appendix 3 *infra* pp. \_\_\_\_.

4. See "Commission Publications" *infra* pp. \_\_\_\_.

*Trial Court Unification.* The Commission will recommend correction of minor problems discovered as a result of trial court unification work, e.g., jurisdictional classification of a good faith improver claim and repeal of expired pilot project statutes.

#### **Debtor-Creditor Law**

*Family Code Enforcement.* [\_\_\_\_].

*Homestead Exemption.* [\_\_\_\_].

#### **Environmental Law**

*Air Resource Technical Revisions.* The Commission will recommend cleanup legislation to correct technical defects relating to air resources.

#### **Estate Planning, Probate, and Trusts**

*Family Consent in Health Care Decisionmaking.* [\_\_\_\_].

*Uniform Principal and Income Act Follow-Up.* [\_\_\_\_].

*Miscellaneous Probate Issues.* The Commission will recommend changes in the law governing alternative beneficiaries for unclaimed distributions and liability of property passing to a surviving spouse for debts of a decedent.

#### **Property**

*Goodwill Issues in Eminent Domain.* The Commission will recommend clarification of technical issues surround compensation for loss of goodwill in eminent domain, including exchange of valuation data and final offer and demand issues.

### **Major Studies in Progress**

During 2000, the Commission will work on eight major topics: mechanics lien law, implementation of Bankruptcy Code Chapter 9 (adjustment of debts of governmental entities), general assignments for the benefit of creditors, selected issues in eminent domain and inverse condemnation, Evidence Code changes required by electronic communications, rules of construction for trusts, and issues in judicial administration resulting from trial court unification. The Commission will also consider other subjects to the extent time permits.

**Mechanics Lien Law**

The Assembly Judiciary Committee has requested the Commission for a comprehensive review of and recommendations relating to the California mechanics lien law. The Commission has retained Gordon Hunt of Pasadena to prepare a background study on the matter. The study is due in early 2000. The Commission will give this matter highest priority.

**Bankruptcy Code Chapter 9 Implementation**

The Commission will begin its study of California law implementing Bankruptcy Code Chapter 9, relating to adjustment of debts of governmental entities. Issues to be considered include whether California law should be revised to increase the options of state and local agencies and nonprofit corporations that administer government funded programs to elect Chapter 9 treatment. The Commission has retained Professor Frederick Tung of the University of San Francisco Law School to prepare a background study on the matter.

**General Assignment for Benefit of Creditors**

The Commission will begin its study of general assignments for benefit of creditors. The purpose of this study is to determine whether any aspects of the law and practice of general assignments may benefit from statutory clarification. The Commission has retained David Gould of Los Angeles to prepare a background study on the matter.

**Eminent Domain and Inverse Condemnation Selected Issues**

The Eminent Domain Law was enacted on recommendation of the Commission in 1975. For 2000, the Commission plans to recommend technical revisions relating to compensation for loss of goodwill. During 2000, the Commission, with the assistance of Professor Gideon Kanner, will review other issues, including award of litigation expenses and assessment of general and special benefits and severance damages. The Commission also plans in the future to study procedural prerequisites for an inverse condemnation action, particularly exhaustion of administrative remedies and ripeness requirements, and relevant limitations periods.

**Evidence Code Changes Required by Electronic Communications**

The California Evidence Code was enacted on recommendation of the Commission in 1965. Application of the 1965 statute to electronic communications is not always clear or appropriate. For example, the Commission has recommended, and the Legislature in 1998 enacted, repeal of the Best Evidence Rule, which became anachronistic with the advent of contemporary electronic data and photocopying technology. The Commission in 2000 will study whether any further Evidence Code changes may be required by electronic communications. The Commission has retained Judge Joseph B. Harvey (ret.) of Susanville to prepare a background study on this topic. As a member of the Commission's legal staff, Judge Harvey was a principal draftsman of the 1965 Code.

**Rules of Construction for Trusts**

Recent legislation has made the rules of construction for wills applicable to trusts as well. The results of this approach to construction of trusts and other nonprobate transfer instruments are not always appropriate. The Commission will conduct a comprehensive review of the application of the rules of construction to trusts, and recommend corrective legislation where appropriate. The Commission has retained Professor William McGovern of UCLA Law School to prepare a background study on this matter.

**Judicial Administration Issues Resulting from Trial Court Unification**

Legislation to implement unification of the trial courts under Proposition 220 was enacted on recommendation of the Commission in 1998. The 1998 legislation also directs the Commission, in consultation with the Judicial Council, to perform follow-up studies taking into consideration experience in courts that have unified.<sup>5</sup> Issues include civil and criminal procedures in a unified court, role of the court reporter in a unified court, and publication of legal notice in a county in which the courts have unified, among

---

5. Gov't Code § 70219.

others.<sup>6</sup> The Commission intends to complete the majority of these studies in 2000. The Commission is assisted in this project by the Institute for Legislative Practice of McGeorge Law School and its director, Professor J. Clark Kelso.

### **Other Subjects**

The major studies in progress described above will dominate the Commission's time and resources during 1999. If time permits, the Commission will work other subjects into its agenda. The Commission will consider other subjects as time permits, including shifting of attorney fees between litigants, selected issues in probate law, statutes of limitation in legal malpractice actions, public records law, and the Uniform Unincorporated Nonprofit Association Act.

### **Calendar of Topics for Study**

The Commission's calendar of topics is set out in Appendix 2.<sup>7</sup> The Legislature has authorized each of these topics for Commission study.<sup>8</sup> The Commission does not recommend the addition or removal of any topics on its calendar in 2000.

---

6. For a complete listing, see *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51, 82-86 (1998) ("Issues in Judicial Administration Appropriate for Future Study").

7. See *infra* pp. \_\_\_\_.

8. Government Code Section 8293 provides that the Commission shall study, in addition to those topics that it recommends and are approved by the Legislature, any topics the Legislature by concurrent resolution refers to it for study. For the current authorization, see 1998 Cal. Stat. res. ch. 91.

Government Code Section 8298 provides that the Commission may study and recommend revisions to correct technical or minor substantive defects in the state statutes without a prior concurrent resolution of the Legislature referring the matter to it for study.

In addition, Code of Civil Procedure Section 703.120 requires the Commission to review statutes providing for exemptions from enforcement of money judgments every 10 years and to recommend any needed revisions. The next report will be due in 2003.

Government Code Section 70219 requires the Law Revision Commission, in consultation with the Judicial Council, to perform followup studies taking into consideration experience in courts that have unified. For a list of specific studies,



### Function and Procedure of Commission

The principal duties of the Commission<sup>9</sup> are to:

- (1) Examine the common law and statutes for the purpose of discovering defects and anachronisms.
- (2) Receive and consider suggestions and proposed changes in the law from the American Law Institute, the National Conference of Commissioners on Uniform State Laws,<sup>10</sup> bar associations, and other learned bodies, and from judges, public officials, lawyers, and the public generally.
- (3) Recommend such changes in the law as it deems necessary to bring California law into harmony with modern conditions.<sup>11</sup>

The Commission is required to file a report at each regular session of the Legislature containing a calendar of topics selected by it for study, listing both studies in progress and topics intended for future consideration. As a general rule, the Commission may study only topics that the Legislature, by concurrent resolution, authorizes for study.<sup>12</sup> However, the Commission may study and recommend revisions to correct technical or minor substantive defects in state statutes without a prior concurrent resolution.<sup>13</sup>

---

see *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51, 82-86 (1998).

9. Gov't Code §§ 8280-8298 (statute governing California Law Revision Commission). See Appendix 1 *infra* pp. \_\_\_\_.

10. The Legislative Counsel, an *ex officio* member of the Law Revision Commission, serves as a Commissioner of the Commission on Uniform State Laws. See Gov't Code § 8261. The Commission's Executive Secretary serves as an Associate Member of the National Conference of Commissioners on Uniform State Laws.

11. Gov't Code § 8289. The Commission is also directed to recommend the express repeal of all statutes repealed by implication or held unconstitutional by the California Supreme Court or the United States Supreme Court. Gov't Code § 8290. See "Report on Statutes Repealed by Implication or Held Unconstitutional" *infra* p. 708.

12. Gov't Code § 8293.

13. Gov't Code § 8298.

**Background Studies**

The Commission's work on a recommendation typically begins after a background study has been prepared. The background study may be prepared by a member of the Commission's staff or by a specialist in the field who is retained as a consultant. Law professors and practicing attorneys who serve as consultants have already acquired the considerable knowledge necessary to understand the specific problems under consideration, and they receive little more than an honorarium for their services. From time to time, expert consultants are also retained to advise the Commission at meetings.

**Recommendations**

After making its preliminary decisions on a subject, the Commission ordinarily distributes a tentative recommendation to interested persons and organizations, including the State Bar, local and specialized bar associations, public interest organizations, and business and professional associations. Notice of the availability of the tentative recommendation is mailed to interested persons on the Commission's mailing list and publicized in legal newspapers and other relevant publications. Notice is also posted on the Commission's website and emailed to interested persons.

Comments received on the tentative recommendation are considered by the Commission in determining what recommendation, if any, will be made to the Legislature. When the Commission has reached a conclusion on the matter, its recommendation<sup>14</sup> to the Legislature (including a draft of any necessary legislation) is published and distributed in printed form and electronically on the Internet. If a background study has been prepared in connection with the recommendation, it may be published by the Commission or in a law review.<sup>15</sup>

---

14. Occasionally one or more members of the Commission may not join in all or part of a recommendation submitted to the Legislature by the Commission. Dissents are noticed in the minutes of the meeting where the recommendation is approved.

15. For recent background studies published in law reviews, see Asimow, *The Scope of Judicial Review of Decisions of California Administrative Agencies*, 42 UCLA L. Rev. 1157 (1995); Asimow, *Toward a New California Administrative Procedure Act: Adjudication Fundamentals*, 39 UCLA L. Rev. 1067 (1992);

### Official Comments

The Commission ordinarily prepares an official Comment explaining each section it recommends. These Comments are included in the Commission's printed recommendations. Comments may be revised by the Commission in later reports to reflect amendments made in the legislative process.<sup>16</sup> Reports provide background with respect to Commission intent in proposing the legislation, such intent being reflected in the Comments to the various sections of the bill contained in the Commission's recommendation, except to the extent that new or revised Comments are set out in the report on the bill as amended.<sup>17</sup>

---

Kasner, *Donative and Interspousal Transfers of Community Property in California: Where We Are (or Should Be) After MacDonald*, 23 Pac. L.J. 361 (1991). A revised version of Prof. Fellmeth's background study on unfair competition litigation was published as Fellmeth, *Unfair Competition Act Enforcement by Agencies, Prosecutors, and Private Litigants: Who's on First?*, 15 Cal. Reg. L. Rep. 1 (Winter 1995).

For a list of background studies published in law reviews before 1991, see 10 Cal. L. Revision Comm'n Reports 1108 n.5 (1971); 11 Cal. L. Revision Comm'n Reports 1008 n.5, 1108 n.5 (1973); 13 Cal. L. Revision Comm'n Reports 1628 n.5 (1976); 16 Cal. L. Revision Comm'n Reports 2021 n.6 (1982); 17 Cal. L. Revision Comm'n Reports 819 n.6 (1984); 18 Cal. L. Revision Comm'n Reports 212 n.17, 1713 n.20 (1986); 19 Cal. L. Revision Comm'n Reports 513 n.22 (1988); 20 Cal. L. Revision Comm'n Reports 198 n.16 (1990).

16. Many amendments are made on Commission recommendation to address matters brought to the Commission's attention after publication of its recommendation. In some cases, however, a bill may be amended in a way that the Commission believes is not desirable and does not recommend.

17. For an example of such a report, see Appendix 4 *infra* pp. \_\_\_\_\_. Reports containing new or revised comments are printed in the next Annual Report following enactment of a recommendation, and may be found by reference to the "Cumulative Table of Sections Affected by Commission Recommendations" included in each bound volume of Commission reports. For a description of legislative committee reports adopted in connection with the bill that became the Evidence Code, see *Arellano v. Moreno*, 33 Cal. App. 3d 877, 884, 109 Cal. Rptr. 421, 426 (1973).

On rare occasions, the Commission will approve revised Comments to make important editorial changes or correct obvious errors in past Comments, or where comments have become inaccurate due to changes in cross-referenced provisions or other revisions. See, e.g., *Report of the California Law Revision Commission on Corrected Probate Code Comments*, Appendix 8 to the *Annual Report for 1991*, 21 Cal. L. Revision Comm'n Reports 1, 75 (1991).

A Comment indicates the derivation of a section and often explains its purpose, its relation to other sections, and potential issues concerning its meaning or application. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions.<sup>18</sup> However, while the Commission endeavors in Comments to explain any changes in the law made by a section, the Commission does not claim that every inconsistent case is noted in the Comments, nor can it anticipate judicial conclusions as to the significance of existing case authorities.<sup>19</sup> Hence, failure to note a change in prior law or to refer to an inconsistent judicial decision is not intended to, and should not, influence the construction of a clearly stated statutory provision.<sup>20</sup>

Comments are provided to legislative committee members and staff before a bill is heard and throughout the legislative process. Comments are provided to the Governor's office once a bill has passed the Legislature and is before the Governor for action.

### **Publications**

Commission materials and publications are distributed to the Governor, the Chief Clerks of the Senate and Assembly, and, on

---

18. E.g., *Van Arsdale v. Hollinger*, 68 Cal. 2d 245, 249-50, 437 P.2d 508, 511, 66 Cal. Rptr. 20, 23 (1968); see also *Juran v. Epstein*, 23 Cal. App. 4th 882, 893-94, 28 Cal. Rptr. 2d 588, 594 (1994); *Barkley v. City of Blue Lake*, 18 Cal. App. 4th 1745, 1751 n.3, 23 Cal. Rptr. 2d 315, 318-19 n.3 (1993); *Milligan v. City of Laguna Beach*, 34 Cal. 3d 829, 831, 670 P.2d 1121, 1122, 196 Cal. Rptr. 38, 39 (1983). The Commission concurs with the opinion of the court in *Juran* that staff memorandums to the Commission should not be considered as legislative history. *Id.* at 894 n.5, 28 Cal. Rptr. 2d at 594 n.5.

Commission Comments are published by Lexis Law Publishers and West Publishing Company in their print and CD-ROM editions of the annotated codes, and printed in selected codes prepared by other publishers. Comments are also available on Westlaw and Lexis.

19. See, e.g., *Arellano v. Moreno*, 33 Cal. App. 3d 877, 109 Cal. Rptr. 421 (1973).

20. The Commission does not concur in the *Kaplan* approach to statutory construction. See *Kaplan v. Superior Court*, 6 Cal. 3d 150, 158-59, 491 P.2d 1, 5-6, 98 Cal. Rptr. 649, 653-54 (1971). For a reaction to the problem created by the *Kaplan* approach, see *Recommendation Relating to Erroneously Ordered Disclosure of Privileged Information*, 11 Cal. L. Revision Comm'n Reports 1163 (1973). See also 1974 Cal. Stat. ch. 227.

request, to heads of state departments, and to interest groups, lawyers, law professors, courts, district attorneys, and law libraries throughout the state.<sup>21</sup> Thus, a large and representative number of interested persons is given an opportunity to study and comment on the Commission's work before it is considered for enactment by the Legislature.<sup>22</sup>

The Commission's reports, recommendations, and studies are republished in hardcover volumes that serve as a permanent record of the Commission's work and, it is believed, a valuable contribution to the legal literature of California. These volumes are available at many county law libraries and at some other libraries. Half of the hardcover volumes are out of print, but others are available for purchase.<sup>23</sup>

#### **Electronic Publication and Internet Access**

Since June 1995, the Commission has provided a variety of information on the Internet, including online material and downloadable files.<sup>24</sup> Interested persons with Internet access can find current agendas, meeting minutes, background studies, tentative and final recommendations, staff memorandums, and general background information.

#### **Electronic Mail**

Email commenting on Commission proposals or suggesting issues for study is given the same consideration as letter correspondence, if the email message includes the name and regular

---

21. See Gov't Code § 8291. For availability see "Commission Publications" *infra* pp. [791-812].

22. For a step-by-step description of the procedure followed by the Commission in preparing the 1963 governmental liability statute, see DeMouly, *Fact Finding for Legislation: A Case Study*, 50 A.B.A. J. 285 (1964). The procedure followed in preparing the Evidence Code is described in 7 Cal. L. Revision Comm'n Reports 3 (1965). See also Quillinan, *The Role and Procedures of the California Law Revision Commission in Probate and Trust Law Changes*, 8 Est. Plan. & Cal. Prob. Rep. 130-31 (Cal. Cont. Ed. Bar 1987).

23. See "Commission Publications" *infra* pp. [791-812].

24. The URL for the Commission's website is <http://www.clrc.ca.gov/>.

mailing address of the sender. Email to the Commission may be sent to *commission@clrc.ca.gov* or to *staff@clrc.ca.gov*.

The Commission distributes about half of its tentative and final meeting agendas through email and also gives notice of the availability of tentative recommendations and printed reports by email. The Commission encourages use of email as an inexpensive and expedient means of communication with the Commission.

### Personnel of Commission

The following persons are members of the Law Revision Commission:

#### Legislative Members <sup>25</sup>

Assembly Member Howard Wayne, San Diego  
*Chairperson*  
 [Senate member vacant]

#### Members Appointed by Governor <sup>26</sup>

	<i>Term Expires</i>
Sanford M. Skaggs, Walnut Creek <i>Vice Chairperson</i>	October 1, 2001
Arthur K. Marshall, Los Angeles	October 1, 1999
Edwin K. Marzec, Santa Monica	October 1, 1999
Colin W. Wied, San Diego	October 1, 1999
<i>Vacancy</i>	October 1, 1999
<i>Vacancy</i>	October 1, 2001
<i>Vacancy</i>	October 1, 2001

#### Legislative Counsel <sup>27</sup>

Bion M. Gregory, Sacramento

In January 1999, Pamela L. Hemminger and Ronald S. Orr left the Commission because appointments made by the prior administration that had not yet been confirmed were withdrawn generally

---

25. The Senate and Assembly members of the Commission serve at the pleasure of their respective appointing powers, the Senate Committee on Rules and the Speaker of the Assembly. Gov't Code § 8281.

26. Seven Commission members are appointed by the Governor with the advice and consent of the Senate. Gov't Code § 8281. These Commissioners serve staggered four-year terms. *Id.* The provision in Government Code Section 8281 to the effect that Commission members appointed by the Governor hold office until the appointment and qualification of their successors has been superseded by the rule in Government Code Section 1774 declaring a vacancy if there is no reappointment 60 days following expiration of the term of office. See also Gov't Code § 1774.7 (Section 1774 overrides contrary special rules unless specifically excepted).

27. The Legislative Counsel serves on the Commission by virtue of office. Gov't Code § 8281.

by the new Governor. In January 1999, Robert E. Cooper resigned from the Commission.

Effective September 1, 1999, the Commission elected Assembly Member Howard Wayne as Chairperson (succeeding Arthur K. Marshall), and Sanford M. Skaggs as Vice Chairperson (succeeding Mr. Wayne). The terms of the new officers end August 31, 2000.

The following persons are on the Commission's staff:

*Legal*

Nathaniel Sterling  
*Executive Secretary*

Stan Ulrich  
*Assistant Executive Secretary*

Barbara S. Gaal  
*Staff Counsel*

Brian P. Hebert  
*Staff Counsel*

*Administrative-Secretarial*

Lauren M. Trevathan  
*Administrative Assistant*

Victoria V. Matias  
*Secretary*

In July 1999, staff counsel Robert J. Murphy retired from state service. During his 24-year tenure, Mr. Murphy was the principal drafter of many of California's probate and estate planning and related statutes enacted on recommendation of the Commission.

In early 1999, Linda Wong Verheecke worked as a volunteer attorney for the Commission. During the spring, University of Pennsylvania law students Holly Olson Paz and Jon Steinberg performed legal research for the Commission through the law school's Public Service Program. During the summer, Stanford law student Julian M. Davis worked as a law clerk for the Commission through the work study program under the auspices of the Stanford Public Interest Law Foundation. Legal work for the Commission was also performed by law students in the Hastings Public Law Research Institute under the direction of Professor David Jung, and by law students in the McGeorge Institute for Legislative Practice under the direction of Professor J. Clark Kelso.



### **Sacramento Office**

The Commission has opened a small office at McGeorge Law School, in conjunction with the Institute for Legislative Practice. The office is staffed by Brian Hebert, who has relocated to the Sacramento area. The Sacramento office will be helpful in recruiting new legal talent for the Commission on state salary, due to the significantly lower cost of living in the Sacramento area.

### **Commission Budget**

The Commission's operations are funded from the state general fund. The amount appropriated to the Commission for the 1999-2000 fiscal year from the general fund is \$598,000. This is supplemented by \$15,000 budgeted for income generated from sale of documents to the public, representing reimbursement for the production and shipping cost of the documents.

The Commission receives substantial donations of necessary library materials from the legal publishing community, especially California Continuing Education of the Bar, Lexis Law Publishers, and West Publishing Company. The Commission receives additional library materials from other legal publishers and from other law reform agencies on an exchange basis, and has full access to the Stanford University Law Library and the McGeorge Law School Library. The Commission is grateful for their contributions.

### **Other Activities**

The Commission is directed by statute to cooperate with bar associations and other learned, professional, or scientific associations, institutions, or foundations in any manner suitable for the fulfillment of the purposes of the Commission.<sup>28</sup>

### **Commissioner Activities**

[\_\_\_\_\_]

---

28. Gov't Code § 8296.

**National Conference of Commissioners on Uniform State Laws**<sup>29</sup>

The Commission's executive secretary participated in the National Conference of Commissioners on Uniform State Laws, in Denver, Colorado in July 1999. Matters considered at the conference included uniform acts on rules of evidence, electronic transactions, trusts, and disclaimer of property interests.

The Executive Secretary also continued serving on the drafting committee for a new Uniform Trust Act. The uniform act will be derived from the California Trust Law, a national model enacted on recommendation of the Commission.<sup>30</sup>

**Other Staff Activities**

In March 1999, Staff Counsel Barbara Gaal gave a presentation at Stanford Law School on the roles of lawyers in the legislative process.

**Visitors**

In August 1999, the Commission's staff was visited by Tatyana Mogilyova, a Russian attorney with the Irkutsk Commission on Regional Legislation, which drafts legislation for consideration by the legislature of the Irkutsk Region in eastern Siberia.

---

29. The Commission is directed by statute to receive and consider proposed changes in the law recommended by the National Conference of Commissioners on Uniform State Laws. Gov't Code § 8289. The Commission's executive secretary is an associate member of the National Conference.

30. See *Recommendation Proposing the Trust Law*, 18 Cal. L. Revision Comm'n Reports 501 (1986) (enacted by 1986 Cal. Stat. ch. 820). See also 18 Cal. L. Revision Comm'n Reports 1207 (1986) (Trust Law as enacted, with revised Comments).

### **Legislative History of Recommendations Submitted to 1999 Legislative Session**

The Commission's recommendations were included in five bills and a concurrent resolution recommended for enactment in the 1999 legislative session. Four bills and the concurrent resolution were enacted. One bill will be carried over as a two-year bill in the 2000 session.

#### **Uniform Principal and Income Act**

Assembly Bill 846 (1999 Cal. Stat. ch. 145) was introduced by Assembly Member Dick Ackerman to effectuate the Commission recommendation on the *Uniform Principal and Income Act*, 29 Cal. L. Revision Comm'n Reports 245 (1999). The bill was enacted after a number of amendments were made. See *Report of the California Law Revision Commission on Chapter 145 of the Statutes of 1999 (Assembly Bill 846)*, 29 Cal. L. Revision Comm'n Reports \_\_\_\_ (1999) (Appendix 4 *infra* pp. \_\_\_\_).

#### **Trial Court Unification Follow-Up**

Senate Bill 210 (1999 Cal. Stat. ch. 344) was introduced by as a committee bill by the Senate Committee on Judiciary to make Commission-recommended revisions relating to trial court unification. The bill was enacted after a number of amendments were made. See *Report of the California Law Revision Commission on Chapter 344 of the Statutes of 1999 (Senate Bill 210)*, 29 Cal. L. Revision Comm'n Reports \_\_\_\_ (1999) (Appendix 5 *infra* pp. \_\_\_\_).

#### **Resolution Authorizing Topics for Study**

Assembly Concurrent Resolution 17 (1999 Cal. Stat. res. ch. 81) was introduced by Assembly Member Howard Wayne. It continues

the Commission's authority to study 16 topics previously authorized, remove five topics,<sup>31</sup> and add four new topics.<sup>32</sup>

### **Report on Statutes Repealed by Implication or Held Unconstitutional**

Government Code Section 8290 provides:

The commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the state or the Supreme Court of the United States.

Pursuant to this directive, the Commission has reviewed the decisions of the United States Supreme Court and the California Supreme Court published since the Commission's last Annual Report was prepared<sup>33</sup> and has the following to report:

- \_\_\_ decision holding a state statute repealed by implication has been found.
- \_\_\_ decision of the United States Supreme Court holding a state statute unconstitutional has been found.
- \_\_\_ decision of the California Supreme Court holding a state statute unconstitutional has been found.

### **Recommendations**

The Law Revision Commission respectfully recommends that the Legislature authorize the Commission to complete its study of the topics previously authorized,<sup>34</sup> to study the new topics recom-

---

31. See *1998-1999 Annual Report*, 28 Cal. L. Revision Comm'n Reports 679, 692-93 (1998).

32. See *1998-1999 Annual Report*, 28 Cal. L. Revision Comm'n Reports 679, 693-96 (1998).

33. This study has been carried through \_\_\_ Cal. 4th \_\_\_ and 119 S. Ct. (1998-99 Term).

34. See "Calendar of Topics Authorized for Study," Appendix 2 *infra* pp. \_\_\_\_.

mended for study,<sup>35</sup> and to remove five topics from the Commission's calendar.<sup>36</sup>

---

35. See "Topics for Future Consideration" *supra* pp. \_\_\_\_.

36. See "Calendar of Topics for Study" *supra* pp. \_\_\_\_.

