

Admin.

September 12, 2000

Memorandum 2000-58

New Topics and Priorities

BACKGROUND

It is the Commission's practice annually to review the topics on its Calendar of Topics, consider suggested new topics, and determine priorities for work during the coming year.

This memorandum reviews the status of items on the Commission's calendar to which the Commission may wish to give priority during the coming year, and summarizes suggestions we have received for new topics that should be studied. The memorandum concludes with staff recommendations for allocation of the Commission's resources during 2001.

The following letters and other materials are attached to and discussed in this Memorandum:

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LAST YEAR'S DECISIONS

At its last annual review of topics and priorities, the Commission decided that in 2000 it would not request legislative authority to study any new topics. The Commission also decided that in 2001 it will ask the Legislature to add the following new topic to the Commission's calendar:

Subdivision Map Act and Mitigation Fee Act

Whether the Subdivision Map Act (Government Code Sections 66410 to 66499.37) and the Mitigation Fee Act (Government Code Sections 66000 to 66025) should be revised to improve their organization, resolve inconsistencies, fill gaps, clarify and

rationalize provisions, codify accepted practices and procedures, and related matters.

Meanwhile, the Legislature has directed the Commission to study and report back by January 1, 2002, on the following expanded topic:

Gov't Code § 71674. Obsolete provisions resulting from trial court restructuring

71674. The California Law Revision Commission shall determine whether any provisions of law are obsolete as a result of the enactment of this chapter [Trial Court Employment Protection and Governance Act], the enactment of the Lockyer-Isenberg Trial Court Funding Act of 1997 (Chapter 850 of the Statutes of 1997), or the implementation of trial court unification, and shall recommend to the Legislature any amendments to remove those obsolete provisions. The commission shall report its recommendations to the Legislature, including any proposed statutory changes, on or before January 1, 2002.

The bill that includes this provision — SB 2140 (Burton) — is before the Governor for action.

TOPICS CURRENTLY AUTHORIZED FOR COMMISSION STUDY

There are now 20 topics on the Commission's Calendar of Topics that have been authorized by the Legislature for study. A precise description of each topic is appended at Exhibit pp. 1-3. The Commission has completed work on a number of the topics on the calendar — they are retained in case corrective legislation is needed.

Below is a discussion of each topic on the calendar. The discussion indicates the status of the topic and the need for future work. If you believe a particular matter deserves priority, you should raise it at the meeting.

1. Creditors' Remedies

Beginning in 1971, the Commission made a series of recommendations covering specific aspects of creditors' remedies and in 1982 obtained enactment of a comprehensive statute governing enforcement of judgments. Since enactment of the Enforcement of Judgments Law, the Commission has submitted a number of narrower recommendations to the Legislature.

Exemptions. Code of Civil Procedure Section 703.120 requires the Law Revision Commission, decennially, to review the exemptions from execution and

recommend any changes in exempt amounts that appear proper. The Commission completed this task during 1994-95 (pursuant to statutes extending time for state reports affected by budget reductions); legislation was enacted. The next Commission review is due by July 1, 2003.

Judicial and nonjudicial foreclosure of real property liens. This is a matter that the Commission has recognized in the past is in need of work, but has always deferred due to the magnitude, complexity, and controversy involved in this area of law. The National Conference of Commissioners on Uniform State Laws has commenced work on a Uniform Non-Judicial Foreclosure Act, and may have a useful product for Commission consideration in a couple of years.

Mechanics lien law. The Commission has this matter under active consideration. The Commission has retained two experts in this field to provide advice, Gordon Hunt and James Acret.

Municipal Bankruptcy. The Commission has commenced active consideration of this matter.

Assignments for the benefit of creditors. The issues here are whether California law should be revised to codify, clarify, or change the law governing general assignments for the benefit of creditors, including but not limited to changes that might make general assignments useful for purposes of reorganization as well as liquidation. The Commission's consultant is David Gould of McDermott, Will & Emery, Los Angeles; his background study is overdue.

Enforcement of judgments technical revisions. The Commission has under active consideration technical revisions of the enforcement of judgments law proposed by the state marshal's association.

Civil arrest. The statutes governing civil arrest (imprisonment for debt) were repealed on recommendation of the Commission. **This topic may be eliminated from the Commission's calendar without loss.**

2. Probate Code

The Commission drafted the Probate Code and continues to monitor experience under it and make occasional recommendations on it. Not all estate planning and probate issues fall under the Probate Code, however, and some may arise under other codes such as the Civil or Family Code. As a technical matter, it may be worth expanding the description of the Commission's authority in this field to cover issues under the Probate Code "and related matters".

Health care decisions. Commission-recommended legislation on this topic has been enacted. Followup issues are under active consideration by the Commission.

Termination of beneficiary designation by divorce. The Commission's recommendation on this matter has not been enacted. The Commission has put it on the back burner due to opposition of the chair of the Assembly Judiciary Committee. The State Bar Probate Section has indicated its desire to seek enactment of this recommendation. The Commission has also under consideration a recommendation on a related matter, Estate Planning During Dissolution of Marriage.

Rules of construction for trusts. The Commission has commenced active consideration of this topic.

Creditors' rights against nonprobate assets. The staff has identified policy issues. The Uniform Probate Code now has a procedure for dealing with this matter. This is an important issue that the Commission should take up when resources permit.

Application of family protection provisions to nonprobate transfers. Should the various probate family protections, such as the share of an omitted spouse or the probate homestead, be applied to nonprobate assets? The Commission needs to address this problem at some point. The Uniform Probate Code deals with statutory allowances to the decedent's spouse and children.

Protective proceedings for federal benefits. It has been suggested that California could perform a service by clarifying the preemptive effect of federal laws on general state fiduciary principles when federal benefits are involved. We referred this matter to the State Bar Estate Planning, Trust and Probate Law Section for comment some time ago.

Uniform Trust Code. The National Conference of Commissioners on Uniform State Laws has promulgated a Uniform Trust Code (2000). The code is derived from the California Trust Law, which the Commission drafted. The Commission has engaged Professor David English of the University of Missouri Law School to prepare a comparison of the Uniform Code with California law. (He is the Reporter for the Uniform Code.) The concept is to determine whether any of the provisions of the Uniform Code that differ from California law should be adopted in California. Professor English expects to deliver his report in spring 2001.

3. Real and Personal Property

The study of property law was authorized in 1983, consolidating various previously authorized aspects of real and personal property law into one comprehensive topic.

Eminent domain law. The California eminent domain law was enacted on Commission recommendation in 1975. The Commission is currently engaged in an update project focusing on specific issues in eminent domain law.

Inverse condemnation. The Commission has dropped this as a separate study topic. However, the Commission has agreed to consider the impact of exhaustion of administrative remedies on inverse condemnation, as part of the administrative procedure study. Professor Emeritus Gideon Kanner of Loyola Law School is preparing a report for the Commission on this matter. The study has been delayed pending resolution of several cases currently in the courts.

Adverse possession of personal property. The Commission has withdrawn its recommendation on this matter pending consideration of issues that have been raised by the State Bar Committee on Administration of Justice. The Commission has made this a low priority matter.

Severance of personal property joint tenancy. A low priority project is statutory authorization of unilateral severance of a personal property joint tenancy (e.g., securities). This would parallel the authorization for unilateral severance of real property joint tenancies.

Completed projects. The real property grant of authority itemizes a number of specific matters for Commission study, including:

- A marketable title act
- Covenants, servitudes, conditions, and restrictions on land use or relating to land
- Possibilities of reverter
- Powers of termination
- Section 1464 of the Civil Code
- Escheat of property and the disposition of unclaimed or abandoned property
- Eminent domain
- Quiet title actions
- Abandonment or vacation of public streets and highways
- Partition

- Rights and duties attendant upon assignment, subletting, termination, or abandonment of a lease
- Powers of appointment

The Commission has completed work and legislation has been enacted on all of these topics. The Commission has found it useful, however, to continue the detailed listing in order to provide clear authority to recommend corrective or follow-up legislation. **The list might be simplified by removal of the references to possibilities of reverter** (abolished on Commission recommendation), **Civil Code Section 1464** (repealed on Commission recommendation), and **powers of appointment** (relocated to the Probate Code on Commission recommendation).

4. Family Law

The California Family Code was drafted by the Commission.

Marital agreements made during marriage. California has enacted the Uniform Premarital Agreements Act and detailed provisions concerning agreements relating to rights on death of one of the spouses. However, there is no general statute governing marital agreements during marriage. Such a statute would be useful, but the development of the statute would involve controversial issues. One issue — whether the right to support can be waived — should be addressed in the premarital context as well; there are recent cases on this point. The Commission has indicated its interest in pursuing this topic.

Community property in joint tenancy form. The Commission has issued a recommendation on this matter that has not been enacted. We have decided to bide our time on this one. Legislation in the 2000 session to create a new form of title for “community property with right of survivorship” has been passed by the Legislature and is awaiting action by the Governor. See proposed Civ. Code § 682.1 (AB 2913, operative July 1, 2001).

5. Offers of Compromise

This topic was added to the Commission’s calendar at the request of the Commission in 1975. The Commission was concerned with Section 998 of the Code of Civil Procedure (withholding or augmenting costs following rejection or acceptance of offer to allow judgment). The Commission noted several instances where the language of Section 998 might be clarified and suggested that the section did not deal adequately with the problem of a joint offer to several

plaintiffs. Since then, Section 3291 of the Civil Code has been enacted to allow recovery of interest where the plaintiff makes an offer pursuant to Section 998.

The Commission has never given this topic priority, but it is one that might be considered by the Commission sometime in the future on a nonpriority basis when staff and Commission time permit work on the topic.

6. Discovery in Civil Cases

The Commission requested authority to study this topic in 1974. Although the Commission considered the topic to be an important one, the Commission did not give the study priority because a joint committee of the State Bar and the Judicial Council produced a new discovery act that was enacted into law.

The Commission in 1995 decided to investigate the question of discovery of computer records; this matter is not under active consideration.

The Commission has also decided to review developments in other jurisdictions to improve discovery. Prof. Gregory Weber of McGeorge Law School is the Commission's consultant; he reports that he plans to deliver his background study mid-December.

7. Special Assessments for Public Improvements

There are a great many statutes that provide for special assessments for public improvements of various types. The statutes overlap and duplicate each other and contain apparently needless inconsistencies. The Legislature added this topic to the Commission's calendar in 1980 with the objective that the Commission might be able to develop one or more unified acts to replace the variety of acts that now exist. (A number of years ago, the Commission examined the improvement acts and recommended the repeal of a number of obsolete ones. That recommendation was enacted.) This legislative assignment would be a worthwhile project, but would require a substantial amount of staff time.

8. Rights and Disabilities of Minor and Incompetent Persons

The Commission has submitted a number of recommendations under this topic since its authorization in 1979 and it is anticipated that more will be submitted as the need becomes apparent.

9. Evidence

The California Evidence Code was enacted on recommendation of the Commission, and the study has been continued on the Commission's agenda for ongoing review.

Federal Rules of Evidence and Uniform Rules of Evidence. Since the 1965 enactment of the Evidence Code, the Federal Rules of Evidence have been adopted and the Uniform Rules of Evidence have been adopted and comprehensively revised. The Commission many years ago had a background study prepared that reviews the federal rules and notes changes that might be made in the California code in light of the federal rules; that study was never considered by the Commission and is now dated. The Commission has engaged Professor Miguel Mendez of Stanford Law School to prepare a comprehensive comparison of the California Evidence Code with the Federal Rules and the Uniform Rules. That study is due at the end of 2002.

Electronic Documents. The Commission has decided to study selected admissibility issues relating to electronic data. The repeal of the best evidence rule is a result of this project. The Commission has received a report prepared for it by Judge Joe Harvey (ret.), indicating that only minor changes are needed. The Commission has approved a tentative recommendation on this matter.

10. Arbitration

The present California arbitration statute was enacted in 1961 on Commission recommendation. The topic was retained on the Commission's calendar so that the Commission has authority to recommend any needed technical or substantive revisions in the statute.

11. Administrative Law

This topic was authorized for Commission study in 1987 both by legislative initiative and at the request of the Commission.

The **administrative adjudication** portion of the study was enacted in 1995, with cleanup legislation in 1996. In 1997 Commission-recommended legislation was enacted to subject administrative adjudication by quasi-public entities to fair hearing procedures. In 1998 the Commission obtained enactment of legislation imposing a code of ethics on administrative law judges.

Legislation proposed by the Commission to reform the law governing **judicial review of agency action** was heard in the 1997-98 legislative session, but was not enacted.

Legislation addressed to two aspects of **rulemaking** — consent regulations and advisory interpretations — passed the Legislature but was vetoed by the Governor. Omnibus legislation on rulemaking recommended by the Commission was passed by the Legislature this year and is awaiting action by the Governor. See AB 1822 (Wayne).

12. Attorney's Fees

The Commission requested authority to study this topic in 1988 pursuant to a suggestion by the California Judges Association. The staff did a substantial amount of work on this topic in 1990. The Commission has deferred further consideration of it pending receipt from the CJA of an indication of the problems they see in the law governing payment and shifting of attorney's fees between litigants. Meanwhile, the Commission has commenced work on one aspect of this topic — award of costs and contractual attorney's fees to the prevailing party.

13. Uniform Unincorporated Nonprofit Association Act

This topic was authorized in 1993 on request of the Commission. The Commission has commenced work on this study, with the assistance of Professor Michael Hone of the University of San Francisco Law School.

14. Trial Court Unification

This topic was assigned by the Legislature in 1993. The Commission delivered its report on constitutional changes for unification in January 1994. Proposition 220, implementing the report, was approved by the voters on the June 1998 ballot.

The Commission submitted its report on statutory revisions to implement unification in July 1998. The proposed legislation was enacted in 1998, and cleanup legislation recommended by the Commission was enacted in 1999.

Government Code Section 70219 directs the Commission to study the additional issues in judicial administration identified in the Commission's report on statutory revisions. The Commission is actively engaged in this endeavor, and has approved a number of tentative recommendations on these issues.

The major project under Section 70219 is a review of basic court procedures under unification to determine what, if any changes should be made. With

respect to **criminal procedures**, the Commission has retained Professor Gerald Uelmen of Santa Clara University Law School to prepare a background study. The study is due December 31, 2000. With respect to **civil procedures**, the statute contemplates a joint project of the Commission and Judicial Council. The Commission and Judicial Council staffs have met, convened a panel of civil procedure experts to suggest appropriate areas of inquiry, and are in the process of attempting to narrow the focus of this project and initiate background research. As part of this effort, the Commission has circulated a tentative recommendation on minor procedural simplifications.

The Legislature has also directed the Commission to recommend revision of obsolete statutes resulting from trial court restructuring (unification, funding, and employment). See Gov't Code § 71674, which is included in SB 2140 (Burton), awaiting action by the Governor. The recommendation would be due January 1, 2002.

15. Contract Law

The Commission's calendar includes a study of the law of contracts (including the effect of electronic communications on the law governing contract formation, the statute of frauds, the parol evidence rule, and related matters).

The National Conference of Commissioners on Uniform State Laws has promulgated a Uniform Electronic Transactions Act, which has been adopted in California, effective January 1, 2000. See Civ. Code § 1633.1 *et seq.* The staff has not yet had an opportunity to explore whether this act addresses all the problems in the area. Federal legislation has also been enacted to validate electronic signatures.

The staff suggests that the Commission maintain authority in this area and monitor experience under the new enactments for the time being.

16. Environmental Law

The Legislature in 1996 added to the Commission's calendar a study of "Whether the laws within the various codes relating to environmental quality and natural resources should be reorganized in order to simplify and consolidate relevant statutes, resolve inconsistencies between the statutes, and eliminate obsolete and unnecessarily duplicative statutes." After extensive inquiry into this question, the Commission concluded that it would be inadvisable to attempt the contemplated statutory reorganization. The Commission has submitted a report

to the Legislature indicating its intent not to proceed with the proposed Environment Code.

The Commission developed a recommendation to correct technical defects in the air resources statutes, discovered in the process of the Commission's exploration of the Environment Code concept. This proposal has been passed by the Legislature and is awaiting action by the Governor. See AB 2039 (Assembly Natural Resources Committee).

The Commission no longer needs to maintain this authority. **The staff suggests that it be removed from the Commission's calendar of topics.**

17. Common Interest Developments

This topic was added to the Commission's calendar in 1999 at the request of the Commission.

The Commission's request noted that the main body of law governing common interest developments is the Davis-Stirling Common Interest Development Law, and that other key statutes include the Subdivision Map Act, the Subdivided Lands Act, the Local Planning Law, and the Nonprofit Mutual Benefit Corporation Law, as well as various environmental and land use statutes. In addition, statutes based on separate, rather than common, real property ownership models still control many aspects of the governing law.

The Commission suggested that the statutes affecting common interest developments be reviewed with the goal of setting a clear, consistent, and unified policy with regard to their formation and management and the transaction of real property interests located within them. The objective of the review is to clarify the law and eliminate unnecessary or obsolete provisions, to consolidate existing statutes in one place in the codes, and to determine to what extent common interest housing developments should be subject to regulation.

Due to the magnitude of this project and the number of different statutes and interest groups that are involved, the Commission decided to obtain expert guidance on the appropriate scope of the project. The Commission retained Professors Susan French of UCLA Law School and Roger Bernhardt of Golden Gate University Law School to jointly prepare a scope report. Their report was due August 1, but they have indicated they will not be able to deliver the report until October 1.

18. Legal Malpractice Statutes of Limitation

This topic was added to the Commission's calendar in 1999 at the request of the Commission. The Commission has this matter under active consideration.

19. Coordination of Public Records Statutes

This topic was added to the Commission's calendar in 1999 at the request of the Commission. The objective is to review the public records law in light of electronic communications and data bases to make sure the laws are appropriate in this regard, and to make sure the public records law is adequately coordinated with laws protecting personal privacy.

The staff will work this matter into the Commission's agenda as staff and Commission resources permit.

20. Criminal Sentencing

This topic was added to the Commission's calendar in 1999 at the request of the Commission. The objective of the study is to propose a reorganization and clarification of the sentencing procedure statutes in order to make them more logical and understandable. The Commission has commenced active work on this topic.

SUGGESTED NEW TOPICS

During the past year the Commission has received several suggestions for new topics and priorities. These are analyzed below.

Covenants, Servitudes, Conditions, and Restrictions on Land Use or relating to Land

Commissioner Skaggs has forwarded us information concerning a defect in the law governing covenants that run with the land. Exhibit pp. 4-5.

Public agencies often settle concerns over contaminated property, environmental, and land use matters by requiring certain covenants and restrictions on land use be placed in an agreement and recorded, assuming that because recorded they will be binding on successors in interest in the property. However, there is nothing in the case law or statutes that permits enforcement of these covenants against successive owners of the land because they do not fall under the language of Civil Code Section 1468 (governing covenants that run with the land), nor are they enforceable as equitable servitudes.

This topic would fall within the Commission's existing authority concerning real and personal property, including covenants, servitudes, conditions, and restrictions on land use or relating to land. This Commission has touched on this area in connection with an earlier effort to eliminate obsolete land use restrictions, but preserving environmental restrictions and those in favor of public entities. **The staff would investigate this matter on a low priority basis, as Commission and staff resources permit.**

Attorney's Fees

Commissioner Skaggs, has sent us a note pointing out that existing statutes governing attorney's fees, including several enacted on Commission recommendation, are inconsistent in their phrasing. Exhibit p. 6. Compare, for example, the following provisions, all of which provide for recovery of a "reasonable attorney's fee", but each of which is qualified by a somewhat different standard:

Civ. Code § 883.250 (dormant mineral right) — "expenses reasonably and necessarily incurred in preparation for the action, including a reasonable attorney's fee"

Civ. Code § 880.360 (slander of title) — "cost of the action or proceeding, including a reasonable attorney's fee"

Code Civ. Proc. § 1235.140 (eminent domain) — reasonable attorney's fees "where such fees were reasonably and necessarily incurred to protect the defendant's interest in the proceeding in preparing for trial, during trial, and in any subsequent judicial proceedings, whether such fees were incurred for services rendered before or after the filing of the complaint"

He suggests that it might be useful to provide some uniformity in the law, with a comprehensive statute and uniform definitions. "If it is too complicated to conform existing statutes, we at least could create a statutory scheme and definitions which future legislation could incorporate."

Attorney's fees is a topic the Commission is authorized to study. We are actively engaged in one facet of the topic — contractual attorney's fees. A project of the type envisioned by Commissioner Skaggs is certainly within the contemplation of the legislative authorization. The main impediment is likely to be apprehension by interest groups such as plaintiff and defense attorney organizations. A statutory framework that is prospective in its operation could be more achievable, initially, than an effort to fit existing statutes into the mold. But

it is certainly possible that if a prospective system could be put in place, and if people are happy with its operation, we could go back later and pick up pre-existing statutes.

This appears to the staff to be a worthwhile effort. However, the Commission's agenda is currently quite full. If the Commission wishes to get into this matter at any time in the near future, we would need to defer other projects that we had anticipated activating during the coming year.

Medical Records Retention

We have received correspondence from Darryl Harvey of Bakersfield indicating the need for legislation to require a retention period for medical records. His suggestion is prompted by his experience in attempting, without success, to obtain copies of his records from his former physician. His efforts reveal that there is no state law requiring retention of medical records for a specific length of time. Exhibit pp. 7-9.

Mr. Harvey enlisted the Department of Consumer Affairs and the Medical Board of California to help retrieve his records, to no avail. The relevant state agencies have advised him that there is nothing more they can do to remedy the situation. "You may wish to contact your local legislator and seek his or her support to make changes to existing law that address your concerns." Exhibit p. 8.

Although the Commission has worked in the area of health care decisionmaking, we have not gotten involved with the question of medical records. That would require additional legislative authorization. **The staff does not recommend that the Commission seek legislative sanction to investigate this matter.** It is not an area that coincides with the Commission's core competencies, and it is unlikely that the Legislature will particularly value the advice of lawyers on the issue.

The staff is unfamiliar with the politics of the area, but we think it is instructive that the relevant regulatory agencies have declined to become involved. Perhaps we can forward Mr. Harvey's correspondence to a legislator known to have an interest in patients' rights.

San Diego County Superior Court's "Pre-Read" Rule

We have received correspondence from Sondra S. Sutherland of Escondido. Exhibit p. 10. Ms. Sutherland is concerned with the San Diego County Superior

Court's "pre-read" rule. That is a local court rule. It specifies that the judge making a determination on a motion will decide the matter based solely on argument presented at the hearing, unless a party has previously requested, in advance of the hearing, that the judge read evidentiary material submitted with the motion. San Diego County Superior Court Rule 5.12(J) provides:

J. Pre-Reading of File by the Court

Normally the court cannot take a recess to review the court file in detail on the day of the hearing. If counsel wants the court to read a file before the hearing then counsel shall notify opposing counsel of the request. Counsel shall also notify the calendar clerk of the department in which the matter is calendared no later than noon on the day before the hearing. The pre-read request shall include a designation of all relevant documents filed by both sides. Where counsel requests the court read more than eight documents, counsel shall make arrangements with the calendar clerk for counsel to place yellow tags on the documents to be read. If opposing counsel objects to the request for the pre-read, opposing counsel shall notify the calendar clerk for the department of the specific objection. This will not, however, prevent the pre-read.

In Ms. Sutherland's case, out of town counsel was unfamiliar with the local court rule and failed to invoke the pre-read procedure, resulting arguably in a miscarriage of justice in the case. The case is on appeal, and Ms. Sutherland invited the Commission to submit an amicus brief on it. The Executive Secretary responded that by statute the Commission does not become involved in litigation but only makes recommendations to the Governor and Legislature for statutory reform. Ms. Sutherland suggests that, "the issue here is significant enough that I thought you might like to review these materials in evaluating existing and future rules regarding the reading of papers filed with the court." Exhibit p. 10.

The Commission has been concerned in the past with the proliferation of local court rules and the problems they cause. We understand that one of the Judicial Council advisory committees is involved in an effort to prepare uniform rules that would preempt local rules on matters such as this. Cf. Ct. Rule 981.1, effective July 1, 2000 ("The Judicial Council preempts local court rules relating to pleadings, demurrers, ex parte applications, motions, discovery, provisional remedies, and form and format of papers. No trial court, or any division or branch of a trial court, shall enact or enforce any local rule concerning these fields. All local rules concerning these fields are null and void as of the effective date of this rule unless otherwise permitted or required by statute or Judicial

Council rule.”) **The staff suggests we forward Ms. Sutherland’s material to the Judicial Council for consideration in connection with that project.**

Civil Grand Juries

Exhibit pp. 11-12 is a copy of a letter from Judge Quentin Kopp to Assemblyman Ackerman, suggesting a Law Revision Commission study of the civil grand jury statutes. Judge Kopp proposes to relocate those statutes from the Penal Code to the Government Code, and to have the Law Revision Commission review them. He notes that, “There are some civil grand jury provisions which should be clarified; there are a few which could be eliminated; and there are others which could be rewritten to suit modern circumstances surrounding the work of civil grand juries throughout the state.” Exhibit p. 11.

The staff notes that the Institute for Legislative Practice is currently engaged in a review of grand jury issues. That project includes civil, as well as criminal, grand jury matters. We are informed that the current schedule for the project calls for a report to be issued late fall.

The staff has mixed feelings about a project of this sort for the Commission. There are undoubtedly some useful modernizations of the governing statutes that could be readily achieved; there are also certainly a number of political minefields that must be avoided. The Institute for Legislative Practice project perhaps will illuminate some of these considerations.

A project of this type would require legislative authorization. That could be done in a bill that relocates the civil grand jury statutes, such as Judge Kopp suggests. **If there is legislative interest in directing such a study by the Commission, we would suggest that there be no completion date set.** That would enable us to monitor the results of the Institute for Legislative Practice project. It is possible that project would result in a resolution of the issues, making Commission work unnecessary. Even if that project does not resolve the issues, their report would provide the Commission a useful starting point, once the Commission was in a position to turn to the study.

Nonjudicial Controls on Administrative Procedure

The Commission in 1990 divided its study of administrative procedure into four phases:

- (1) Administrative adjudication. (This has been enacted.)
- (2) Judicial review of agency action. (This died in the Legislature.)

- (3) Administrative rulemaking. (This is before the Governor for action.)
- (4) Nonjudicial controls on administrative procedure (This has not been commenced.)

The Commission noted at the time that after the first three phases are complete, the Commission might conclude that the last phase is not necessary.

Types of nonjudicial controls contemplated for Phase 4 were (1) gubernatorial and legislative oversight of rulemaking, (2) the possibility of an ombudsman to look into complaints about poor administration, and (3) the possibility of an Administrative Conference that studies administrative law problems and makes recommendations to the agencies or legislature.

Given the struggle we have encountered in attempting to enact sensible legislation in the administrative procedure area, **the staff has come to the conclusion that it is not worth the expenditure of the Commission's resources to open up Phase 4.** However, we have recently received a communication that implicates Phase 4 concepts, that the Commission should be aware of.

We have received a complaint from an administrative hearing officer in one of the state's enforcement agencies. (We withhold the person's name and agency to protect confidentiality.) The hearing officer states that the administrative adjudication rules we have enacted are salutary, but there is no enforcement mechanism if an agency chooses to violate them. The specific concern is that a hearing officer is on occasion ordered by a supervisor to render a specific decision in a case, not based on applicable facts or law, but to satisfy an administrative requirement, such as a quota of agency enforcement actions that must be sustained or internal timing deadlines.

Such an action is plainly illegal. However, the hearing officer has no practical alternative but to comply with the supervisor's command, on pain of an adverse performance report or disciplinary action. This would be a perfect opportunity for referral of the problem to an ombudsman.

In his original report for the Commission on the possible scope of the administrative law study, the Commission's consultant Professor Asimow described the ombudsman concept in these terms:

In many agencies and in some states there are ombudsmen. An ombudsman is empowered to look into complaints about poor administration and try to correct them, but generally an ombudsman has no formal powers. Should California have an

ombudsman who can look into complaints arising out of agency action?

One concern with the ombudsman concept is the cost. Of course it would be possible to fund a very small operation, but our sense is that if there were a place where the public could lodge complaints about abuses of administrative power, that place would very shortly be overwhelmed. Moreover, it is not a one-time cost we are contemplating, but an on-going expense.

Does the Commission have any interest in activating Phase 4 of the administrative procedure study?

Uniform Custodial Trust Act

The Commission is directed by statute to receive and consider proposed changes in law recommended by the National Conference of Commissioners on Uniform State Laws. The National Conference has now designated as a target act the Uniform Custodial Trust Act (1987). That act provides a simple procedure for holding assets for the benefit of an adult (perhaps elderly or disabled), similar to that available for a minor under the Uniform Transfers to Minors Act. The designation of a uniform act as a target act signals the intention of the National Conference to mount a drive for and devote resources to widespread adoption of the act by the states. (It has previously been adopted in 15 jurisdictions.)

The California Commission on Uniform State Laws sponsored legislation in 1988 to adopt the Uniform Act in California. That legislation was not enacted, due to opposition of the State Bar Probate Section. Their opposition was based on a concern that the act enables fraud — there could be a secret disposition of assets of unlimited value with no court supervision. The Section was also concerned about potential traps for the unsophisticated, and possibly elder, user.

The staff thinks the concept of the act is salutary. As Senator (then Assemblyman) Sher noted in a 1988 letter urging the Commission to undertake a study of the Uniform Act, the custodial trust authorized by the act “is similar in nature to a durable power of attorney. However, unlike the durable power of attorney, the UCTA trust can address the disposition of property after death -- a distinct advantage to many users. I believe that the trust may be useful for California residents, and I am eager to have it included in your ongoing review.”

The Commission has had a fair amount of success in the past in reviewing Uniform Acts concerning which the State Bar Probate Section has identified issues, and working out acceptable solutions. In addition, attitudes towards

nonprobate transfers, and court supervision generally, have evolved considerably during the past dozen years. **The staff recommends that the Commission commence a review of the Uniform Custodial Trust Act on a low priority basis.**

SUGGESTED PRIORITIES

The Commission needs to determine its priorities for work during the remainder of 2000 and for 2001. Ordinarily, completion of prospective recommendations for the 2001 legislative session becomes the highest priority at this time of year. That is followed by matters the Legislature has indicated should receive a priority and other matters the Commission has concluded deserve immediate attention. The Commission has also tended to give priority to studies for which a consultant has delivered a background study — it is desirable to take advantage of the consultant's expertise while the matter is still fresh and the consultant is available. Finally, once a study has been activated, the Commission has felt it important to make steady progress so as not to lose continuity on it.

Legislative Program for 2001

Matters under active consideration by the Commission on which work could be completed for the 2001 legislative session include the following:

- Estate Planning During Dissolution of Marriage
- Family Consent in Health Care Decisionmaking for Adults
- Withdrawal of Prejudgment Deposit in Eminent Domain
- Early Disclosure of Valuation Data and Resolution of Issues in Eminent Domain
- Rulemaking under Penal Code Section 5058
- Law Library Board of Trustees
- Civil Procedure After Trial Court Unification
- Expired Pilot Projects

All of these matters are scheduled for consideration by the Commission at the October meeting.

Legislature's Priorities

The Legislature has indicated two current priority matters for the Commission:

Mechanics lien law. The Commission received a request from the Assembly Judiciary Committee that it prioritize the study of mechanics lien law. The Commission has been giving it highest priority during the past year.

Obsolete provisions resulting from trial court restructuring. The Legislature has directed that the Commission deliver a recommendation on this matter by January 1, 2002. The major restructuring of the trial court system that has occurred over the past several years involves trial court funding reform, trial court unification, and trial court employment reform. There are somewhere around 3,000 statute sections (occupying about 2 volumes of the annotated codes) that will need to be reviewed and disposed of in this project. Given the magnitude of the task, if the bill is signed by the Governor, this will necessarily assume the highest priority for staff work during the coming year.

Consultant Studies

To the extent delivery of a background study by a consultant affects Commission priorities, it will be helpful to review studies delivered, and to be delivered, during 2000 (and beyond).

The year 2000 has been, and will continue to be, quite full for the Commission. To date during 2000 we have received background studies on the following subjects:

- Mechanics Lien Law (Gordon Hunt)
- Municipal Bankruptcy Law (Prof. Frederick Tung)
- Reorganization of Criminal Sentencing Statutes (Hon. David S. Wesley, David Ross, and Mark Overland)
- Evidentiary Issues in Electronic Communications (Hon. Joseph B. Harvey)
- Rules of Construction for Trusts (Prof. William M. McGovern)

The Commission currently has each of these studies under active consideration.

The Commission also has consultants engaged to prepare material for it on a number of other subjects. These include:

Common interest development law. The Commission has contracted with Professors Susan French of UCLA Law School and Roger Bernhardt of Golden Gate University Law School to prepare an overview of the possible scope and

priorities for the common interest development law study. Their report was due August 1, 2000, but they expect to deliver it by **October 1, 2000**. We will schedule this matter for consideration at the November/December meeting.

Discovery improvements from other jurisdictions. The Commission has contracted with Professor Greg Weber of McGeorge Law School to prepare an analysis of discovery innovations in other jurisdictions that may be appropriate for adoption in California. The study was due September 1, 2000. Prof. Weber reports that he has completed his research but would like to take some additional time to present his findings. We have agreed to a revised delivery date for the background study of **December 15, 2000**.

Review of criminal procedures under trial court unification. The Commission has contracted with Professor Gerald Uelmen of University of Santa Clara Law School to analyze California criminal procedures in light of trial court unification. Prof. Uelmen is currently working on the project, and has met with the Commission staff on a several occasions to go over issues. The study is due **December 31, 2000**.

Uniform Trust Code. The Commission has contracted with Professor David English, reporter for the Uniform Trust Code, to prepare a comparison of the Uniform Code with the California Trust Law. The contract calls for delivery of the study by the end of 2001, but Prof. English anticipates substantially earlier delivery — by **April 2001**.

Federal Rules of Evidence and Uniform Rules of Evidence. The Commission has contracted with Professor Miguel Mendez of Stanford Law School to prepare a comparison of the Federal Rules of Evidence and the revised Uniform Rules of Evidence with the California Evidence Code. The contract calls for delivery of the study by **December 31, 2002**.

General assignments for the benefit of creditors. The Commission has contracted with David Gould of Los Angeles to prepare a background study on possible statutory clarification of the law governing general assignments for the benefit of creditors. The study was due December 31, 1999. Mr. Gould has completed a substantial amount of work and has delivered an outline of the study, but has not given us an anticipated completion date.

Ripeness and exhaustion of remedies in inverse condemnation. The Commission has contracted with Professor Emeritus Gideon Kanner of Loyola Law School to prepare a study of the ripeness and exhaustion of remedies issue in inverse condemnation procedure. The study was originally due April 30, 1998,

but was postponed pending key litigation on the issue. The contract has expired, but Prof. Kanner has indicated his intention to perform nonetheless. He has not set a completion date.

Other Active Topics

Apart from matters to be wrapped up for the 2000 legislative session, legislatively set priorities, and projects on which we have received consultant studies, the Commission has also commenced work on the following topics. We would continue to give a reasonably high priority to these matters, so that, once activated, they do not become stale.

Trial court unification. There will be a continuing need to consider issues arising out of trial court unification as experience in the unified counties discloses problems. The staff has commenced the major task of reviewing, with Judicial Council staff and a panel of experts, the civil procedure statutes in light of unification. The simplification of procedures tentative recommendation is one result of this effort. Other matters will hit the Commission agenda from time to time as staff work is completed. Also, when statewide unification is complete, we will need to clean deadwood relating to municipal courts out of the statutes.

Statute of limitations for legal malpractice. We have not yet reached the point of a tentative recommendation on this matter.

Attorney's fees. This is a complex and difficult project concerning the interrelation of the general attorney's fee statutes with those governing contractual attorney's fee provisions.

Technical revisions in debtor-creditor law. The Commission has made some initial decisions but not yet approved a tentative recommendation. This will not take much Commission or staff time during 2001.

Uniform Unincorporated Nonprofit Association Act. The Commission has commenced work on this topic, and can expect it to occupy some Commission time during 2001.

CONCLUSION

The staff cannot recall a time when the Commission's agenda has been so full. If we just stick with already activated projects, and projects on which background studies are to be delivered, we will have more than enough to keep us busy for the next year.

The staff recommends no departure from the traditional scheme of Commission priorities — (1) matters to be completed for next legislative session, (2) matters directed by the Legislature, (3) matters for which the Commission has engaged an expert consultant, and (4) matters that have been activated during the past year. Projects falling within each of these categories are identified above.

The staff recommends that in 2001 the Commission request the Legislature only for authority to study the Subdivision Map Act and Mitigation Fee Act, pursuant to a previous Commission decision. (It's also worth expanding our probate authority to include "related matters" that may happen to fall outside the Probate Code, such as in the Civil or Family Code.) We would delete environmental law from our Calendar of Topics, along with the specific studies of civil arrest, possibilities of reverter, Civil Code Section 1464, and powers of appointment.

The suggested studies of covenants that run with the land, standardization of attorney's fee statutes, and the Uniform Custodial Trust Act, appear meritorious and fall within existing study areas. However, we would not schedule them until the Commission finds some breathing room on its agenda.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

Exhibit

NEW TOPICS AND PRIORITIES

Calendar of Topics Authorized for Study

The Commission's calendar of topics authorized for study includes the subjects listed below. Each of these topics has been authorized for Commission study by the Legislature. For the current authorizing resolution, see 1999 Cal. Stat. res. ch. 81.

1. Creditors' remedies. Whether the law should be revised that relates to creditors' remedies, including, but not limited to, attachment, garnishment, execution, repossession of property (including the claim and delivery statute, self-help repossession of property, and the Commercial Code provisions on repossession of property), civil arrest, confession of judgment procedures, default judgment procedures, enforcement of judgments, the right of redemption, procedures under private power of sale in a trust deed or mortgage, possessory and nonpossessory liens, insolvency, and related matters.

2. Probate Code. Whether the California Probate Code should be revised, including, but not limited to, the issue of whether California should adopt, in whole or in part, the Uniform Probate Code.

3. Real and personal property. Whether the law should be revised that relates to real and personal property, including, but not limited to, a marketable title act, covenants, servitudes, conditions, and restrictions on land use or relating to land, possibilities of reverter, powers of termination, Section 1464 of the Civil Code, escheat of property and the disposition of unclaimed or abandoned property, eminent domain, quiet title actions, abandonment or vacation of public streets and highways, partition, rights and duties attendant upon assignment, subletting, termination, or abandonment of a lease, powers of appointment, and related matters.

4. Family law. Whether the law should be revised that relates to family law, including, but not limited to, community property, the adjudication of child

and family civil proceedings, child custody, adoption, guardianship, freedom from parental custody and control, and related matters, including other subjects covered by the Family Code.

5. Offers of compromise. Whether the law relating to offers of compromise should be revised.

6. Discovery in civil cases. Whether the law relating to discovery in civil cases should be revised.

7. Special assessments for public improvements. Whether the acts governing special assessments for public improvement should be simplified and unified.

8. Rights and disabilities of minors and incompetent persons. Whether the law relating to the rights and disabilities of minors and incompetent persons should be revised.

9. Evidence. Whether the Evidence Code should be revised.

10. Arbitration. Whether the law relating to arbitration should be revised.

11. Administrative law. Whether there should be changes to administrative law.

12. Attorney's fees. Whether the law relating to the payment and the shifting of attorney's fees between litigants should be revised.

13. Uniform Unincorporated Nonprofit Association Act. Whether the Uniform Unincorporated Nonprofit Association Act, or parts of that uniform act, and related provisions should be adopted in California.

14. Trial court unification. Recommendations to be reported pertaining to statutory changes that may be necessitated by court unification.

15. Contract law. Whether the law of contracts should be revised, including the law relating to the effect of electronic communications on the law governing contract formation, the statute of frauds, the parol evidence rule, and related matters.

16. Environmental law. Whether the laws within various codes relating to environmental quality and natural resources should be reorganized in order to simplify and consolidate relevant statutes, resolve inconsistencies between the statutes, and eliminate obsolete and unnecessarily duplicative statutes.

17. Common interest developments. Whether the law governing common interest housing developments should be revised to clarify the law, eliminate unnecessary or obsolete provisions, consolidate existing statutes in one place in

the codes, establish a clear, consistent, and unified policy with regard to formation and management of these developments and transaction of real property interests located within them, and to determine to what extent they should be subject to regulation.

18. Legal malpractice statutes of limitation. Whether the statutes of limitation for legal malpractice actions should be revised to recognize equitable tolling or other adjustment for the circumstances of simultaneous litigation, and related matters.

19. Coordination of public records statutes. Whether the law governing disclosure of public records and the law governing protection of privacy in public records should be revised to better coordinate them, including consolidation and clarification of the scope of required disclosure and creation of a single set of disclosure procedures, to provide appropriate enforcement mechanisms, and to ensure that the law governing disclosure of public records adequately treats electronic information, and related matters.

20. Criminal sentencing. Whether the law governing criminal sentencing should be revised, nonsubstantively, to reorganize and clarify the sentencing procedure statutes in order to make them more logical and understandable.

From: "Skaggs, Sandy" <SSkaggs@MDBE.com>
To: "'Sterling, Nat'" <nsterling@clrc.ca.gov>
Subject: Common Interest Subdivisions
Date: Mon, 21 Feb 2000 11:59:51 -0800
MIME-Version: 1.0
X-Rcpt-To: nsterling@clrc.ca.gov
X-MIME-Autoconverted: from quoted-printable to 8bit by shell13.ba.best.com id
MAA02645
Status: 0
X-Status:
X-Keywords:
X-UID: 6

I don't know whether this fits, but here is an excerpt from a proposal sent to legislative staff in a memo concerning the omnibus bill they prepare each year relating to non-controversial land use matters. I suspect it is inappropriate to include it in the omnibus bill. Perhaps it will fit into our common interest subdivision recommendation.

Civil Code § 1468 governs covenants that run with the land and requires that the benefited land be adjacent to the burdened land or that the covenant be between a grantor and grantee. Public agencies often settle concerns over contaminated property, environmental and land use matters by requiring certain covenants and restrictions on land be placed in an agreement and recorded, assuming that because recorded they will be binding on successors in interest in the property. However, there is nothing the case law or statutes that permits enforcement of these covenants against successive owners in the land because they do not fall under the language of Civil Code section 1468 and are not enforceable as equitable servitudes. Bob Merritt has suggested a new section (perhaps Civil Code § 1468.1), be added to the Civil Code giving these covenants enforceability as covenants running with the land. The following is an example:

Each covenant, made by an owner of land in favor of a public agency, to do or refrain from doing some act on his own land, which doing or refraining is expressed to be for the benefit of the public, runs with the land owned by the covenantor and shall, except as provided by Section 1466, or as specifically provided in the instrument creating such covenant, and notwithstanding the provisions of Section 1465, benefit or be binding upon each successive owner, during his ownership, of any portion of such land affected thereby and upon each person having any interest therein derived through any owner thereof where all of the following requirements are met:

(a) The land of the covenantor which is to be affected by such covenants, is particularly described in the instrument containing such covenants;

(b) Such successive owners of the land are in such instrument expressed to be bound thereby for the benefit of the land owned by, granted by, or granted to the covenantee;

(c) Each such act relates to the use, repair, maintenance or improvement of, or payment of taxes and assessments on, such land or some part thereof;

(d) The instrument containing such covenants is recorded in the office of the recorder of each county in which such land or some part thereof is situated.

Where several persons are subject to the burden of any such covenant, it shall be apportioned among them pursuant to Section 1467, except that where only a portion of such land is so affected thereby, such apportionment shall be only among the several owners of such portion. This section shall apply to the mortgagee, trustee or beneficiary of a mortgage or deed of trust upon such land or any part thereof while but only while he, in such capacity, is in possession thereof.

The same effect could be achieved by amending Civil Code section 1468, but enactment of a separate statute seemed to us to be better. If you are interested in following up on this, Bob can give you specific examples of circumstances when these covenants are used and why lack of enforcement can present a problem.

From: "Skaggs, Sandy" <SSkaggs@MDBE.com>
To: "'Sterling, Nat'" <nsterling@clrc.ca.gov>
Subject: Attorneys fees
Date: Tue, 4 Jan 2000 12:10:23 -0800
MIME-Version: 1.0
X-Rcpt-To: nsterling@clrc.ca.gov

While looking at the Marketable Title law, I notice that the statutes pertaining to recovery of attorney's fees are not consistent. For example in section 880.360 "the cost of the action or proceeding ,including a reasonable attorney's fee" and in 883.250 "'litigation expenses'" defined as "'recoverable costs and expenses reasonably and necessarily incurred in preparation for the action, including a reasonable attorney's fee."

Section 1235.140 provides a slightly different definition of litigation expenses for eminent domain proceedings.

I wonder if we should try to provide some uniformity. I think it would be preferable to have a comprehensive statute and uniform definitions. If it is too complicated to conform existing statues, we at least could create a statutory scheme and definitions which future legislation could incorporate. Is this something that could be added to our study of attorney's fees?

Darryl Howard Harvey
9009 Ellisan Street
Bakersfield, California 93307
May 03, 2000

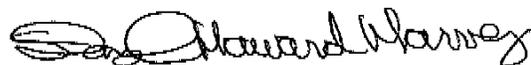
Aileen Adams
Secretary
State and Consumers Agency
915 Capitol Mall Suite 200
Sacramento, California 95814

Dear Aileen Adams:

Please find enclosed as per facsimile to your office on April 30,2000 a complete chronological history of correspondance between myself and the Department of Consumer Affairs (and its boards) including a recent request for inspection of records done under the watch of the correspondance unit of the Department of Consumer Affairs. Needless to say,I as well as anyone for that matter and quite shocked and appalled by the actions of the Medical Board and their attention to detail (as in to retrieve records etc.). I do look forward to a response from you in regards to this and hoping some legislation,enforcement, etc. would curtail this from ever happening again to anyone. I do thank you for your time..

Please contact me at the above address if you have any questions or need additional information. I can also be contacted by phone at (661)836-0502. A fax can be sent to (661)837-9473.

Sincerely,



Darryl Howard Harvey



400 R STREET, SACRAMENTO, CALIFORNIA 95814-6200



April 26, 2000

Darryl H. Harvey
9009 Ellisan Street
Bakersfield, California 93307

Mr. Harvey:

This is to confirm that I received the documents you faxed on April 24, 2000. As you know, Dr. Christiansen, your former physician, was unable to locate any documents or records under your name. Although unfortunate, this development does not violate state law.

The documents you faxed to me provide guidelines and make recommendations to the retention of Health Record Information. The MBC confirmed that state law does not specify the amount of time these records must be retained, however, the law requires medical practices to establish internal procedures for the purposes of record retention.

At this point, the Department and the MBC have exhausted all efforts in attempting to retrieve your original medical records from Dr. Christiansen; therefore, I must bring this case to closure. You may wish to contact your local legislator and seek his or her support to make changes to existing law that address your concerns.

Thank you for bringing this to my attention and I wish you well in the future.

Sincerely,


BRIAN J. STIGER, Manager
Correspondence Unit

GRAY DAVIS
GOVERNOR



State and Consumer Services Agency

OFFICE OF THE SECRETARY
915 CAPITOL MALL, SUITE 200
SACRAMENTO, CA 95814

- African American Museum
- Building Standards Commission
- Consumer Affairs
- Fair Employment & Housing
- Fair Employment & Housing Commission
- Franchise Tax Board
- General Services
- Insurance Advisor
- Science Center
- Personnel Board
- Public Employees' Retirement System
- Teachers' Retirement System

May 1, 2000

Mr. Darryl H. Harvey
9009 Ellisan Street
Bakersfield, CA 93307

Dear Mr. Harvey:

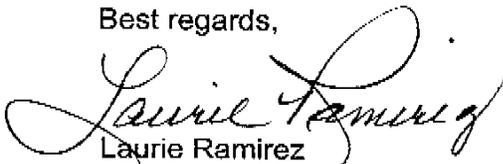
Thank you for your fax transmittal of April 28, 2000. Secretary Adams has asked me to respond on her behalf. I have reviewed a copy of the letter from Mr. Stiger, Manager of the Correspondence Unit of the Department of Consumer Affairs. I also had a conversation with him regarding your situation.

Prior to responding to your concerns, Mr. Stiger researched the matter extensively. He is correct in stating that the MBC is not mandated under state law to retain records for a specific length of time. Additionally, there is nothing more that the Department of Consumer Affairs or this Agency can do to remedy this situation.

Mr. Harvey, you have the option to work with your legislator to seek a remedy through the legislative process. I urge you to investigate this possibility.

I am sorry that we were not able to resolve this situation for you. If I can be of further assistance, please let me know.

Best regards,


Laurie Ramirez
Assistant Secretary



LAW OFFICES OF
SONDRA S. SUTHERLAND
2062 DAWN VIEW GLEN ▲ ESCONDIDO, CALIFORNIA 92026

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Law Revision Commission
RECEIVED

AUG - 2 2000

July 30, 2000

File: _____

Ms. Nathaniel Sterling
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

Re: Lammers v. Superior Court
San Diego Superior Court, Case No. DN100705 MYH
Court of Appeal, Case No. D035476

Dear Ms. Sterling:

Thank you for your letter dated June 9, 2000. I am enclosing, for your information and review, copies of the two (2) Amicus Curiae Briefs that were filed yesterday by the Appellate Court Committee of the San Diego County Bar Association and the Family Law Specialists here in San Diego. I sure am glad that I have Gray Cary, Appellate Defenders, Inc. and the other writers of the Appellate Court Committee's Brief on our side in this matter! Their Brief, prepared by a team of \$300/hour lawyers who donated in excess of 200 hours on the Brief, is truly a magnificent piece of work (not to mention a pro bono effort valued at at least \$60,000). They prepared this Brief without pay and only because they, too, care about the administration of justice in our State.

I understand that your Commission can only submit proposals to the Governor and/or Legislature, but the issue here is significant enough that I thought you might like to review these materials in evaluating existing and future rules regarding the reading of papers filed with the court. I thank you for your time and consideration.

Very truly yours,

LAW OFFICES OF SONDRA S. SUTHERLAND



Sondra S. Sutherland

/sss
Encls.



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO
NORTHERN BRANCH COURT
1080 MISSION ROAD
SOUTH SAN FRANCISCO, CALIFORNIA 94080

QUENTIN L. KOPP
JUDGE

PHONE (650) 877-5485
FAX (650) 615-0875

August 31, 2000

Law Revision Commission
RECEIVED

SEP - 1 2000

The Honorable Dick Ackerman
District Office
305 N. Harbor Blvd., Ste. 303
Fullerton, CA 92832

File: _____

Dear Dick:

I spoke today briefly with Sharon concerning my desire (and that of others) to reshape the California Penal Code provisions respecting the civil grand jury in California. I thought it appropriate to memorialize my thoughts in that respect.

It is a peculiarity of history that all provisions relating to the powers and duties of the civil grand jury are contained in Section 888 et. seq. of the Penal Code. That's essentially puzzling to people interested in service on a civil grand jury and those interested in the operation of a civil grand jury. Most of the provisions from Section 888 to Section 939.91, inclusive, apply only to a civil grand jury; a lesser number apply to a criminal grand jury. For example, Sections 925-936.7, inclusive, relate solely to the powers and duties of the civil grand jury.

It seems to me that if the provisions relating only to civil grand juries were identified for Legislative Counsel, he could promulgate during the fall a bill to transfer those provisions to the Government Code which you could introduce in December or January. At the same time, I would propose asking the California Law Revision Commission, of which you are a member, to undertake such a revamping. There are some civil grand jury provisions which should be clarified; there are a few which could be eliminated; and there are others which could be rewritten to suit modern circumstances surrounding the work of civil grand juries throughout the state.

I send a copy of this letter to Nat Sterling, Esq. at the Commission and also to Bion Gregory, Esq. so as to inform each of them and solicit their comments. I also send a copy to Thomas Casey, Esq., San Mateo County Counsel.

The Honorable Dick Ackerman
August 31, 2000
Page 2

Please advise me of your thoughts, and whether you believe the revamping is worthy of a bill introduction in the next session of the Legislature.

Sincerely yours,


QUENTIN L. KOPP

QLK:dtm

cc: ✓ Nat Sterling, Esq., California Law Revision Commission
Thomas Casey, Esq., San Mateo County Counsel
Bion Gregory, Esq., Legislative Counsel