

Leg. Prog.

April 15, 1998

**Memorandum 98-23****1998 Legislative Program**

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Attached to this memorandum is a chart showing the status of bills in the Commission's 1998 legislative program and other items of interest. This memorandum supplements the chart as to a few matters. We will make any necessary updates at the meeting

**AB 707 (Ackerman) — Real Property Covenants**

This bill has been signed into law. 1998 Cal. Stat. ch. 14.

At the end of the legislative process we received communications from the Executive Council of Homeowners suggesting addition of material to the portion of the bill relating to the statute of limitations. Their interest is to codify rules relating to the running of the statute of limitations against a homeowner's association that fails to perform a duty imposed by covenant that is a continuing obligation of the association. Cf. *Cutujian v. Benedict Hills Estates Ass'n*, 41 Cal. App. 4th 1379, 49 Cal. Rptr. 2d 166 (1996). The staff will bring this matter before the Commission at the Commission's next meeting.

**AB 1094 (Assem. Jud. Comm.) — Response to Demand for Production of Documents in Discovery**

AB 1094 is the Assembly Judiciary Committee's omnibus civil practice bill. It includes the same change being recommended by the Commission — increase the time to respond to a demand for production of documents in discovery from 20 days to 30. We have sent copies of the Commission's recommendation on this matter to the Assembly Judiciary Committee, as well as to the Senate Judiciary Committee (to which the bill has been referred).

**SB 453 (Solis) — Administrative Law Judge Code of Ethics**

It now appears likely that Senator Solis will recycle SB 453 for another purpose, unrelated to ethical standards for administrative law judges. Therefore, we must locate another vehicle for this proposal. Assembly Member Howard Wayne has agreed to help on this.

Meanwhile, the staff suggests one minor change in the Commission's recommendation. Since the time the recommendation was promulgated, the Supreme Court amended the Code of Judicial Ethics (effective June 19, 1997) to require a judge who is criminally charged to report that fact to the Commission on Judicial Performance. Canon 3D(3). This duty is not relevant to administrative law judges; we should exempt them from the provision:

**§ 11475.40. Provisions of Code excepted from application**

11475.40. The following provisions of the Code of Judicial Ethics do not apply under this article:

(a) Canon 3B(7), to the extent it relates to ex parte communications.

(b) Canon 3B(10).

(c) Canon 3D(3).

(d) Canon 4C.

~~(d)~~ (e) Canons 4E(1), 4F, and 4G.

~~(e)~~ (f) Canons 5A-5D. The introductory portion of Canon 5 applies under this article notwithstanding Chapter 9.5 (commencing with Section 3201) of Division 4 of Title 1, relating to political activities of public employees.

~~(f)~~ (g) Canon 6.

**Comment.** Section 11475.40 adapts the Code of Judicial Ethics for application to administrative law judges. Some provisions of the Code of Judicial Ethics, although not excepted by this section, may be minimally relevant to an administrative law judge. See, e.g., Canon 3C(4) (administrative responsibilities).

Subdivision (a) of Section 11475.40 excepts the portion of Canon 3B(7) relating to ex parte communications. It reflects the fact that special provisions, and not the Code of Judicial Ethics, govern ex parte communications in administrative adjudication. See, e.g., Article 7 (commencing with Section 11430.10).

Subdivision (b) excepts Canon 3B(10), relating to juries. It reflects the fact that juries are not used in administrative adjudication.

Subdivision (c) excepts Canon 3D(3), which requires a judge who is criminally charged to report that fact to the Commission on Judicial Performance. This duty is not relevant to administrative law judges, who are not under the jurisdiction of the Commission on Judicial Performance.

Subdivision (d) excepts Canon 4C, relating to governmental, civic, or charitable activities. An administrative law judge is not precluded from engaging in activities of this type, except to the extent the activities may conflict with general limitations on the administrative law judge's conduct. See, e.g., Canon 4A (extrajudicial activities in general).

Subdivision ~~(d)~~ (e) excepts Canons 4E(1), 4F, and 4G, relating to fiduciary activities, private employment in alternative dispute resolution, and the practice of law. These matters are the subject of the employing agency's incompatible activity statement pursuant to Section 19990.

Subdivision ~~(e)~~ (f) applies the introductory portion of Canon 5 to an administrative law judge or other presiding officer, but not Canons 5A-5D. Under this provision an administrative law judge or other presiding officer must avoid political activity that may create the appearance of political bias or impropriety. This would preclude participation in political activity related to an issue that may come before the administrative law judge or other presiding officer.

Subdivision ~~(e)~~ (f) limits the political activities of administrative law judges even though other public employees might be able to participate in those activities under the *Hatch Act* (Sections 3201-3209). This subdivision is not intended to preclude an administrative law judge or other presiding officer to which this article applies from appearing at a public hearing or officially consulting with an executive or legislative body or public official in matters concerning the judge's private economic or personal interests, or to otherwise engage in political activities relating to salary, benefits, and working conditions. Cf. Section 11475.70 (collective bargaining rights not affected).

Subdivision ~~(f)~~ (g) excepts Canon 6, which is superseded by Sections 11475.50 (enforcement) and 11475.60 (compliance).

### **SB 2063 (Kopp) — Business Judgment Rule**

Issues on this bill are considered in Memorandum 98-24.

### **Budget Bill**

The Commission's budget for fiscal 1998-99 has been approved by budget subcommittees in both the Senate and Assembly. The amount is the same as budgeted for the current fiscal year, and is sufficient to keep the Commission operating at full strength.

### **Inheritance Involving Stepparent or Foster Parent**

The recommendation on inheritance involving a stepparent or foster parent is too small to warrant a separate bill. The Assembly Judiciary Committee is considering it for possible inclusion in the committee's omnibus probate bill — AB 2801.

### **Public Utilities Deregulation**

Last year the Public Utilities Commission, in consultation with the Law Revision Commission, was required by statute to report to the Legislature on needed revisions of the Public Utilities Code that result from restructuring of the electrical, gas, transportation, and telecommunications industries. The Law Revision Commission fulfilled its consultative obligation by making itself available as a forum and reporting separately to the Legislature on the matter. This effort was well-received by the parties involved.

Now telecommunications industry representatives are suggesting continued involvement by the Law Revision Commission in that industry's deregulation process. The staff has heard a proposal to require the Public Utilities Commission, in consultation with the Law Revision Commission, to report annually to the Legislature on the status of telecommunications deregulation, including recommendations for statutory revision. So far, we have not seen this proposal amended into a bill.

Respectfully submitted,

Nathaniel Sterling  
Executive Secretary

**STATUS OF 1998 COMMISSION LEGISLATIVE PROGRAM  
AND OTHER BILLS OF INTEREST**

(as of April 15, 1998)

AB 707 (Ackerman): Real Property Covenants (includes First Rule in  
Spencer's Case and Statute of Limitations)  
AB 1094 (Assem. Jud. Comm.): Response to Demand for Production of  
Documents in Discovery  
SB 177 (Kopp): Best Evidence Rule  
SB 453 (Solis): ALJ Code of Ethics

SB 2063 (Kopp): Business Judgment Rule  
SB 2139 (Lockyer): Trial Court Unification  
SCR 65 (Kopp): Continuing Authority to Study Topics  
Budget Bill (AB 1656/SB 1391)

Bill Status		AB 707	AB 1094	SB 177	SB 453	SB 2063	SB 2139	SCR 65		Budget
Introduced		2/26/97	2/27/97	1/22/97	2/19/97	Feb 20	Feb 20	Jan 14		Jan 12
Last Amended		Mar 4	Jan 20	5/5/97	9/4/97	Mar 23	Apr 2			
First House	Policy Committee	Jan 14	Jan 16	Jan 14	4/10/97		Apr 14	Mar 13		Mar 24
	Fiscal Committee	—	—	—	—	—		[Apr 20]		
	Passed House	Jan 22	Jan 26	Jan 22	4/24/97					
Second House	Policy Committee	Mar 18			6/10/97					Mar 30
	Fiscal Committee	—	—	—	—	—				
	Passed House	Mar 26			9/8/97					
Concurrence		Mar 30								
Governor	Received	Apr 1								
	Approved	Apr 6								
Chaptered by Secretary of State	Date	Apr 7								
	Chapter #	14								

• Unless otherwise noted, all dates are in 1998

[date]: scheduled

—: not applicable