

Legis Prog

August 13, 2002

## Memorandum 2002-39

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**Use of CLRC Materials to Determine Legislative Intent**

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The Law Revision Commission's Annual Report refers to a number of cases demonstrating proper and improper use of Commission materials in determining legislative intent of statutes enacted on Commission recommendation. In its current form, the Annual Report states:

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>17</sup> However, while the Commission endeavors in Comments to explain any changes in the law made by a section, the Commission does not claim that every inconsistent case is noted in the Comments, nor can it anticipate judicial conclusions as to the significance of existing case authorities.<sup>18</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>19</sup>

17. E.g., *People v. Martinez*, 22 Cal. 4th 106, 129, 990 P.2d 563, 91 Cal. Rptr. 2d 687, 704 (2000); *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); *Juran v. Epstein*, 23 Cal. App. 4th 882, 893-94, 28 Cal. Rptr. 2d 588, 594 (1994); *Barkley v. City of Blue Lake*, 18 Cal. App. 4th 1745, 1751 n.3, 23 Cal. Rptr. 2d 315, 318-19 n.3 (1993). 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.

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

19. 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.

The Commission has decided to augment this material with the following footnote:

[FN] The Commission does not concur with the suggestion of the court in *Conservatorship of Wendland*, 26 Cal. 4th 519, 28 P.3d 151, 110 Cal. Rptr. 2d 412 (2001), that a Commission Comment might be entitled to less weight because the Legislature may have not have been aware of every word in the Commission's report. 26 Cal. 4th at 542. The Commission's Comments are provided to legislative committee members and staff who are charged with in depth study of the legislation, and are relied upon by them in making recommendations to the Legislature concerning the legislation. See, e.g., "The Committee System" in *California's Legislature* at 126-27 (Office of the Chief Clerk, California State Assembly 2000).

The Commission also has decided to expand this discussion into a more extensive compendium of cases showing proper usage of Commission materials in statutory construction, as an aid to attorneys, courts, and others who may have occasion to construe a statute enacted on Commission recommendation.

The compendium will be referenced by a standard Note that appears at the front of every Law Revision Commission recommendation:

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission's most recent *Annual Report*.

The text proposed for inclusion in our Annual Report would replace the existing material. The draft is set out in the Exhibit to this memorandum. The new material would be integrated into the Annual Report in an appropriate sequence, so that it appears in context. The many citations will be proofed and double checked before printing.

In preparing an appropriate discussion, the staff has found it difficult to be selective. There are over a thousand reported appellate decisions referencing Law Revision Commission materials. The cases generally evince proper usage and citation of Commission materials. In the interest of providing a manageable discussion, we have limited ourselves primarily to selected Supreme Court cases,

and have avoided multiplying examples, preferring more recent cases. We have referenced a Court of Appeal case only if it is an extraordinarily fine example of proper usage or a particularly egregious example of improper usage. We have also included a few references to federal materials and a few secondary sources.

Respectfully submitted,

Nathaniel Sterling  
Executive Secretary

Exhibit

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**FOR COMMISSION'S ANNUAL REPORT**

**(TO REPLACE EXISTING DISCUSSION OF LEGISLATIVE INTENT,  
AND INTEGRATED WITH REMAINDER OF ANNUAL REPORT)**

**Commission Materials as Legislative History**

Commission recommendations are printed and sent to both houses of the Legislature, as well as to the Legislative Counsel and Governor.<sup>1</sup> Receipt of a recommendation by the Legislature is noted in the legislative Journals, and the recommendation is referred to the appropriate policy committee.<sup>2</sup>

The bill introduced to effectuate a Commission recommendation is assigned to legislative committees charged with in depth study of the matter.<sup>3</sup> A copy of the recommendation is provided to legislative committee members and staff before the bill is heard and throughout the legislative process. The legislative committees rely on the recommendation in analyzing the bill and making recommendations to the Legislature concerning it.<sup>4</sup>

If an amendment is made to the bill that renders one of the Commission's original Comments inconsistent, the Commission generally will adopt a revised Comment and provide it to the committee. The Commission also provides this material to the Governor's office once the bill has passed the Legislature and is before the Governor for action. These materials are a matter of public record.<sup>5</sup>

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1. See Gov't Code §§ 8291, 9795; see also, *Reynolds v. Superior Court of Los Angeles County*, 12 Cal. 3d 834, 528 P.2d 45, 117 Cal. Rptr. 437 (1974) (Commission "submitted to the Governor and the Legislature an elaborate and thoroughly researched study").

2. See, e.g., Senate Journal, 2001-2002 Reg. Sess., p. 4585 (June 3, 2002), noting receipt of 2001-2002 recommendations and their transmittal to the Committee on Public Safety.

3. See, e.g., "The Committee System" in *California's Legislature* at 126-27 (Office of the Chief Clerk, California State Assembly 2000).

4. The Commission does not concur with the suggestion of the court in *Conservatorship of Wendland*, 26 Cal. 4th 519, 542, 28 P.3d 151, 110 Cal. Rptr. 2d 412 (2001), that a Commission Comment might be entitled to less weight on speculation that the Legislature may have not read and endorsed every statement in the Commission's report. That suggestion belies the operation of the committee system in the Legislature. See White, *Sources of Legislative Intent in California*, 3 Pac. L. J. 63, 85 (1972) ("The best evidence of legislative intent must surely be the records of the legislature itself and the reports which the committees relied on in recommending passage of the legislation.").

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

Until the mid-1980's, a legislative committee, on approving a bill implementing a Commission recommendation, would vote to adopt the Commission's recommendation as indicative of the committee's intent in approving the bill.<sup>6</sup> If a Comment required revision, the revised Comment would be adopted as a legislative committee Comment.<sup>7</sup> The committee's report would be printed in the Journal of the relevant house. The Legislature has discontinued that practice due to increased committee workloads and the effort to decrease the volume of material reprinted in the legislative Journals. Under current practice, a legislative committee relies on Commission materials in its analysis of a bill, but does not separately adopt the materials. Instead, the Commission makes a report detailing the legislative history of the bill, including any revised Comments. Bill reports are published as appendices to the Commission's annual reports.<sup>8</sup>

### **Use of Commission Materials to Determine Legislative Intent**

Commission materials that have been placed before and considered by the Legislature are legislative history and are entitled to great weight in construing statutes.<sup>9</sup> The materials are a key interpretive aid for practitioners as well as courts,<sup>10</sup> and courts may judicially notice and rely on them.<sup>11</sup> Courts at all levels of the state<sup>12</sup> and federal<sup>13</sup> judicial systems depend on Commission materials to

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6. See, e.g., *Baldwin v. State*, 6 Cal. 3d 424, 433, 491 P.2d 1121, 99 Cal. Rptr. 145 (1972). 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, 109 Cal. Rptr. 421 (1973).

7. See, e.g., *KSDO v. Superior Court*, 136 Cal. App. 3d 375, 380, 186 Cal. Rptr. 211 (1982). For an example of such a report, see *Report of Senate Committee on Judiciary on Assembly Bill 3472*, Senate Journal (June 14, 1984), reprinted as Appendix XV in *Annual Report*, 18 Cal. L. Revision Comm'n Reports 1, 115 (1985).

8. Commission reports have in the past been published as well in the legislative Journal. See, e.g., *In re Marriage of Neal*, 153 Cal. App. 3d 117, 200 Cal. Rptr. 341 (1984).

9. See, e.g., *Hale v. Southern California IPA Med. Group, Inc.*, 86 Cal. App. 4th 919, 927, 103 Cal. Rptr. 2d 773 (2001):

In an effort to discern legislative intent, an appellate court is entitled to take judicial notice of the various legislative materials, including committee reports, underlying the enactment of a statute. (*Kern v. County of Imperial* (1990) 226 Cal. App. 3d 391, 400, fn. 8 [276 Cal. Rptr. 524]; *Coopers & Lybrand v. Superior Court* (1989) 212 Cal. App. 3d 524, 535, fn. 7 [260 Cal. Rptr. 713].) In particular, reports and interpretive opinions of the Law Revision Commission are entitled to great weight. (*Schmidt v. Southern Cal. Rapid Transit Dist.* (1993) 14 Cal. App. 4th 23, 30, fn. 10 [17 Cal. Rptr. 2d 340].

10. Cf. 7 B. Witkin, *Summary of California Law Constitutional Law* § 96, p. 149 (9th ed. 1988) (Commission reports as aid to construction).

11. See, e.g., *Barkley v. City of Blue Lake*, 18 Cal. App. 4th 1745, 23 Cal. Rptr. 2d 315 (1993).

12. See, e.g., *Sullivan v. Delta Air Lines, Inc.*, 15 Cal. 4th 288, 935 P.2d 781, 63 Cal. Rptr. 2d 74 (1997) (California Supreme Court); *Administrative Management Services, Inc. v. Fidelity & Deposit Co. of Maryland*, 129 Cal. App. 3d 484, 181 Cal. Rptr. 141 (1982) (court of appeal); *Rossetto v. Barross*, 90 Cal. App. 4th Supp. 1, 110 Cal. Rptr. 2d 255 (2001) (appellate division of superior court).

13. See, e.g., *California v. Green*, 399 U.S. 149 (1970) (Supreme Court); *Southern Cal. Bank v. Zimmerman* (*In re Hilde*), 120 F.3d 950 (9th Cir. 1997) (circuit court of appeal); *Williams v. Townsend*, 283 F. Supp. 580 (C.D. Cal. 1968) (federal district court); *Ford Consumer Fin. Co. v. McDonell* (*In re*

construe statutes enacted on Commission recommendation.<sup>14</sup> Appellate courts alone have cited Commission materials in more than a thousand published opinions.<sup>15</sup>

Commission materials have been used as direct support for a court's interpretation of a statute,<sup>16</sup> as one of several indicia of legislative intent,<sup>17</sup> to explain the public policy behind a statute,<sup>18</sup> and on occasion to demonstrate (by their silence) the Legislature's intention not to change the law.<sup>19</sup> The Legislature's failure to adopt a Commission recommendation may be used as evidence of legislative intent to reject the rule proposed.<sup>20</sup>

Commission materials are entitled to great weight, but they are not conclusive.<sup>21</sup> While the Commission endeavors in Comments to explain any changes in the law made by a section, the Commission does not claim that every consistent or inconsistent case is noted in the Comments,<sup>22</sup> nor can it anticipate judicial conclusions as to the significance of existing case authorities.<sup>23</sup> Hence, failure of the Comment to note every change the recommendation would make in prior law,

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McDonell), 204 B.R. 976 (B.A.P. 9th Cir. 1996) (bankruptcy appellate panel); *In re Haaland*, 89 B.R. 845 (Bankr. S.D. Cal. 1988) (bankruptcy court).

14. See, e.g., *Collection Bureau of San Jose v. Rumsey*, 24 Cal. 4th 301, 6 P.3d 713, 99 Cal. Rptr. 2d 792 (2000) (statute enacted with clear understanding and intent reiterated in Commission report); *In re Bryce C.*, 12 Cal. 4th 226, 906 P.2d 1275, 48 Cal. Rptr. 2d 120 (1995) (Comments reliable guide to legislative intent); *Brian W. v. Superior Court*, 20 Cal. 3d 618, 574 P.2d 788, 143 Cal. Rptr. 717 (1978) (Comments persuasive evidence of the intent of the Legislature); *Van Arsdale v. Hollinger*, 68 Cal. 2d 245, 249-50, 437 P.2d 508, 511, 66 Cal. Rptr. 20, 23 (1968) (Comments entitled to substantial weight); *County of Los Angeles v. Superior Court of Los Angeles County*, 62 Cal. 2d 839, 402 P.2d 868, 44 Cal. Rptr. 796 (1965) (statutes reflect policy recommended by Commission); *Volkswagen Pacific, Inc. v. Los Angeles*, 7 Cal. 3d 48, 61-63, 496 P.2d 1237, 101 Cal. Rptr. 869 (1972) (Comments evidence the clear legislative intent of the law).

15. In this connection it should be noted that the Law Revision Commission should not be cited as the "Law Revision Committee" or as the "Law Review Commission." See, e.g., *Venerable v. City of Sacramento*, 185 F. Supp. 2d 1128, 1132 (E.D. Cal. 2002) (Law Revision "Committee"); *Ryan v. Garcia*, 27 Cal. App. 4th 1006, 1010 n.2, 33 Cal. Rptr. 2d 158 (1994) (Law "Review" Commission).

16. See, e.g., *People v. Ainsworth*, 45 Cal. 3d 984, 1015, 755 P.2d 1017, 248 Cal. Rptr. 568 (1988).

17. See, e.g., *Heieck & Moran v. Modesto*, 64 Cal. 2d 229, 233 n.3, 411 P.2d 105, 49 Cal. Rptr. 377 (1966).

18. See, e.g., *Southern California Gas Co. v. Public Utils. Comm'n*, 50 Cal. 3d 31, 784 P.2d 1373, 265 Cal. Rptr. 801 (1990).

19. See, e.g., *State ex rel. State Public Works Bd. v. Stevenson*, 5 Cal. App. 3d 60, 84 Cal. Rptr. 742 (1970).

20. See, e.g., *Nestle v. Santa Monica*, 6 Cal. 3d 920, 935-36, 496 P.2d 480, 101 Cal. Rptr. 568 (1972).

21. See, e.g., *Redevelopment Agency v. Metro. Theatres Corp.*, 215 Cal. App. 3d 808, 263 Cal. Rptr. 637 (1989) (Comment does not override clear and unambiguous statute). Commission materials are but one of a number of indicia of legislative intent. See, e.g., *Estate of Joseph*, 17 Cal. 4th 203, 216, 949 P.2d 472, 70 Cal. Rptr. 2d 619 (1998). The accuracy of a Comment may also be questioned See, e.g., *Buzgheia v. Leasco Sierra Grove*, 30 Cal. App. 4th 766, 774, 36 Cal. Rptr. 2d 144 (1994); *In re Thomas*, 102 B.R. 199 (Bankr. E.D. Cal. 1989).

22. Cf. *People v. Coleman*, 8 Cal. App. 3d 722, 87 Cal. Rptr. 554 (1970) (Comments make clear intention with respect of existing law even if not all supporting cases are cited).

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

or to refer to a consistent or inconsistent judicial decision, is not intended to, and should not, influence the construction of a clearly stated statutory provision.<sup>24</sup>

Some types of Commission materials may not properly be relied on as evidence of legislative intent. Courts have on occasion cited preliminary Commission materials such as tentative recommendations and correspondence in support of their construction of a statute.<sup>25</sup> This is not appropriate because the material is not placed before the Legislature during its consideration of the legislation.<sup>26</sup> While these materials may be indicative of the Commission's intent in proposing the legislation, it is only the Legislature's intent in adopting the legislation that is entitled to weight in construing the statute.<sup>27</sup>

A Commission study prepared after enactment of a statute that analyzes the statute is not part of the legislative history of the statute.<sup>28</sup> However, documents prepared by or for the Commission may be used by the courts for their analytical value, apart from their role in statutory construction.<sup>29</sup>

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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.

25. See, e.g., *Yamaha Corp. of Am. v. State Bd. of Equalization*, 19 Cal. 4th 1, 960 P.2d 1031, 78 Cal. Rptr. 2d 1 (1998) (tentative recommendation). However, in some cases, proposed legislation will be based on a tentative, rather than final, Commission recommendation. See, e.g., *Estate of Archer*, 193 Cal. App. 3d 238, 243, 239 Cal. Rptr. 137 (1987). In that event, reliance on the tentative recommendation is proper.

See also *Ilkhchooyi v. Best*, 37 Cal. App. 4th 395, 45 Cal. Rptr. 2d 766 (1995) (letter responding to tentative recommendation); D. Henke, *California Legal Research Handbook* § 3.5.1 (1971) (background studies).

26. The Commission concurs with the opinion of the court in *Juran v. Epstein*, 23 Cal. App. 4th 882, 893-94, 28 Cal. Rptr. 2d 588, 594 (1994), that staff memoranda to the Commission should not be considered as legislative history.

27. Cf. *Rittenhouse v. Superior Court*, 235 Cal. App. 3d 1584, 1 Cal. Rptr. 2d 595 (1991) (linking Commission's intent and Legislature's intent); *Guthman v. Moss*, 150 Cal. App. 3d 501, 198 Cal. Rptr. 54 (1984) (determination of Commission's intent used to infer Legislature's intent).

28. See, e.g., *Duarte v. Chino Community Hosp.*, 72 Cal. App. 4th 849, 85 Cal. Rptr. 2d 521, 525 n.3 (1999).

29. See, e.g., *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) (unenacted Commission recommendation useful as the "opinion of a learned panel"); *Hall v. Hall*, 222 Cal. App. 3d 578, 585, 271 Cal. Rptr. 773 (1990) (Commission staff analysis of statute the most detailed available); *W. E. J. v. Superior Court*, 100 Cal. App. 3d 303, 160 Cal. Rptr. 862 (1979) (law review article prepared for Commission provides insight into development of the law); *Schonfeld v. City of Vallejo*, 50 Cal. App. 3d 401, 123 Cal. Rptr. 669 (1975) (court indebted to many studies of Commission for analytical materials).