
MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
DECEMBER 13, 2002
BURBANK

A meeting of the California Law Revision Commission was held in Burbank on December 13, 2002.

Commission:

Present: David Huebner, Chairperson
Frank Kaplan, Vice Chairperson
Joyce G. Cook
Desiree Icaza Kellogg
Edmund L. Regalia
William E. Weinberger

Absent: Diane F. Boyer-Vine, Legislative Counsel
Bill Morrow, Senate Member

Staff: Nathaniel Sterling, Executive Secretary
Barbara S. Gaal, Staff Counsel
Brian P. Hebert, Staff Counsel
Lynne I. Urman, Staff Counsel

Consultants: None

Other Persons:

Ken Dine
Janet Grove, Administrative Office of the Courts, San Francisco
Robert G. Harris, State Bar Insolvency Law Committee, Santa Clara
Thomas Isgrigg, California Association of Collectors, Los Angeles
James Lingl, Community Associations Institute – California Legislative Action Committee, Camarillo
Jacque Petterson, Smokefree Air For Everyone, Granada Hills
Ronald Sargis, Hefner, Stark and Marois, Sacramento
Robert Sherman, Ventura Superior Court, Ventura
Dan Steinman, California Association of Collectors, Ventura
Norma Jean Walker, Bakersfield

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MINUTES OF NOVEMBER 7-8, 2002, COMMISSION MEETING

1 The Commission approved the Minutes of the November 7-8, 2002,
2 Commission meeting as submitted by the staff.

ADMINISTRATIVE MATTERS

3 **Report of Executive Secretary**

4 The Executive Secretary reported that the proposed rollbacks in the current
5 budget for which the Governor has convened a special session of the Legislature
6 would not affect the Commission’s budget directly.

7 The Executive Secretary reported that the Speaker of the Assembly has not yet
8 acted to appoint a replacement on the Commission for former member Howard
9 Wayne.

STUDY D-355 – EXEMPTIONS FROM ENFORCEMENT OF MONEY JUDGMENTS:
DECENNIAL REVIEW

10 The Commission considered Memorandum 2002-54 and its First Supplement,
11 reviewing comments on the discussion draft relating to exemptions from
12 enforcement of money judgments. After hearing from representatives of the
13 California Association of Collectors and the State Bar Insolvency Law
14 Committee, the Commission approved the discussion draft as its final
15 recommendation on the matter, subject to the following revisions:

16 (1) The exempt amounts should be updated to reflect August 2002 CPI
17 figures.

1 (2) The technical drafting improvements described in the First Supplement
2 should be incorporated in the final recommendation.

STUDY H-851 – NONJUDICIAL DISPUTE RESOLUTION UNDER CID LAW

3 **Procedural Fairness in Association Rulemaking and Decisionmaking**

4 The Commission considered Memorandum 2002-55 and its First Supplement,
5 presenting a staff draft recommendation on procedural fairness in homeowners
6 association decisionmaking. The Commission approved the draft as its final
7 recommendation, with the following changes.

8 *Civ. Code § 1350.7. Document delivery*

9 Proposed Section 1350.7(b)(2) was revised as follows:

10 (2) Mail, pursuant to the procedure provided in subdivision (a)
11 of Section 1013 of the Code of Civil Procedure for service by mail.
12 First class mail, postage prepaid, addressed to a member at the
13 address last shown on the books of the association or otherwise
14 provided by the member. Delivery is deemed to be complete on the
15 fifth day after deposit into the United States Mail.

16 *Civ. Code § 1357.170. Rule change reversal*

17 The Comment to proposed Section 1357.170 was revised to read as follows:

18 **Comment.** Section 1357.170 authorizes member reversal of a
19 recent rule change. This authority is limited to cases where
20 members owning 10 percent or more of the separate interests call a
21 meeting for that purpose within the specified time. This specific
22 provision supersedes the general provision authorizing five percent
23 or more of the members of a nonprofit mutual benefit corporation
24 to call a special meeting. See Corp. Code § 7510(e). The governing
25 documents of an association may provide other additional
26 procedures for member participation in rulemaking.

27 Subdivision (c) is drawn from Corporations Code Section 5034.

28 See also Sections 1351(a) (“association” defined), 1357.100 (“rule
29 change” defined).

30 *Civ. Code § 1378.010. Application of article*

31 A cross reference to Civil Code Section 1360 was added to the Comment to
32 proposed Section 1378.010.

1 *Changes Affecting Common Area or Exclusive Use Common Area*

2 Language will be added to reflect the fact that some alterations of a separate
3 interest may also include alterations of the common area or an exclusive use
4 common area.

5 *Civ. Code § 1378.070. Approval process*

6 Proposed Section 1378(a) was revised as follows:

7 (a) An association member who proposes to alter a separate
8 interest shall submit a written application to the reviewing body.
9 The application shall be in the form specified by the association. An
10 incomplete application may be returned to the applicant with an
11 explanation of why the application is incomplete. No further action
12 is required on an application that is returned as incomplete.

13 *Delivery of Notice Under Architectural Review Procedure*

14 The provisions for delivery of notice in proposed Sections 1378(b) and
15 1378.090(b) will be revised to implement the following decisions:

- 16 (1) If an association mails a newsletter, billing statement, or other
17 document to all members at least once a month, the notice shall be
18 delivered to all members.
- 19 (2) Regardless of whether an association has a regular monthly
20 mailing, notice relating to a proposed alteration that would affect
21 the common area shall be delivered to all members.
- 22 (3) If an association does not have a regular monthly mailing and a
23 proposed alteration would not affect the common area, notice shall
24 be delivered to owners of separate interests within 500 feet of the
25 property to be altered and to separate interests in the same
26 building as the property to be altered.

27 *Civ. Code § 1378.100. Judicial review*

28 Proposed Section 1378.100 was revised along the following lines:

29 1378.100. (a) A decision of the reviewing body made under
30 Section 1378.070 is not subject to judicial review.

31 (b) Any member may seek judicial review of a decision of the
32 board of directors of the association made under Section 1378.090.
33 Judicial review shall be governed by may be by writ of mandate
34 pursuant to Section 1094.5 of the Code of Civil Procedure.

1 *Civ. Code § 1378.110. Scope of inquiry*

2 Proposed Section 1378.110 was revised as follows:

3 1378.110. In making a decision to approve or disapprove a
4 proposed alteration of a member's separate interest, the
5 decisionmaker reviewing body or board of directors may consider
6 any relevant information. The decisionmaker reviewing body or
7 board of directors is not required to consider information other
8 than that provided to the decisionmaker reviewing body or board
9 of directors.

10 **Alternative Dispute Resolution**

11 The Commission considered Memorandum 2002-60 and its First Supplement,
12 relating to the draft tentative recommendation on alternative dispute resolution
13 under CID law. The Commission approved the draft tentative recommendation
14 to circulate for comment, subject to the revision noted below. The comment
15 deadline should be the end of March, to allow for review of comments at the
16 Commission's April meeting.

17 *Civ. Code § 1369.520. ADR prerequisite to enforcement action*

18 The reference in proposed Section 1369.520(b) to a claim for monetary
19 damages not in excess of "the jurisdictional limit of the small claims division of
20 the superior court" should be revised to refer instead to a claim not in excess of
21 five thousand dollars (\$5,000). This would preserve the language used in existing
22 Civil Code Section 1354(b).

STUDY J-1321 – JURISDICTIONAL LIMITS FOR SMALL CLAIMS AND LIMITED CIVIL CASES

23 The Commission considered Memorandum 2002-61 and its First Supplement,
24 concerning the jurisdictional limits for small claims cases and limited civil cases.
25 Janet Grove from the Administrative Office of the Courts ("AOC") and Ronald
26 Sargis from the California Association of Collectors ("CAC") participated in the
27 discussion.

28 The Commission reviewed the draft attached to the memorandum and
29 approved it to be circulated as a tentative recommendation, subject to the
30 following revisions:

1 **References to “city and county”**

2 Throughout the proposal, references to “city and county” should be deleted,
3 because Code of Civil Procedure Section 17 defines “county” to include “city and
4 county.”

5 **Code Civ. Proc. § 90. Limitation of general law by economic litigation**
6 **procedures**

7 The amendment of Code of Civil Procedure Section 90 should be deleted from
8 the proposal, because it will be included in the tentative recommendation on
9 statutes made obsolete by trial court restructuring. See entry in these Minutes
10 under Study J-1401.

11 **Code Civ. Proc. § 116.220. Jurisdiction of small claims division**

12 The amendment of Code of Civil Procedure Section 116.220 should be revised
13 to eliminate the \$2,500 and \$4,000 limits for small claims actions against
14 defendant guarantors and broaden the scope of the proposed study by the
15 Department of Consumer Affairs:

16 116.220. (a) The small claims court shall have jurisdiction in the
17 following actions:

18 (1) Except as provided in subdivisions (c), (e), and (f) (d) and (e),
19 for recovery of money, if the amount of the demand does not
20 exceed ~~five thousand dollars (\$5,000)~~ ten thousand dollars
21 (\$10,000).

22 (2) Except as provided in subdivisions (c), (e), and (f) (d) and (e),
23 to enforce payment of delinquent unsecured personal property
24 taxes in an amount not to exceed ~~five thousand dollars (\$5,000)~~ ten
25 thousand dollars (\$10,000), if the legality of the tax is not contested
26 by the defendant.

27 (3) To issue the writ of possession authorized by Sections 1861.5
28 and 1861.10 of the Civil Code if the amount of the demand does not
29 exceed ~~five thousand dollars (\$5,000)~~ ten thousand dollars
30 (\$10,000).

31 (4) To confirm, correct, or vacate a fee arbitration award not
32 exceeding ~~five thousand dollars (\$5,000)~~ ten thousand dollars
33 (\$10,000) between an attorney and client that is binding or has
34 become binding, or to conduct a hearing de novo between an
35 attorney and client after nonbinding arbitration of a fee dispute
36 involving no more than ~~five thousand dollars (\$5,000)~~ ten thousand
37 dollars (\$10,000) in controversy, pursuant to Article 13
38 (commencing with Section 6200) of Chapter 4 of Division 3 of the
39 Business and Professions Code.

1 (b) In any action seeking relief authorized by subdivision (a), the
2 court may grant equitable relief in the form of rescission,
3 restitution, reformation, and specific performance, in lieu of, or in
4 addition to, money damages. The court may issue a conditional
5 judgment. The court shall retain jurisdiction until full payment and
6 performance of any judgment or order.

7 (c) ~~Notwithstanding subdivision (a), the small claims court shall~~
8 ~~have jurisdiction over a defendant guarantor who is required to~~
9 ~~respond based upon the default, actions, or omissions of another,~~
10 ~~only if the demand does not exceed (1) two thousand five hundred~~
11 ~~dollars (\$2,500), or (2) on and after January 1, 2000, four thousand~~
12 ~~dollars (\$4,000), if the defendant guarantor charges a fee for its~~
13 ~~guarantor or surety services or the defendant guarantor is the~~
14 ~~Registrar of the Contractors' State License Board.~~

15 (d) In any case in which the lack of jurisdiction is due solely to
16 an excess in the amount of the demand, the excess may be waived,
17 but any waiver shall not become operative until judgment.

18 (e) ~~(d)~~ Notwithstanding subdivision (a), in any action filed by a
19 plaintiff incarcerated in a Department of Corrections facility or a
20 Youth Authority facility, the small claims court shall have
21 jurisdiction over a defendant only if the plaintiff has alleged in the
22 complaint that he or she the plaintiff has exhausted his or her the
23 plaintiff's administrative remedies against that department,
24 including compliance with Sections 905.2 and 905.4 of the
25 Government Code. The final administrative adjudication or
26 determination of the plaintiff's administrative claim by the
27 department may be attached to the complaint at the time of filing in
28 lieu of that allegation.

29 (f) ~~(e)~~ In any action governed by subdivision (e) ~~(d)~~, if the
30 plaintiff fails to provide proof of compliance with the requirements
31 of subdivision (e) ~~(d)~~ at the time of trial, the judicial officer shall, at
32 his or her the officer's discretion, either dismiss the action or
33 continue the action to give the plaintiff an opportunity to provide
34 such proof.

35 (g) ~~(f)~~ For purposes of this section, "department" includes an
36 employee of a department against whom a claim has been filed
37 under this chapter arising out of his or her that person's duties as
38 an employee of that department.

39 (g) The Department of Consumer Affairs shall study and collect
40 data on the effects of increasing the jurisdictional limits in
41 subdivision (a) to \$10,000, and the effects of the other changes to
42 small claims procedures made by [Senate or Assembly] Bill [xxx] of
43 the 2004-05 Regular Session. The Department of Consumer Affairs
44 shall report to the Legislature on this matter on or before July 31,
45 2007.

1 A Note should solicit comment on whether \$10,000 is the appropriate amount of
2 the proposed jurisdictional increase and whether the Department of Consumer
3 Affairs is the appropriate entity to conduct the proposed study. Conforming
4 revisions should be made in the Comment and the preliminary part, and in other
5 code provisions if necessary.

6 **Code Civ. Proc. § 116.231. Limitation on number of small claims cases per year**

7 The amendment of Code of Civil Procedure Section 116.231 should be revised
8 to increase the \$2,500 limit to \$5,000, instead of \$4,000 as in the draft:

9 116.231. (a) Except as provided in subdivision (d), no person
10 may file more than two small claims actions in which the amount
11 demanded exceeds ~~two thousand five hundred dollars (\$2,500)~~ five
12 thousand dollars (\$5,000), anywhere in the state in any calendar
13 year.

14 (b) Except as provided in subdivision (d), if the amount
15 demanded in any small claims action exceeds ~~two thousand five~~
16 ~~hundred dollars (\$2,500)~~ five thousand dollars (\$5,000), the party
17 making the demand shall file a declaration under penalty of perjury
18 attesting to the fact that not more than two small claims actions in
19 which the amount of the demand exceeded ~~two thousand five~~
20 ~~hundred dollars (\$2,500)~~ five thousand dollars (\$5,000) have been
21 filed by that party in this state within the calendar year.

22 (c) ~~The Legislature finds and declares that the pilot project~~
23 ~~conducted under the authority of Chapter 1196 of the Statutes of~~
24 ~~1991 demonstrated the efficacy of the removal of the limitation on~~
25 ~~the number of actions public entities may file in the small claims~~
26 ~~courts on claims exceeding two thousand five hundred dollars~~
27 ~~(\$2,500).~~

28 (d) ~~(c)~~ The limitation on the number of filings exceeding ~~two~~
29 ~~thousand five hundred dollars (\$2,500)~~ five thousand dollars
30 (\$5,000) does not apply to filings where the claim does not exceed
31 ~~five thousand dollars (\$5,000)~~ ten thousand dollars (\$10,000) that
32 are filed by a city, county, ~~city and county~~, school district, county
33 office of education, community college district, local district, or any
34 other local public entity. If any small claims action is filed by a city,
35 county, ~~city and county~~, school district, county office of education,
36 community college district, local district, or any other local public
37 entity pursuant to this section, and the defendant informs the court
38 either in advance of the hearing by written notice or at the time of
39 the hearing, that he or she the defendant is represented in the action
40 by legal counsel, the action shall be transferred out of the small
41 claims division. A city, county, ~~city and county~~, school district,
42 county office of education, community college district, local district,

1 or any other local public entity may not file a claim within the small
2 claims division if the amount of the demand exceeds ~~five thousand~~
3 ~~dollars (\$5,000)~~ ten thousand dollars (\$10,000).

4 **Comment.** Subdivision (a) of Section 116.231 is amended to
5 increase the amount to which the two-claim limit applies.

6 Subdivision (b) is amended to reflect the increase in the amount
7 to which the two-claim limit applies.

8 Former subdivision (c) is deleted as unnecessary and obsolete.

9 Subdivision (c) (former subdivision (d)) is amended to reflect
10 the increase in the amount to which the two-claim limit applies.

11 The provision is also amended to reflect the increase in the
12 jurisdictional limit of a small claims case. See Section 116.220
13 (jurisdiction of small claims division) & Comment. References to
14 “city and county” are deleted as surplusage. See Section 17
15 (“county” includes “city and county”).

16 Conforming revisions should be made in the preliminary part. A Note should
17 solicit comment on whether Section 116.231 should be repealed and, if not,
18 whether the \$2,500 limit should be raised. The Note should ask what impact such
19 possible reforms would have on the nature of claims brought in small claims
20 court.

21 **Proposed Code Civ. Proc. § 1035. Attorney’s fee clause in consumer contract**

22 Proposed Code of Civil Procedure Section 1035 should be deleted from the
23 proposal. An amendment of Code of Civil Procedure Section 1033 should be
24 added to the proposal, to make clear that the court has discretion to deny
25 recovery of attorney’s fees under Section 1033(b)(1), not just other items of costs.
26 Conforming revisions should be made in the preliminary part.

STUDY J-1401 – STATUTES MADE OBSOLETE BY TRIAL COURT RESTRUCTURING

27 The Commission considered Memorandum 2002-57, the attached draft
28 tentative recommendation on *Statutes Made Obsolete by Trial Court Restructuring*,
29 the First Supplement and its attachment, and the Second Supplement. The
30 Commission approved the attached draft — including revisions proposed in the
31 attachment to the First Supplement — for circulation as a tentative
32 recommendation, subject to the following revisions.

33 **Code Civ. Proc. § 575.1 (amended). Local court rules**

34 The Commission approved the revision of Code of Civil Procedure Section
35 575.1 as proposed in the Second Supplement (pp. 2-3), except that the word “as”

1 should be inserted before “specified” in the first sentence of subdivision (b). As
2 revised, Section 575.1 would read:

3 **Code Civ. Proc. § 575.1 (amended). Local court rules**

4 SEC. ____ . Section 575.1 of the Code of Civil Procedure is
5 amended to read:

6 575.1. (a) The presiding judge of each superior ~~and municipal~~
7 court may prepare, with the assistance of appropriate committees
8 of the court, proposed local rules designed to expedite and facilitate
9 the business of the court. The rules need not be limited to those
10 actions on the civil active list, but may provide for the supervision
11 and judicial management of actions from the date they are filed.
12 Rules prepared pursuant to this section shall be submitted for
13 consideration to the judges of the court and, upon approval by a
14 majority of the judges, the judges shall have the proposed rules
15 published and submitted to the local bar and others, as specified by
16 the Judicial Council, for consideration and recommendations.

17 (b) After a majority of the judges have officially adopted the
18 rules, ~~61 copies or a greater number as specified by Judicial Council~~
19 ~~rule, they~~ shall be filed with the Judicial Council as required by
20 Section 68071 of the Government Code and as specified in rules
21 adopted by the Judicial Council. The Judicial Council shall ~~deposit~~
22 ~~a copy of each rule and amendment with each county law library or~~
23 ~~county clerk where it shall be~~ prescribe rules to ensure that a
24 complete current set of local rules and amendments, for each
25 county in the state, is made available for public examination in each
26 county. The local rules shall also be published for general
27 distribution in accordance with rules adopted by the Judicial
28 Council. Each court shall make its local rules available for
29 inspection and copying in every location of the court that generally
30 accepts filing of papers. The court may impose a reasonable charge
31 for copying the rules and may impose a reasonable page limit on
32 copying. The rules shall be accompanied by a notice indicating
33 where a full set of the rules may be purchased.

34 (c) If a judge of a court adopts a rule that applies solely to cases
35 in that judge’s courtroom, or a particular branch or district of a
36 court adopts a rule that applies solely to cases in that particular
37 branch or district of a court, the court shall publish these rules as
38 part of the general publication of rules required by the California
39 Rules of Court. The court shall organize the rules so that rules on a
40 common subject, whether individual, branch, district, or courtwide
41 appear sequentially. Individual judges’ rules and branch and
42 district rules are local rules of court for purposes of this section and
43 for purposes of the adoption, publication, comment, and filing
44 requirements set forth in the Judicial Council rules applicable to
45 local court rules.

1 **Comment.** Subdivision (a) of Section 575.1 is amended to reflect
2 unification of the municipal and superior courts pursuant to former
3 Section 5(e) of Article VI of the California Constitution.

4 Subdivision (b) is amended to be consistent with the approach
5 used in California Rule of Court 981, as amended effective January
6 1, 2003, regarding preparation of and public access to local rules.
7 Rules of Court adopted by the Judicial Council pursuant to this
8 section cannot be inconsistent with statute. See Cal. Const. art. VI, §
9 6.

10 **Gov't Code § 69740 (added). Number and location of trial court sessions**

11 The Commission approved the revision of Government Code Section 69740(a)
12 as proposed in the Second Supplement (pp. 4-5), except that the word "public"
13 should be deleted from the last sentence. As revised, subdivision (a) would read:

14 69740. (a) Notwithstanding any other provision of law, each trial
15 court shall determine the number and location of sessions of the
16 court necessary for the prompt disposition of the business before
17 the court. In making this determination, the court shall consider,
18 among other factors, the impact of this provision on court
19 employees pursuant to Section 71634, the availability and adequacy
20 of facilities for holding the court session at the specific location, the
21 efficiency and cost of holding the session at the specific location,
22 any applicable security issues, and the convenience to the parties
23 and the public served by the court. Nothing in this section
24 precludes a session from being held in a building other than a
25 courthouse.

26 The Comment should be adjusted accordingly.

STUDY L-661 – INHERITANCE INVOLVING NONMARITAL CHILD

27 The Commission considered Memorandum 2002-63, relating to inheritance
28 involving a nonmarital child. The Commission decided not to recommend any
29 change in existing law on the matter.

STUDY L-2011 – PROBATE CODE TECHNICAL CORRECTIONS

30 The Commission considered Memorandum 2002-62 and its First Supplement,
31 relating to Probate Code technical corrections. The Commission approved the
32 draft tentative recommendation to circulate for comment, including the
33 additional provision set out in the First Supplement. A brief comment period
34 should be allowed.

1 As part of the tentative recommendation, the Commission will inquire about
2 clarification of the “date of death valuation” provisions of Probate Code Sections
3 21612 (share of omitted spouse) and 21623 (share of omitted child). The tentative
4 recommendation should display the proposed clarification as set out in the
5 memorandum, but should include a note soliciting comment on whether the date
6 of death valuation provision should be eliminated rather than clarified.

APPROVED AS SUBMITTED

Date

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

Chairperson

Executive Secretary