

Admin.

December 12, 2000

**Memorandum 2000-77****2000-2001 Annual Report (Staff Draft)**

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Attached to this memorandum is a draft of the Commission's *2000-2001 Annual Report*. If approved, the staff will send it to the printer after final editing, subject to any revisions needed to reflect Commission action at the meeting.

The background and explanatory parts of the Annual Report are largely the same as past reports. The Legislative Program (pp. 1010-11), Major Studies in Progress (pp. 1011-14), and Calendar of Topics for Study (pp. 1014-17) reflect decisions the Commission made concerning topics and priorities at the October meeting.

The report includes a place to note any activities by Commissioners related to the Commission's work, such as any speeches you have given or articles published since the last Annual Report. (See p. 1026.) If any Commissioner has something of this nature to be noted in the Annual Report, please give it to the staff for inclusion.

The appendices listed in the table of contents have not been reproduced (but a copy will be available at the meeting). Several reports on Commission bills, which have already been approved, will be printed in the appendices. One or more brief recommendations will also be included to save printing costs.

Respectfully submitted,

Stan Ulrich  
Assistant Executive Secretary

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

## ***Draft*** 2000-2001 Annual Report

*Including*

Improving Access to Rulemaking Information  
Under the Administrative Procedure Act . . . . . \_\_\_\_

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

Cite this pamphlet as *2000-2001 Annual Report*, 30 Cal. L. Revision Comm'n Reports \_\_\_\_ (2000). This is publication #210.

## SUMMARY OF WORK OF COMMISSION

### **Recommendations Enacted in the 2000 Legislative Session**

In 2000, seven bills effectuating the Commission's recommendations were enacted, relating to the following subjects:

- Administrative rulemaking
- Family Code enforcement
- Eminent domain valuation evidence
- Alternate distributee for unclaimed distribution
- Jurisdictional classification of good faith improver claims
- Air resources technical revisions
- Trout affidavit

A bill relating to confidentiality of settlement negotiations was not enacted.

### **Recommendations to the 2001 Legislature**

In 2001, the Commission plans to submit recommendations on the following subjects to the Legislature:

- Rulemaking under Penal Code Section 5058
- Early disclosure of valuation data and resolution of issues in eminent domain
- Trial court unification follow-up, including:
  - Authority to appoint receivers
  - Cases in which court reporter is required
  - Expired pilot projects
  - Law library board of trustees
  - Stay of mechanic's lien enforcement pending arbitration
  - Unnecessary procedural differences between limited and unlimited civil cases
- Estate planning during dissolution of marriage
- Health Care Decisions Law follow-up

### **Commission Activities Planned for 2001**

During 2001, the Commission will work on the following major topics: mechanic's lien law, obsolete provisions resulting from trial court restructuring, implementation of Bankruptcy Code Chapter 9

(adjustment of debts of governmental entities), reorganization of criminal sentencing statutes, rules of construction for trusts, common interest development law, discovery improvements from other jurisdictions, review of criminal procedures under trial court unification, the Uniform Unincorporated Nonprofit Association Act, and the Uniform Trust Code. The Commission will also consider other subjects to the extent time permits.

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STATE OF CALIFORNIA

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**CALIFORNIA LAW REVISION COMMISSION**

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ASSEMBLY MEMBER HOWARD WAYNE

December 15, 2000

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

In conformity with Government Code Section 8293, the California Law Revision Commission herewith submits this report of its activities during 2000 and its plans for 2001.

Six bills introduced in 2000 to effectuate Commission recommendations were enacted. A two-year bill introduced in 1999 was also enacted. A bill on confidentiality of settlement negotiations was not enacted.

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

- Assembly Member Howard Kaloogian (alternate distributee for unclaimed distribution)
- Senator William "Pete" Knight (trout affidavit)
- Senator Deborah Ortiz (confidentiality of settlement negotiations)
- Assembly Member Howard Wayne (administrative rulemaking)
- Assembly Member Scott Wildman (eminent domain valuation evidence)
- Assembly Judiciary Committee (Family Code enforcement; jurisdictional classification of good faith improver claims)
- Assembly Natural Resources Committee (air resources technical revisions)

The Commission held five two-day meetings and a one-day meeting during 2000. Meetings were held in Los Angeles, Sacramento, San Diego, and San Francisco.

Respectfully submitted,

David Huebner  
*Chairperson*

## 2000-2001 ANNUAL REPORT

### Introduction

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

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

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

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

The Commission consists of:

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

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

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

The Commission has submitted 323 recommendations to the Legislature — 303 have been enacted in whole or in substantial part.<sup>3</sup> Commission recommendations have resulted in the enactment of legislation affecting 19,778 sections of California law: 3,692 sections amended, 9,060 sections added, and 7,026 sections repealed.

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

### **2001 Legislative Program**

In 2001, the Commission plans to submit recommendations to the Legislature concerning the following subjects:

#### **Administrative Law and Procedure**

*Rulemaking Under Penal Code Section 5058.* The Commission will recommend tightening of the procedures by which the Department of Corrections promulgates emergency regulations and pilot project regulations.

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

*Trial Court Unification.* The Commission will recommend correction of minor problems discovered as a result of trial court unification work, including: the authority to appoint receivers, cases in which a court reporter is required, elimination of unnecessary procedural differences between limited and unlimited civil cases (this project is subject to Judicial Council concurrence), expired pilot projects, composition of law library boards of

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

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

4. See "Commission Publications" in Appendix ## *infra* p. \_\_\_\_.

trustees, and staying mechanic's lien enforcement pending arbitration.

#### **Eminent Domain**

*Early Disclosure of Valuation Data and Resolution of Issues in Eminent Domain.* The Commission will recommend a number of improvements in the law intended to facilitate resolution of eminent domain cases without the need for trial.

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

*Health Care Decisions Law.* The Commission will recommend several minor substantive and technical revisions as a follow-up to the Health Care Decisions Law enacted on Commission recommendation in 1999.

*Estate Planning During Dissolution of Marriage.* The Commission will recommend clarification of the extent to which the automatic temporary restraining order in a marital dissolution proceeding affects the ability of the parties to execute estate planning documents.

### **Major Studies in Progress**

During 2001, the Commission will work on the following major topics: mechanic's lien law, obsolete provisions resulting from trial court restructuring, implementation of Bankruptcy Code Chapter 9 (adjustment of debts of governmental entities), reorganization of criminal sentencing statutes, rules of construction for trusts, common interest development law, discovery improvements from other jurisdictions, review of criminal procedures under trial court unification, the Uniform Unincorporated Nonprofit Association Act, and the Uniform Trust Code. The Commission will also consider other subjects to the extent time permits.

#### **Mechanic's Lien Law**

The Assembly Judiciary Committee has asked the Commission to conduct a comprehensive review of mechanic's lien law and suggest areas for reform. The Commission has retained Gordon Hunt of Pasadena and James Acret of Pacific Palisades as consultants. The Commission is giving this matter its highest priority.

The Commission has been focusing on issues concerning home improvement contracts, but plans to consider reform of the entire mechanic's lien and stop notice statutes as the study progresses.

#### **Statutes Rendered Obsolete by Trial Court Restructuring**

The Legislature has directed the Commission to recommend repeal of statutes rendered obsolete by the Trial Court Employment Protection and Governance Act, the Lockyer-Isenberg Trial Court Funding Act of 1997, or the implementation of trial court unification. The Commission's report is due by January 1, 2002.

#### **Bankruptcy Code Chapter 9 Implementation**

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

#### **Reorganization of Criminal Sentencing Statutes**

The objective of this study is to propose a reorganization and clarification of the sentencing procedure statutes in order to make them more logical and understandable. The Commission is assisted in this project by Judge David Wesley of Los Angeles, Deputy District Attorney David Ross of Los Angeles, and Mark Overland of Santa Monica. The Commission has begun active consideration of this matter.

#### **Rules of Construction for Trusts**

Recent legislation has made the rules of construction for wills applicable to trusts as well. However, the results of this approach to construction of trusts and other nonprobate transfer instruments are not always appropriate. The Commission is conducting a comprehensive review of the application of the rules of construction to trusts, and will recommend corrective legislation

where appropriate. Professor William McGovern of UCLA Law School has prepared a background study.

#### **Common Interest Development Law**

The Commission will review the statutes affecting common interest developments with the goal of setting a clear, consistent, and unified policy regarding 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. The Commission has retained Professors Susan French of UCLA Law School and Roger Bernhardt of Golden Gate University Law School to prepare a report on the scope of this project. The Commission expects to begin active consideration of the matter early in 2001.

#### **Discovery Improvements from Other Jurisdictions**

The Commission in 2001 will begin a review of discovery developments in other jurisdictions to determine whether any of them may be appropriate models for improvement of discovery practice in California. Professor Gregory Weber of McGeorge Law School is preparing a background study for the Commission.

#### **Review of Criminal Procedures Under Trial Court Unification**

The Commission is conducting a review of basic court procedures under unification. In 2001, the Commission will begin a study 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.

#### **Uniform Unincorporated Nonprofit Association Act**

The Commission has commenced work on a project to determine whether the Uniform Unincorporated Nonprofit Association Act should be adopted in California in whole or in part. The Commission is assisted by Professor Michael Hone of the University of San Francisco Law School. The Commission is

working closely with the State Bar Nonprofit Organizations Committee.

### **Uniform Trust Code**

The Commission in 2001 will begin a review of the Uniform Trust Code (2000) to determine whether any of its provisions that differ from California law should be adopted here. The Commission has engaged Professor David English of the University of Missouri Law School (Reporter for the Uniform Trust Code) to prepare a comparison of the uniform code with California law.

### **Other Subjects**

The major studies in progress described above will dominate the Commission's time and resources during 2001. The Commission will consider other subjects as time permits, including judicial administration issues resulting from trial court unification, Evidence Code changes required by electronic communications, general assignments for the benefit of creditors, exhaustion of remedies and ripeness issues in inverse condemnation litigation, shifting of attorney fees between litigants, statutes of limitation in legal malpractice actions, and technical revisions in debtor-creditor law.

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

The Commission's calendar of topics is set out in Appendix 2.<sup>5</sup> The Commission recommends revision of its calendar in 2001 to modify four authorized topics, delete one authorized topic, and add one new topic.

### **Modification of Previously Authorized Topics**

The Commission recommends revision of its calendar in 2001 to modify four previously authorized topics:

*Creditors' remedies.* The Commission's authority to study the law relating to creditors' remedies includes a specific reference to "civil arrest." The Commission has completed its work on civil

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5. See *infra* p. \_\_\_\_.

arrest,<sup>6</sup> and the Commission-recommended legislation to abolish civil arrest has been enacted.<sup>7</sup> The reference to civil arrest may be deleted from the Commission's calendar.

*Probate Code.* The Commission's authority to study the California Probate Code is unduly limited, since some estate planning and probate issues fall under other codes such as the Civil Code or Family Code. The authority to study the Probate Code should be expanded to include "related matters."

*Real and personal property.* The Commission's authority to study the law relating to real and personal property includes specific references to "possibilities of reverter," "Section 1464 of the Civil Code," and "powers of appointment." The Commission has completed its work on each of these matters, and the Commission-recommend legislation on them has been enacted.<sup>8</sup> The references to them may be deleted from the Commission's calendar.<sup>9</sup>

*Arbitration.* The Commission's authority to study arbitration is unduly limited, since modern alternative dispute techniques encompass other procedures such as mediation. The authority to study the law relating to arbitration should be expanded to include "mediation, and other alternative dispute resolution techniques."

#### **Deletion of Previously Authorized Topic**

*Environment Code.* The Commission's calendar of topics includes a study "Whether the laws within the various codes relating to environmental quality and natural resources should be reor-

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6. See *Recommendation and Study Relating to Civil Arrest*, 11 Cal. L. Revision Comm'n Reports 1 (1973).

7. 1973 Cal. Stat. ch. 20. See 11 Cal. L. Revision Comm'n Reports 1123 (1973).

8. See *Recommendation Relating to Marketable Title of Real Property*, 16 Cal. L. Revision Comm'n Reports 401 (1982), enacted 1982 Cal. Stat. ch. 1268; *Repeal of Civil Code Section 1464: The First Rule in Spencer's Case*, 26 Cal. L. Revision Comm'n Reports 29 (1996), enacted 1998 Cal. Stat. ch. 14 (Section 1464 of the Civil Code); *Relocation of Powers of Appointment Statute*, 21 Cal. L. Revision Comm'n Reports 91 (1991), enacted 1992 Cal. Stat. ch. 30.

9. Although future work with powers of appointment may be appropriate, this would already be authorized under the Commission's Probate Code authority.

ganized 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 intention not to proceed with the proposed Environment Code.<sup>10</sup> The authority to study this matter should be deleted from the Commission’s calendar of topics.

#### **Addition of New Topic**

*Subdivision Map Act and Mitigation Fee Act.* The Subdivision Map Act (Gov’t Code §§ 66410-66499.37) is a statutory framework under which a local public entity regulates land use and development within its jurisdiction by controlling the design and improvement of subdivisions. The purposes of the law include uniformity of mapping procedures (for conveyancing and title insurance regularity), regulation and control of development (for consumer protection), and dedication of land within a subdivision, such as for streets, sewers, and parks (to ensure public use and protect the public from undue maintenance burdens). The Mitigation Fee Act (Gov’t Code §§ 66000-66025) governs imposition of fees by a local public entity as a condition of approval of a development project. There is a need to redraft and reorganize these complex provisions, and to resolve inconsistencies, fill gaps, and rationalize the provisions, in order to make them easier to work with. In addition, practices and procedures have developed under these statutes that are not reflected in the statutory text; existing practices and procedures should be codified so that they are clear and have a statutory basis. The Commission’s calendar of topics should be expanded to include a study “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,

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10. *Reorganization of Environmental and Natural Resource Statutes*, 29 Cal. L. Revision Comm’n Reports 401 (1999).

fill gaps, clarify and rationalize provisions, codify accepted practices and procedures, and related matters.”

### **Function and Procedure of Commission**

The principal duties of the Commission<sup>11</sup> are to:

- (1) Examine the common law and statutes for the purpose of discovering defects and anachronisms.
- (2) Receive and consider suggestions and proposed changes in the law from the American Law Institute, the National Conference of Commissioners on Uniform State Laws,<sup>12</sup> bar associations, and other learned bodies, and from judges, public officials, lawyers, and the public generally.
- (3) Recommend such changes in the law as it deems necessary to bring California law into harmony with modern conditions.<sup>13</sup>

The Commission is required to file a report at each regular session of the Legislature containing a calendar of topics selected by it for study, listing both studies in progress and topics intended for future consideration. Under its general authority, the Commission may study only topics that the Legislature, by concurrent resolution, authorizes for study.<sup>14</sup> However, the Commission may study and recommend revisions to correct technical or minor substantive defects in state statutes without a prior concurrent resolution.<sup>15</sup>

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

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

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

14. Gov't Code § 8293.

15. Gov't Code § 8298.

Additionally, some statutes directly confer authority to study particular subjects.<sup>16</sup>

### **Background Studies**

The Commission's work on a recommendation typically begins after a background study has been prepared. The background study may be prepared by a member of the Commission's staff or by a specialist in the field who is retained as a consultant.<sup>17</sup> Law professors and practicing attorneys who serve as consultants have already acquired the considerable knowledge necessary to understand the specific problems under consideration, and they receive little more than an honorarium for their services. From time to time, expert consultants are also retained to advise the Commission at meetings.

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

Government Code Section 70219 requires the Commission, in consultation with the Judicial Council, to perform follow-up studies taking into consideration the experience in courts that have unified. For a list of specific studies, see *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51, 82-86 (1998).

Statutory authority may not be codified. See, e.g., 1996 Cal. Stat. ch. 856, § 12 (study of revisions of Public Utilities Code resulting from utility deregulation, in consultation with Public Utilities Commission.)

17. The following persons are serving as Commission consultants: James E. Acret, Thelen, Reid & Priest, Pacific Palisades; Prof. Michael Asimow, UCLA Law School; Prof. Roger Bernhardt, Golden Gate University School of Law; Prof. Robert K. Best, McGeorge School of Law, Pacific Legal Foundation; Prof. David M. English, University of Missouri Law School; Prof. Susan F. French, UCLA Law School; David Gould, McDermott, Will & Emery, Los Angeles; Judge Joseph B. Harvey (ret.), Susanville; Prof. Michael Hone, University of San Francisco School of Law; Gordon Hunt, Hunt, Ortmann, Blasco, Palffy & Rossell, Pasadena; Prof. Gideon Kanner, Berger & Norton, Burbank (formerly with Loyola Law School); Prof. J. Clark Kelso, McGeorge School of Law, Institute of Legislative Practice; Prof. William M. McGovern, UCLA Law School; Prof. Miguel A. Mendez, Stanford Law School; Mark Overland, Overland & Gits, Santa Monica; David Ross, Deputy District Attorney, Los Angeles; Prof. Frederick Tung, University of San Francisco School of Law; Prof. Gerald F. Uelmen, Santa Clara University School of Law; Prof. Gregory S. Weber, McGeorge School of Law; Judge David S. Wesley, Los Angeles Superior Court.

### Recommendations

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

Comments received on the tentative recommendation are considered by the Commission in determining what recommendation, if any, will be made to the Legislature. When the Commission has reached a conclusion on the matter, its recommendation<sup>18</sup> to the Legislature (including a draft of any necessary legislation) is published and distributed in printed form and in digital form on the Internet. If a background study has been prepared in connection with the recommendation, it may be published by the Commission or in a law review.<sup>19</sup>

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

19. For recent background studies published in law reviews, see Asimow, *The Scope of Judicial Review of Decisions of California Administrative Agencies*, 42 UCLA L. Rev. 1157 (1995); Asimow, *Toward a New California Administrative Procedure Act: Adjudication Fundamentals*, 39 UCLA L. Rev. 1067 (1992); Kasner, *Donative and Interspousal Transfers of Community Property in California: Where We Are (or Should Be) After MacDonald*, 23 Pac. L.J. 361 (1991). A revised version of Prof. Fellmeth's background study on unfair competition litigation was published as Fellmeth, *Unfair Competition Act Enforcement by Agencies, Prosecutors, and Private Litigants: Who's on First?*, 15 Cal. Reg. L. Rep. 1 (Winter 1995).

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

### Official Comments

The Commission ordinarily prepares an official Comment explaining each section it recommends. These Comments are included in the Commission's printed recommendations. Comments may be revised by the Commission in later reports to reflect amendments made in the legislative process.<sup>20</sup> Reports provide background with respect to Commission intent in proposing the legislation, such intent being reflected in the Comments to the various sections of the bill contained in the Commission's recommendation, except to the extent that new or revised Comments are set out in the report on the bill as amended.<sup>21</sup>

A Comment indicates the derivation of a section and often explains its purpose, its relation to other sections, and potential issues concerning its meaning or application. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions.<sup>22</sup> However, while the Commission

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

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

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

22. E.g., *Van Arsdale v. Hollinger*, 68 Cal. 2d 245, 249-50, 437 P.2d 508, 511, 66 Cal. Rptr. 20, 23 (1968); *Catch v. Phillips*, 73 Cal. App. 4th 648, 654-55, 86 Cal. Rptr. 2d 584, 588 (1999). See also *Milligan v. City of Laguna Beach*, 34 Cal. 3d 829, 831, 670 P.2d 1121, 1122, 196 Cal. Rptr. 38, 39 (1983); *Barkley v. City of Blue Lake*, 18 Cal. App. 4th 1745, 1751 n.3, 23 Cal. Rptr. 2d 315, 318-19 n.3 (1993); *Juran v. Epstein*, 23 Cal. App. 4th 882, 893-94, 28 Cal. Rptr.

endeavors in Comments to explain any changes in the law made by a section, the Commission does not claim that every inconsistent case is noted in the Comments, nor can it anticipate judicial conclusions as to the significance of existing case authorities.<sup>23</sup> Hence, failure to note a change in prior law or to refer to an inconsistent judicial decision is not intended to, and should not, influence the construction of a clearly stated statutory provision.<sup>24</sup>

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

### **Publications**

Commission materials and publications are distributed to the Governor, the Chief Clerks of the Senate and Assembly, and, on request, to heads of state departments, and to interest groups, lawyers, law professors, courts, district attorneys, and law libraries

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2d 588, 594 (1994). The Commission concurs with the opinion of the court in *Juran* that staff memorandums to the Commission should not be considered as legislative history. *Id.* at 894 n.5, 28 Cal. Rptr. 2d at 594 n.5.

Courts may also rely on the explanatory text of a Commission recommendation. See, e.g., *Vournas v. Fidelity Nat'l Title Ins. Co.*, 73 Cal. App. 4th 668, 673 n.4, 86 Cal. Rptr. 2d 490, 493-94 n.4 (1999). In a recent case, the Supreme Court gave weight to a Commission recommendation, as the "opinion of a learned panel," even though the recommendation has not been enacted. *Sierra Club v. San Joaquin Local Agency Formation Comm'n*, 21 Cal. 4th 489, 502-03, 981 P.2d 543, 87 Cal. Rptr. 2d 701, 711-12 (1999).

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

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

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

throughout the state.<sup>25</sup> Thus, a large and representative number of interested persons is given an opportunity to study and comment on the Commission's work before it is considered for enactment by the Legislature.<sup>26</sup>

The Commission's reports, recommendations, and studies are republished in hardcover volumes that serve as a permanent record of the Commission's work and, it is believed, a valuable contribution to the legal literature of California. These volumes are available at many county law libraries and at some other libraries. Half of the hardcover volumes are out of print, but others are available for purchase.<sup>27</sup>

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

Since June 1995, the Commission has provided a variety of information on the Internet, including online material and downloadable files.<sup>28</sup> Interested persons with Internet access can find current agendas, meeting minutes, background studies, tentative and final recommendations, staff memorandums, and general background information.

### **Electronic Mail**

Email commenting on Commission proposals or suggesting issues for study is given the same consideration as letter correspondence, if the email message includes the name and regular mailing address of the sender. Email to the Commission may be sent to *commission@clrc.ca.gov* or to *staff@clrc.ca.gov*.

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25. See Gov't Code § 8291. For availability, see "Commission Publications," Appendix ## *infra* p. \_\_\_\_.

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

27. See "Commission Publications," Appendix ## *infra* p. \_\_\_\_.

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

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

**MCLE Credit**

The Commission is approved by the State Bar of California as a minimum continuing legal education provider. Participants and attendees at Commission meetings may be eligible to receive MCLE credit. To receive credit for participation or attendance at a meeting, a person must register at the meeting. Meeting materials are available free of charge on the Internet<sup>29</sup> or may be purchased in advance from the Commission.

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29. See "Electronic Publication and Internet Access" *supra*.

### Personnel of Commission

On December 15, 2000, the following persons were members of the Law Revision Commission:

#### Legislative Members <sup>30</sup>

Assembly Member Howard Wayne, San Diego  
 Senator Bill Morrow, San Juan Capistrano

#### Members Appointed by Governor <sup>31</sup>

	<i>Term Expires</i>
David Huebner, Los Angeles <i>Chairperson</i>	October 1, 2003
Joyce G. Cook, Los Angeles <i>Vice Chairperson</i>	October 1, 2003
Sanford M. Skaggs, Walnut Creek	October 1, 2001
<i>Vacancy</i>	October 1, 2001
<i>Vacancy</i>	October 1, 2001
<i>Vacancy</i>	October 1, 2003
<i>Vacancy</i>	October 1, 2003

#### Legislative Counsel <sup>32</sup>

Bion M. Gregory, Sacramento

In December 1999, Joyce G. Cook and David Huebner, both of Los Angeles, were appointed to the Commission by Governor Gray Davis, succeeding former Commissioners Cooper and Marzec, respectively.

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

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

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

In May 2000, Senator Bill Morrow of San Juan Capistrano, was appointed by the Senate Rules Committee to fill the Senate seat on the Commission, succeeding former Senator (now Judge) Quentin Kopp.

Effective September 1, 2000, the Commission elected David Huebner as Chairperson (succeeding Assembly Member Howard Wayne), and Joyce G. Cook as Vice Chairperson (succeeding Sanford M. Skaggs). The terms of the new officers end August 31, 2001.

The following persons are on the Commission's staff:

*Legal*

Nathaniel Sterling <i>Executive Secretary</i>	Stan Ulrich <i>Assistant Executive Secretary</i>
Barbara S. Gaal <i>Staff Counsel</i>	Brian P. Hebert <i>Staff Counsel</i>
	Lynne I. Urman <i>Staff Counsel</i>

*Administrative-Secretarial*

Glista Guilford <i>Administrative Assistant</i>	Victoria V. Matias <i>Secretary</i>
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In December 2000, Lynne I. Urman was hired to fill a vacant staff counsel position. Ms. Urman has joined the Commission's Sacramento branch office at McGeorge Law School.

In October 2000, Lauren M. Trevathan left her position as the Commission's administrative assistant for a job in Sacramento. In November 2000, Glista Guilford was hired as the new administrative assistant in the Palo Alto main office.

During the spring of 2000, Alex P. Mayer, a student at the University of Santa Clara Law School, worked for the Commission, and McGeorge law student Robert B. McLeod performed legal research for the Commission through the work study program. Legal work for the Commission was also performed by law students in the Institute for Legislative Practice at McGeorge Law School under the direction of Professor J. Clark Kelso, including

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### **Commission Budget**

The Commission's operations are funded from the state general fund. The amount appropriated to the Commission for the 2000-01 fiscal year from the general fund is \$627,000. This is supplemented by \$15,000 budgeted for income generated from sale of documents to the public, representing reimbursement for the production and shipping cost of the documents.

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

### **Other Activities**

The Commission is directed by statute to cooperate with bar associations and other learned, professional, or scientific associations, institutions, or foundations in any manner suitable for the fulfillment of the purposes of the Commission.<sup>33</sup>

#### **Commissioner Activities**

*[To be supplied]*

#### **National Conference of Commissioners on Uniform State Laws**

The Commission is directed by statute to receive and consider proposed changes in the law recommended by the National Conference of Commissioners on Uniform State Laws.<sup>34</sup> The Commission's Assembly Member and the Legislative Counsel are members of the California Commission on Uniform State Laws. The Commission's Executive Secretary is an associate member of the National Conference of Commissioners on Uniform State Laws. They attended the National Conference in St. Augustine,

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33. Gov't Code § 8296.

34. Gov't Code § 8289.

Florida, in July 2000. Matters considered at the conference included uniform acts on trusts and disclaimer of property interests.

The Executive Secretary also continued service on the drafting committee for the Uniform Trust Code (2000). The uniform code is derived from the California Trust Law, a national model enacted on recommendation of the Commission.<sup>35</sup>

#### **Continuing Legal Education**

In September, the Assistant Executive Secretary served on a Continuing Education of the Bar panel for three sessions in the Bay Area on “Planning for Health Care Decisions Under the New Law.” The program materials for the statewide CEB course were largely comprised of the Commission’s report on the new law.<sup>36</sup>

The Executive Secretary spoke at CLE International’s Conference on Eminent Domain in San Francisco in November, on the topic “Proposed Legislative Changes: Eminent Domain Issues Before the California Law Revision Commission.”

#### **Bar Associations**

The Assistant Executive Secretary gave addresses on the Health Care Decisions Law to a conference of the Northern California section of the National Academy of Elder Law Attorneys meeting in San Francisco in March, and the Elder Law and Estate Planning Committees of the Alameda County Bar Association meeting in Oakland in April.

#### **Other Staff Activities**

In February, Staff Counsel Brian Hebert served as a moot court judge at McGeorge Law School.

On September 25, the Assistant Executive Secretary presented a progress report on the Commission’s study of mechanic’s lien law

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35. See *Recommendation Proposing the Trust Law*, 18 Cal. L. Revision Comm’n Reports 501, 519 (1986) (enacted by 1986 Cal. Stat. ch. 820). See also 18 Cal. L. Revision Comm’n Reports 1207 (1986) (Trust Law as enacted, with revised Comments).

36. Excerpted from *2000 Health Care Decisions Law and Revised Power of Attorney Law*, 30 Cal. L. Revision Comm’n Reports 1 (2000).

to the Assembly Select Committee on Construction Fraud, chaired by Assembly Member Mike Honda, which met in Los Angeles.

In October, the Assistant Executive Secretary participated in a panel discussion of the Health Care Decisions Law at a day-long seminar sponsored by the Senior Legal Hotline in Sacramento.

The Assistant Executive Secretary has continued working on health care decisionmaking issues with the Professional Education Workgroup of the California Coalition for Compassionate Care in Sacramento, and the Medical Decisionmaking Taskforce of the Santa Clara County Medical Association Bioethics Committee.

### Articles

The Executive Secretary wrote an article on the role of the Commission in probate law reform.<sup>37</sup> The Commission's administrative law consultant, Professor Michael Asimow of UCLA Law School, wrote an article on the Commission's administrative law revision project.<sup>38</sup>

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37. Sterling, *The California Law Revision Commission and Probate and Trust Law Reform*, Cal. Tr. & Est. Quarterly, Fall 2000, at 13.

38. Asimow, *Speed Bumps on the Road to Administrative Law Reform in California and Pennsylvania*, 8 Widen. J. Pub. Law 229 (1999).

### **Legislative History of Recommendations in the 2000 Legislative Session**

The Commission's recommendations were included in eight bills recommended for enactment in the 2000 legislative session. Seven bills were enacted. One bill was not enacted.

#### **Alternate Distributee for Unclaimed Distribution**

Assembly Bill 1491 (2000 Cal. Stat. ch. 17) was introduced by Assembly Member Howard Kaloogian, and included language to effectuate the Commission recommendation on *Alternate Distributee for Unclaimed Distribution*, 29 Cal. L. Revision Comm'n Reports 743 (1999). The recommendation was enacted as submitted.

#### **Trout Affidavit (Repeal of Fish & Game Code § 2357)**

Senate Bill 1487 (2000 Cal. Stat. ch. 167) was introduced by Senator William Knight to effectuate the Commission recommendation on the *Trout Affidavit*, \_\_ 30 Cal. L. Revision Comm'n Reports \_\_\_\_ (2000). The recommendation was enacted as submitted.

#### **Good Faith Improver Claims**

Assembly Bill 1669 (2000 Cal. Stat. ch. 688) was introduced by the Assembly Judiciary Committee, and included language to effectuate the Commission recommendation on *Jurisdictional Classification of Good Faith Improver Claims*, 30 Cal. L. Revision Comm'n Reports \_\_\_\_ (2000). The recommendation was enacted as submitted.

#### **Family Code Enforcement**

Assembly Bill 1358 (2000 Cal. Stat. ch. 808) was introduced by the Assembly Judiciary Committee, and included language to effectuate the Commission recommendation on *Enforcement of Judgments Under the Family Code: Technical Revisions*, 29 Cal. L. Revision Comm'n Reports 695 (1999). The recommendation was enacted after a number of amendments were made. See *Report of the California Law Revision Commission on Chapter 808 of the*

*Statutes of 2000 (Assembly Bill 1358)*, 30 Cal. L. Revision Comm'n Reports \_\_\_\_ (2000) (Appendix 4 *infra* pp. \_\_\_\_).

#### **Air Resources Technical Revisions**

Assembly Bill 2939 (2000 Cal. Stat. ch. 890) was introduced by the Assembly Judiciary Committee, and included language to effectuate the Commission recommendation on *Air Resources Technical Revisions*, 29 Cal. L. Revision Comm'n Reports 409 (1999). The bill was enacted after a number of amendments were made. See *Report of the California Law Revision Commission on Chapter 890 of the Statutes of 2000 (Assembly Bill 2939)*, 30 Cal. L. Revision Comm'n Reports \_\_\_\_ (2000) (Appendix 5 *infra* pp. \_\_\_\_).

#### **Eminent Domain Valuation Evidence**

Assembly Bill 321 (2000 Cal. Stat. ch. 948) was a two-year bill introduced in 1999 by Assembly Member Scott Wildman, and included language to effectuate the Commission recommendation on *Eminent Domain Valuation Evidence: Clarification of Evidence Code Section 822*, 29 Cal. L. Revision Comm'n Reports 733 (1999). The bill was enacted after a number of amendments were made. See *Report of the California Law Revision Commission on Chapter 948 of the Statutes of 2000 (Assembly Bill 321)*, 30 Cal. L. Revision Comm'n Reports \_\_\_\_ (1999) (Appendix 6 *infra* pp. \_\_\_\_).

#### **Administrative Rulemaking**

Assembly Bill 1822 (2000 Cal. Stat. ch. 1060) was introduced by Assembly Member Howard Wayne to effectuate the Commission recommendations on *Administrative Rulemaking*, 29 Cal. L. Revision Comm'n Reports 459 (1999), and *Improving Access to Rulemaking Information Under the Administrative Procedure Act*, 30 Cal. L. Revision Comm'n Reports \_\_\_\_ (2000). The bill was enacted after a number of amendments were made. See *Report of the California Law Revision Commission on Chapter 1060 of the Statutes of 2000 (Assembly Bill 1822)*, 30 Cal. L. Revision Comm'n Reports \_\_\_\_ (1999) (Appendix 7 *infra* pp. \_\_\_\_).

**Confidentiality of Settlement Negotiations**

Senate Bill 1370 was introduced by Senator Deborah Ortiz to effectuate the Commission recommendation on *Admissibility, Discoverability, and Confidentiality of Settlement Negotiations*, 29 Cal. L. Revision Comm'n Reports 345 (1999) The bill was not enacted.

**Resolution Authorizing Topics for Study**

Assembly Concurrent Resolution 17 (1999 Cal. Stat. res. ch. 81) was introduced in 1999 by Assembly Member Howard Wayne.<sup>39</sup> It continued the Commission's authority to study 16 topics previously authorized, removed five topics,<sup>40</sup> and added four new topics.<sup>41</sup>

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

*[See First Supplement to Memorandum 2000-77.]*

**Recommendations**

The Law Revision Commission respectfully recommends that the Legislature authorize the Commission to complete its study of the topics previously authorized,<sup>42</sup> subject to the additions, deletions, and revisions requested.<sup>43</sup>

Pursuant to the mandate imposed by Government Code Section 8290, the Commission recommends the repeal of the provisions referred to under "Report on Statutes Repealed by Implication or Held Unconstitutional," *supra*, to the extent they have been held unconstitutional and have not been amended or repealed.

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39. The Commission did not seek a new resolution in 2000 because no changes were needed in the ongoing authority to study topics under ACR 17. See Gov't Code § 8293 (report on topics at each session of Legislature).

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

41. *Id.* at 693-96.

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

43. See "Calendar of Topics for Study" *supra*.