

Admin.

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## Memorandum 2003-11

### New Topics and Priorities

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#### BACKGROUND

It is the Commission's practice annually to assess its calendar of study topics.

This memorandum reviews the status of studies assigned to the Commission 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 the coming year.

The following letters, email communications, and other materials are attached to and discussed in this memorandum:

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It is worth stating at the outset that **the staff continues to be negative towards the concept of the Commission taking on any new projects or activating any new priorities.** We are currently overwhelmed with work, with far too many major projects underway simultaneously, and more in the pipeline. This is at a time when our resources are severely reduced due to the state budget crisis.

## REVIEW OF LAST YEAR'S DECISIONS

### **Last Year's Decisions**

At its last annual review of new topics and priorities, the Commission made the following decisions.

*Special Assessments for Public Improvements.* The Commission decided to move the topic of special assessments for public improvements higher on the priority list. The staff was to commence work on this when the opportunity presented itself.

*Criminal Sentencing.* With respect to the topic of criminal sentencing, the Commission decided to suspend further work on the study.

*Antideficiency Bad Faith Waste Exception.* The Commission discussed the bad faith waste exception to antideficiency protections. The Commission decided to monitor case law developments and practice, and to consider addressing the matter if more problems appear to be developing.

*Share of Omitted Spouse.* The Commission directed the staff to review the question of "date of death valuation" of the proportionate shares of beneficiaries in the case of an omitted spouse or omitted child, to determine whether a simple clarifying amendment would be feasible.

*Uniform Statute and Rule Construction Act.* The Commission decided to request authority for, and to activate on a low priority basis, a study of the Uniform Statute and Rule Construction Act (1995).

*Financial Privacy.* The Commission decided to give the financial privacy project a high priority, and to schedule an initial public meeting on the matter for early 2003.

*Mechanic's Liens.* The Commission decided to seek reintroduction of its recommendation on the double payment problem, and introduction of its recommendation on stay of mechanic's lien enforcement during arbitration. The Commission decided to discontinue work on the general mechanic's lien overhaul project until after the Legislature takes action on the two pending mechanic's lien recommendations.

### **Action on Last Year's Decisions**

During 2003, in response to last year's new topic and priority decisions:

*Special Assessments for Public Improvements.* The staff did not commence work on this project, due to declining staff resources and intervening priorities.

*Antideficiency Bad Faith Waste Exception.* The staff is not aware of further development of problems in this area.

*Share of Omitted Spouse.* Corrective legislation on this matter has been enacted on recommendation of the Commission. See AB 167 (Harman), enacted as 2003 Cal. Stat. ch. 32.

*Uniform Statute and Rule Construction Act.* The Legislature approved the Commission's study of the Uniform Statute and Rule Construction Act (1995). See SCR 4 (Morrow), enacted as 2003 Cal. Stat. res. ch. 92.

*Financial Privacy.* The Commission has given the financial privacy project a high priority. For the current status of this project, please refer to Memorandum 2003-30, scheduled for consideration in September 2003.

*Mechanic's Liens.* The Commission's recommendation on stay of mechanic's lines enforcement pending arbitration was enacted by SB 113 (Ackerman), 2003 Cal. Stat. ch. 22. The core of the Commission's recommendation on the double liability problem in home improvement contracts is embodied in AB 286 (Dutra); that measure is pending in the Senate Judiciary Committee and is a two year bill.

#### TOPICS LISTED IN THE COMMISSION'S CALENDAR OF TOPICS

The Commission's enabling statute recognizes two types of study topics — those that the Commission identifies for study and lists in the Calendar of Topics that it reports to the Legislature, and those that the Legislature assigns to the Commission directly. Gov't Code § 8293. However, the Commission may not address those that it has identified for study until the Legislature, by concurrent resolution, approves them for study by the Commission.

The bulk of the Commission's study topics have come through the first route — matters identified by the Commission and approved by the Legislature. Direct legislative assignments have been relatively rare in the past but have become more common in recent years. Some of the major topics currently occupying the Commission (including financial privacy and repeal of statutes made obsolete by trial court restructuring) are the result of direct legislative assignments, not requested by the Commission.

This section of the memorandum reviews the status of matters currently listed in the Commission's Calendar of Topics. The next section discusses matters assigned by the Legislature directly.

The Commission currently lists 21 topics in its Calendar of Topics. These topics have all been previously approved by the Legislature. The most recent concurrent resolution is SCR 4 (Morrow), enacted as 2003 Cal. Stat. res. ch. 92. A precise description of each topic is appended at Exhibit p. 1. The Commission has completed work on a number of the topics listed in the calendar — the authority is retained in case corrective legislation is needed.

Below is a discussion of each topic in the calendar. The discussion indicates the status of the topic and the need for future work. A Commission member who believes a particular matter deserves priority should plan to raise the matter 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.

**Enforcement of Judgments and Exemptions.** There are specific statutes directing the Commission to study enforcement and exemptions. The directives are discussed below under "Topics Referred by the Legislature".

**Judicial and nonjudicial foreclosure of real property liens.** Foreclosure 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 that area of law. The National Conference of Commissioners on Uniform State Laws has completed work on a Uniform Non-Judicial Foreclosure Act (2002). That may be a useful product for Commission consideration.

Pursuant to a Commission directive, the staff is monitoring development of problems concerning the bad faith waste exception to the antideficiency laws. See *Nipon Credit Bank v. 1333 No. Calif. Blvd.*, 86 Cal. App. 4th 486, 103 Cal. Rptr. 2d 421 (2001).

**Mechanic's lien law.** The Commission has had mechanic's lien law under active consideration. The Commission has issued three reports:

(1) *The Double Liability Problem in Home Improvement Contracts*, 31 Cal. L. Revision Comm'n Reports 281 (2001). The core concept recommended by the Commission is embodied in AB 286 (Dutra).

(2) *Stay of Mechanic's Lien Enforcement Pending Arbitration*, 31 Cal. L. Revision Comm'n Reports 333 (2001). Enacted as SB 113 (Ackerman), 2003 Cal. Stat. ch. 22.

(3) *Mechanic's Lien Law Reform*, 31 Cal. L. Revision Comm'n Reports 343 (2001). The comprehensive revision project is on hold, pending legislative action on (1) and (2).

**Assignments for the benefit of creditors.** Should California law 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. He is currently compiling results of a questionnaire distributed to interested and affected persons.

## **2. Probate Code**

The Commission drafted the Probate Code and continues to monitor experience under it and make occasional recommendations on it.

**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 issue at some point. The Uniform Probate Code deals with nonprobate 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 requested comment on this matter from the State Bar Estate Trusts and Estates Section 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, as well as other sources. 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. (David 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. The Commission canceled its contract with Prof. English due to budget cuts, but the State Bar Trusts and Estates Section has agreed to fund the research. Prof. English promises the report for this summer.

**Uniform Custodial Trust Act.** The Commission has decided, on a low priority basis, to study the Uniform Custodial Trust Act. 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.

### **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.

**Inverse condemnation.** The Commission has dropped inverse condemnation 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 deferred pending resolution of several cases currently in the courts.

**Adverse possession of personal property.** The Commission has withdrawn its recommendation on adverse possession of personal property 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 a real property joint tenancy.

**Environmental covenants and restrictions.** The Commission has decided, as a low priority matter, to study an issue relating to environmental covenants and restrictions. Public agencies often settle concerns over contaminated property, environmental, and land use matters by requiring that 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.

#### **4. Family Law**

The Family Code was drafted by the Commission and the general topic of family law has been continued on the Commission's agenda for ongoing review.

**Marital agreements made during marriage.** California has enacted the Uniform Premarital Agreements Act as well as 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.

#### **5. Offers of Compromise**

Offers of compromise 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 discovery 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 circulated a tentative recommendation to **simplify the drafting** of the current discovery statutes. See Memorandum 2003-27, scheduled for consideration in September 2003.

The Commission has initiated a project to review **developments in other jurisdictions** to improve discovery. This matter is under active consideration by the Commission. See Memorandum 2003-17, scheduled for consideration in September 2003.

## **7. Special Assessments for Public Improvements**

There are a great many statutes that provide for special assessments for public improvements of different 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. The Commission has decided to prioritize this matter somewhat, subject to current overriding priorities such as financial privacy.

## **8. Rights and Disabilities of Minor and Incompetent Persons**

The Commission has submitted a number of recommendations relating to rights and disabilities of minor and incompetent persons since authorization of the study 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 comprehensively revised. 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. Prof. Mendez has delivered Parts 1 and

2 of the eight part study. The Commission is engaged in active consideration of the matter. See Memorandum 2003-26, scheduled for consideration in September 2003.

#### **10. Alternative Dispute Resolution**

The present California arbitration statute was enacted in 1961 on Commission recommendation. The topic was expanded in 2001 to include mediation and other alternative dispute resolution techniques.

**Contractual arbitration improvements from other jurisdictions.** The Commission has engaged Professor Roger Alford of Pepperdine Law School to prepare a background study on contractual arbitration statutes in other jurisdictions that may be appropriate for importation into California law. Professor Alford delivered a preliminary draft of the study in June 2003. We plan to circulate the study, when finalized, to interested persons for review and comment before commencing active work on it.

#### **11. Administrative Law**

This topic was authorized for Commission study in 1987 both by legislative initiative and at the request of the Commission. Legislation dealing with both administrative adjudication and administrative rulemaking has been enacted.

#### **12. Attorney's Fees**

The Commission requested authority to study attorney's fees in 1988 pursuant to a suggestion of the California Judges Association. The staff did a substantial amount of work on the topic in 1990.

**Award of costs and contractual attorney's fees to prevailing party.** The Commission has commenced work on one aspect of this topic — award of costs and contractual attorney's fees to the prevailing party. The Commission has considered a number of issues and drafts, but has not yet approved a tentative recommendation on the matter. We have put the matter on the back burner due to its complexity and other demands on staff and Commission time.

**Standardization of attorney's fee statutes.** The Commission has decided, on a low priority basis, to study the possibility of standardizing language in attorney's fee statutes. For example, many provisions allowing recovery of a "reasonable attorney's fee," are qualified by somewhat different standards. An effort would be to provide some uniformity in the law, with a comprehensive

statute and uniform definitions. If it proves to be too difficult to conform existing statutes, an effort could be made to create a statutory scheme and definitions that future legislation could incorporate.

### **13. Uniform Unincorporated Nonprofit Association Act**

The study of the Uniform Unincorporated Nonprofit Association Act was authorized in 1993 on request of the Commission. The Commission is actively engaged in this study. See Memorandum 2003-28, scheduled for consideration in September 2003.

### **14. Trial Court Unification**

Trial court unification was assigned by the Legislature in 1993. Constitutional amendments and legislation recommended by the Commission have been enacted.

Two related projects have been assigned by the Legislature. They are discussed below under "Topics Referred by the Legislature".

### **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 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. Common Interest Developments**

CID law was added to the Commission's calendar in 1999 at the request of the Commission. The Commission is actively engaged in this study, and has divided it into three phases:

**Nonjudicial dispute resolution.** The effort here is to provide some simple and expeditious means of avoiding or resolving disputes within common interest communities before they escalate into full-blown litigation. This is a high priority

phase of the project. The Commission has made a recommendation on fair rulemaking and decisionmaking procedures, currently pending as AB 512 (Bates). Comments on an ADR tentative recommendation are set for Commission review in Memorandum 2003-18, scheduled for consideration in September 2003.

**Uniform Common Interest Ownership Act.** The Commission will consider whether the Uniform Common Interest Ownership Act should be adopted in California in place of the Davis-Stirling Common Interest Development Act.

**General revision of common interest development law.** Numerous issues with existing California law have been brought to the Commission's attention. The staff is compiling and cataloging the issues. After the Commission has completed work on the two topics listed above, we plan to address these issues.

#### **17. Legal Malpractice Statutes of Limitation**

The statute of limitations for legal malpractice was added to the Commission's calendar in 1999 at the request of the Commission. The Commission has this matter under active consideration.

#### **18. Coordination of Public Records Statutes**

A study of the laws governing public records 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 databases 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.

While this is an important and topical study, we have not given it priority. The staff will work it into the Commission's agenda as staff and Commission resources permit.

#### **19. Criminal Sentencing**

Review of the criminal sentencing statutes was added to the Commission's calendar in 1999 at the request of the Commission. The Commission has discontinued work on this matter. **The staff believes this topic could be dropped from the Commission's calendar without loss.**

#### **20. Subdivision Map Act and Mitigation Fee Act**

Study of the Subdivision Map Act and Mitigation Fee Act was added to the Commission's calendar in 2001 at the request of the Commission. The objective of

the study is a revision to improve organization, resolve inconsistencies, and clarify and rationalize provisions of these complex statutes.

## **21. Uniform Statute and Rule Construction Act**

Study of the Uniform Statute and Rule Construction Act (1995) was added to the Commission's calendar in 2003 at the request of the Commission. The Commission has indicated its intention to give this study a low priority.

### **TOPICS REFERRED BY THE LEGISLATURE**

Apart from the Commission's calendar of topics, there are statutes and resolutions that authorize or direct the Law Revision Commission to make studies and recommendations on a number of other matters.

#### **Technical and Minor Substantive Defects**

The Commission is authorized to recommend revisions to correct technical and minor substantive defects in the statutes generally, without specific direction by the Legislature. Gov't Code § 8298. The Commission exercises this authority from time to time. An example is Memorandum 2003-24 relating to the authority of a court commissioner, scheduled for consideration in September 2003. Another example is the Commission's recommendation to delete obsolete state agency reporting requirements from the codes, currently pending as SB 111 (Knight).

#### **Statutes Repealed by Implication or Held Unconstitutional**

The Commission is directed by statute to recommend the express repeal of any statute repealed by implication or held by the Supreme Court of California or the United States to be unconstitutional. Gov't Code § 8290. The Commission obeys this directive annually in its Annual Report. However, the Commission does not ordinarily sponsor legislation to effectuate the recommendation, for a number of reasons. The Commission has requested staff research on the subsequent history of statutes held unconstitutional or repealed by implication. The staff is gathering the requested information on a low priority basis.

#### **Enforcement of Money Judgments**

Code of Civil Procedure Section 703.120(b) authorizes the Law Revision Commission to maintain a continuing review of the statutes governing enforcement of judgments. The Commission submits recommendations from

time to time under this authority. Debtor-creditor technical revisions were enacted on Commission recommendation in 2002.

### **Exemptions from Enforcement of Money Judgments**

Code of Civil Procedure Section 703.120(a) requires the Law Revision Commission, decennially, to review the exemptions from execution and recommend any changes in exempt amounts that appear proper. The Commission's second decennial review is complete, and legislation recommended by the Commission is pending. See AB 182 (Harman).

### **Trial Court Unification Procedural Reform**

Government Code Section 70219 directs the Commission to study issues in judicial administration growing out of trial court unification. The Commission is actively engaged in this endeavor, and has obtained enactment of a number of recommendations on these issues.

The major project remaining under Section 70219 is a review of basic court procedures under unification to determine what, if any, changes should be made. This matter is on the Commission's agenda for September 2003. See Memorandum 2003-15 (appellate and writ review under trial court unification), Memorandum 2003-16 (criminal procedure under trial court unification), and Memorandum 2003-20 (jurisdictional limits for small claims and limited civil cases).

### **Trial Court Restructuring**

The Legislature has directed the Commission to recommend revision of obsolete statutes resulting from trial court restructuring (unification, funding, and employment). See Gov't Code § 71674. This work is ongoing. The statutory revisions recommended by the Commission in Part 2 of the project are pending in the Legislature as SB 79 (Sen. Judic. Committee).

### **Financial Privacy**

Assembly Member Papan's ACR 125, enacted as 2002 Cal. Stat. res. ch. 167, directs the Commission to study, report on, and prepare recommended legislation concerning the protection of personal information relating to or arising out of financial transactions. The Commission is actively engaged in this study. The due date for the Commission's report is January 1, 2005.

## SUGGESTED NEW TOPICS

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

### **Probate Code**

The Commission has continuing authority to study probate law, and the Commission's probate projects have been uniformly successful.

#### *Share of Omitted Spouse or Child*

The Commission during 2003 recommended and obtained enactment of clarifying revisions to the pretermitted heir statutes. Prob. Code §§ 21612, 216123. Those statutes provide a statutory share of the decedent's estate to a spouse married after, or a child born after, execution of the decedent's will or trust.

In the process of developing the clarifying revisions, the Commission heard from a representative of the State Trusts and Estates Section that more fundamental reform of these statutes would be desirable. The Commission asked that the staff bring this matter back for its review in connection with consideration of new topics and priorities.

The staff has requested elaboration from that Section, but none has been forthcoming. Absent elaboration, the staff recommends that the Commission not devote further resources to this matter.

### **Real Property**

Several issues in the real property area have been brought to our attention during the past year.

#### *Proof of Service in Unlawful Detainer Cases*

Eliezer Kapuya of Los Angeles writes to suggest that the landlord in an unlawful detainer case should be allowed to serve notices and summons on the tenant by certified mail to the address of the rental premises. He believes due process would be satisfied by that form of service; alternatively, the tenant should be permitted by contract to agree to receive service by certified mail. Exhibit p. 4.

Mr. Kapuya is correct that existing law does not provide for service by certified mail.

Section 1162 does not authorize service of a three-day notice to pay rent or quit by mail delivery alone, certified or otherwise. It provides for service by: personal delivery; leaving a copy with a person of suitable age and discretion at the renter's residence or usual place of business *and* sending a copy through the mail to the tenant's *residence*; or post *and* delivery of a copy to a person there residing, if one can be found, *and* sending a copy through the mail. Strict compliance with the statute is required.

*Liebovich v. Shahrokhkhany*, 56 Cal. App. 4th 516, 65 Cal. Rptr. 2d 457, 459-60 (1997). The court points out that, "The Legislature might have authorized service of a three-day notice by certified mail (compare Civil Code section 1946), but it did not." 65 Cal. Rptr. 2d at 460.

The existing statutory scheme evidences a legislative intent to maximize the likelihood that the tenant will receive actual notice before the landlord takes steps to forcibly evict the tenant. Cf. Code Civ. Proc. § 415.47 (service of summons by certified mail authorized in unlawful detainer proceeding where tenant has given landlord notice of intent not to abandon leased premises). **The staff does not believe the Commission should devote its resources to the proposed study.**

#### *Pre-Notice of Abstract of Judgment*

Curtis C. Prescott, Jr. of Roseville writes to suggest that a property owner be given notice and an opportunity to be heard before a judgment lien is imposed on property to enforce a judgment for past due child support. That "would give the obligor sufficient notice and time to clear any outstanding monies owed prior to placing a cloud on his or her title." Exhibit p. 5. Mr. Prescott cites in support of his suggestion the pre-lien notice procedures applicable in CID assessment collection disputes and in mechanic's lien proceedings.

The pre-lien notice procedures cited by Mr. Prescott are prejudgment procedures that comport with due process of law. Due process is not an issue in the case of a judgment for past due child support, since the judicial process that generates the judgment affords the property owner notice and an opportunity to be heard. **The staff recommends that the Commission not expend resources studying this matter.**

## **Registered Domestic Partners**

The Family Code establishes a system for domestic partner registration. Family Code Section 297 imposes a number of prerequisites for participation in the registration system. One requirement is that the partners be members of the same sex or, if members of the opposite sex, that one or both partners is over the age of 62 and one or both meet eligibility requirements for Social Security old age insurance benefits. Fam. Code § 297(b)(6).

A. L. Tuter writes to complain that an opposite sex relationship is not given the same treatment as a same sex relationship. “I would like to request that this inequity be reviewed for possible revision to make the Family Code fair to all and not just a select group.” Exhibit p. 7.

Domestic partner registration was developed for same sex partners because marriage is not available to same sex partners. Domestic partner registration is not necessary for opposite sex partners because marriage is available to them.

The foregoing observation is undermined, however, by the fact that domestic partner registration is available to a limited class of opposite sex partners. The over 62 limitation was enacted in recognition of the fact that living together arrangements are not uncommon in that class of opposite sex partners due to the Social Security “marriage penalty”.

**The staff recommends that the Commission not undertake the proposed study.** Domestic partnership registration is relatively new, and there is not yet a substantial body of experience under it. For example, there is little information concerning its costs, benefits, problems, etc. When the Legislature enacted the domestic partner registration system, it made a basic policy decision to restrict its application. The staff believes it is premature to reconsider that policy.

## **Legal Services Contracts**

Civil Code Section 1632(a)(5) requires that a lawyer who negotiates a legal services contract in the Spanish language deliver to the client, before execution of the contract, a Spanish language translation of the contract. Richard L. Haeussler writes to suggest that this provision be expanded to include all languages, and that this revision be coordinated with the rules of conduct governing lawyers, especially in areas where monolingual clients are involved. Exhibit p. 8.

Legislation pending this session would expand the scope of Civil Code Section 1632(a)(5). See AB 309 (Chu). As introduced the legislation would have

extended Section 1632 to apply to any language other than English. It has since been amended to apply to Spanish, Chinese, Tagalog, Vietnamese, and Korean.

The Legislature is actively engaged on this matter. **There is no need for a Commission study of it.**

### **Covenant Not to Compete**

Shasta T. Tayam writes to complain of California law, which recognizes a covenant not to compete that is potentially unlimited in duration, if entered into in connection with the sale of the goodwill of a business. “Please revise how 16601 is written, as all other 49 states state that the noncompetition agreements must be reasonable in time, distance and scope to be enforced, and must have these three components written to be enforced, and also that there must be consideration given (i.e., extra money paid and so stated in the sales contract of how much money is for the goodwill and noncompetition agreement).” Exhibit p. 9.

In California a contract that prevents a person from engaging in a profession, trade, or business is void, with some exceptions. Bus. & Prof. Code § 16600. The specific exception relevant here is Business and Professions Code Section 16601, which permits a person who sells the goodwill of a business to agree with the buyer not to carry on the same business in the area so long as the buyer carries on that business.

Covenants not to compete have been the subject of a considerable amount of attention from legal writers and courts. The number of texts, treatises and judicial opinions that have been written in the field constitutes a “sea-vast and vacillating, overlapping and bewildering” and the sheer volume can “drown the researcher.” *Arthur Murray Dance Studios of Cleveland v. Witman*, 62 Ohio L.Abs. 17 [105 N.E.2d 685 at p. 687]; also see Blake, *Employee Covenants Not to Compete*, 73 Harv.L.Rev., 625.

A few generalizations, however, can be stated. These covenants generally have their genesis in either an employer-employee relationship, or in the sale of the “goodwill” of a business. Covenants arising out of the sale of a business are more liberally enforced than those arising out of the employer-employee relationship. Covenants which are designed simply to prevent competition per se are unenforceable. Enforceability appears to rest on a notion, often unarticulated, of preventing “unfair” competition.

In the case of the sale of the goodwill of a business it is “unfair” for the seller to engage in competition which diminishes the value

of the asset he sold. In order to protect the buyer from that type of “unfair” competition, a covenant not to compete will be enforced to the extent that it is reasonable and necessary in terms of time, activity and territory to protect the buyer’s interest. (*United States v. Addystone Pipe & Steel Co.*, 85 F. 271, 282-283, affd. 175 U.S. 211 [44 L.Ed. 136, 20 S.Ct. 96].)

In brief at common law a restraint against competition was valid to the extent it reasonably provided for the protection of a valid interest of the covenantee. (Corbin on Contracts, 1387 at pp. 55-56; 1393 at p. 87; Rest., Contracts, 516, subd. (a).) Business and Professions Code section 16601 is a codification of this rule of “reasonableness” in connection with the sale of a business. (*City Carpet, etc. Works v. Jones*, 102 Cal. 506 [36 P. 841].)

That section permits a covenant not to engage in a business “similar” to the one sold, in the area where the business sold has been carried on, so long as the buyer carries on a like business therein.

*Monogram Industries v. SAR Industries*, 64 Cal. App. 3d 692, 697-98, 134 Cal. Rptr. 714 (1976).

A cursory legal analysis suggests that it is unclear whether Business and Professions Code Section 16601 in fact would be construed to validate a covenant not to compete that is unlimited in duration, in connection with the sale of the goodwill of a business. The literal language of the statute is that the seller may agree with the buyer to refrain from carrying on a similar business within a specified geographic area “so long as the buyer, or any person deriving title to the goodwill or ownership interest from the buyer, carries on a like business therein.” At least one court has observed that “the Legislature has allowed business sellers to promise noncompetition to their buyers without time limitation ...” *Loral Corp. v. Moyes*, 174 Cal. App. 3d 268, 279, 219 Cal. Rptr. 836 (1985) (dictum).

The Senate Judiciary Committee staff analyzed Section 16601 in 2002 in connection with a bill, sponsored by the State Bar Business Law Section, that extended the provision to partnerships and limited liability companies. The committee analysis makes the following observation:

While already permitted by statute, noncompetition clauses in sale agreements involving small businesses, e.g., where the business is one generated by the owner’s trade or profession, have been guarded by the courts, to prevent the owner’s loss of livelihood for instance. The sponsors state that generally, the courts

have validated these clauses in cases where the duration of the noncompetition clause is no more than one or two years, but certainly no longer than five years. Also, besides the limitations on duration, the courts have looked at the geographic boundaries involved in the context of the particular business, as well as the type of activity covered by the noncompetition covenant. These limitations, while not in the statute, have evolved through litigation over the enforceability of these noncompetition covenants.

Senate Judiciary Committee, *Analysis of AB 601 (Leach)* (June 18, 2002).

The experience on limitation of enforceability reported by the State Bar Business Law Section evidently occurs at the trial level. It is not reflected in reported appellate decisions. Just the opposite. In a case arising under the predecessor statute to Section 16601, the Court of Appeal upheld a 20 year covenant not to compete. See *Akers v. Rappe*, 30 Cal. App. 290 (1916); former Civ. Code § 1674 (“One who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business within a specified county, city or a portion thereof as long as the buyer or any person deriving title to the goodwill from him carries on a like business therein.”).

Most noncompete covenants are limited in duration by their own terms. We understand that modern covenants rarely extend beyond five years and most sellers today balk at anything beyond three. But that doesn’t help a person in the position of our correspondent, Shasta T. Tayam, whose lawyer neglected to include a termination date (although there might be a remedy against the lawyer in such a case).

The staff agrees that the California statute should be clear on this point. However, the staff believes that there are others who may be in a better position than the Commission to address it. **We would forward the correspondence, together with our analysis, to the State Bar Business Law Section with the suggestion that the Section may want to review the matter.**

### **Uniform Money Services Act**

Last year SCR 81 (Machado) would have directed the Commission to study and make recommendations to the Legislature concerning the advisability of California consolidating and revising its licensing laws governing money transmission, sales and issuance of payment instruments, sales and issuance of traveler’s checks, check cashing, and currency exchange, into a single law similar to the Uniform Money Services Act. The study would have been made with the

assistance of the Department of Corporations and the Department of Financial Institutions, and with technical assistance from the regulated industry. The measure moved quickly through the Legislature but was bottled up in its last committee — Assembly Appropriations — ostensibly due to its impact on Commission resources.

We have this year received a letter from the office of the California Corporations Commissioner suggesting that the Commission make the study under its statutory directive to receive and consider proposed changes in the law recommended by the National Conference of Commissioners on Uniform State Laws. See Exhibit p. 11.

The statutory directive to the Commission to receive and consider uniform acts is not self-executing. It is subject to legislative approval of the calendar of topics selected by the Commission for study. Gov't Code §§ 8293, 8289(b). The Commission could not undertake a study of the Uniform Money Services Act without express legislative sanction.

The staff believes this would be a worthwhile and appropriate topic for Commission study. However, we are concerned that the Commission is overwhelmed now and in the foreseeable future with other major topics. Adding that authority to our calendar now might send the wrong signal to interested persons. **The staff proposes to monitor the situation and bring this back to the Commission at some appropriate time in the future if the matter has not been addressed by then.**

### **Nonprofit Corporation Law**

We have received a communication from Laura Golino de Lovato, Executive Director of the Ukiah Senior Center. She writes to suggest a review of the nonprofit corporation laws relating to membership, members' rights, revocation of members' rights, etc. She is specifically concerned about the inability of corporate directors to effectively direct the corporation when members, who have no fiduciary duties, have voting rights to control major corporate decisions. "Whatever good might have been intended in allowing members to vote for directors and to changes to the bylaws and articles, the reality is that today's non profit organization cannot operate effectively when its members are in control." Exhibit p. 18.

The Commission is currently working on two related projects — the nonprofit unincorporated association law, and the common interest development law.

(CIDs such as condominiums and planned communities are ordinarily organized as nonprofit mutual benefit corporations.)

To date, most of the input we have received concerning CIDs would be the opposite of Ms. de Lovato's problem — homeowners concerned about abuse of power by an entrenched board of directors. Of course, their situation is somewhat different from the one she is concerned about because the homeowner members of CID corporations are not casual members, but actually live under association governance, pay substantial monthly assessments, and have perhaps their major investment (their homes) tied up in it.

With respect to nonprofit unincorporated association law, we are just beginning the phase of the study relating to governance issues. See Memorandum 2003-29, scheduled for consideration in September 2003.

**The staff would not get into this matter.** We would forward Ms. de Lovato's concern to Professor Michael Hone of USF Law School, who is the drafter of the nonprofit mutual benefit corporation law.

### **Medical Malpractice Damages**

Civil Code Section 3333.2 limits medical malpractice damages to \$250,000. That limitation was enacted in 1975. In today's dollars, the damages cap would exceed \$875,000, but the statute has never been adjusted. Judge Rolf M. Treu of the Los Angeles County Superior Court writes to suggest that such an adjustment be considered. Exhibit p. 20.

The medical malpractice limitation was a hard fought political compromise. Efforts to change the limitation have been made periodically but have never gotten very far in the Legislature. The California approach is viewed as a model by proponents of a medical malpractice cap at the federal level and there is current debate in Congress concerning it. **The staff does not believe this is an appropriate matter for Commission study.**

### **Gender Neutrality**

Professor William Slomanson has written to suggest that the state codes be rewritten in a form that is gender neutral — i.e., avoid use of "he" or "him". He argues that masculine gender language is discriminatory and should be eradicated. See Exhibit p. 21.

It is the Commission's policy when drafting legislation, and the state's policy as well, to write the legislation in a gender neutral fashion and, if the legislation

affects an existing statute that includes masculine gender language, to revise that language concurrently. However, the state has adopted a policy of achieving gender neutrality incrementally, rather than by reviewing the entire body of statute law.

The same suggestion as the one made by Prof. Slomanson is brought to the Commission periodically. The Commission has always taken the position that, while it agrees with the principle of gender neutrality in statutory drafting, its limited resources would be better spent on more substantive projects.

A review of the entire body of statutes would be a massive undertaking. More than 2000 statutes use the term “him”, more than 4500 use the term “he”, and more than 6500 use the term “his”. Moreover, it would not be a simple matter to replace those terms with gender neutral language. It is likely that many of the statutes are obsolete and should be repealed in whole or in part rather than corrected. Others may include policies that the Legislature today would be reluctant to endorse by reenactment with gender neutral language. **The staff believes it would be a mistake for the Commission to embark on such a project.**

#### SUGGESTED PRIORITIES

The Commission needs to determine its priorities for work during the remainder of 2003 and for 2004. Completion of prospective recommendations for the next 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 projects for which a consultant has delivered a background study — it is desirable to take up the matter before the research goes stale and while the consultant is still 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 2004**

Topics under active consideration by the Commission on which work potentially could be completed for the 2004 legislative session include the following:

## **Common Interest Development Law**

Alternative Dispute Resolution in Common Interest Developments

## **Evidence Code**

Waiver of Privilege by Disclosure

Conformity with Federal Rules: Hearsay and Its Exceptions

## **Discovery**

Reorganization of Discovery Statute

## **Trial Court Restructuring**

Criminal Procedure Under Trial Court Unification

Jurisdictional Limits of Small Claims Cases and Limited Civil Cases

Appellate and Writ Review Under Trial Court Unification

Authority of Court Commissioners

## **Statute of Limitations for Legal Malpractice**

## **Uniform Unincorporated Nonprofit Association Act**

## **Legislature's Priorities**

The Legislature has indicated several priority matters for the Commission:

**Protection of Personal Information.** AB 125 (Papan), 2002 Cal. Stat. res. ch. 167, requires the Commission to study, report on, and prepare recommended legislation by January 1, 2005, concerning the protection of personal information relating to, or arising out of, financial transactions. The Commission is actively engaged in this study. There is a real possibility that action in the Legislature, at the ballot, or in Congress, could fundamentally affect the study. Meanwhile, we must proceed with the legislative deadline in mind.

**Mechanics lien law.** The Assembly Judiciary Committee requested that the Commission give priority to the study of mechanics lien law. The Commission has issued its recommendation on the double liability issue, and also made a report on *Mechanic's Lien Law Reform* generally. 31 Cal. L. Revision Comm'n Reports 343 (2001). The report concludes that a thorough review and revision of the mechanic's lien law and related provisions, including parts of the Contractors' State License Law, should be undertaken in order to modernize, simplify, and clarify the law, making it more user-friendly, efficient, and effective for all stakeholders. The Commission has not actually done the work on the general revision. The staff has prepared some background material.

The Commission's report states that work on this project will continue "as Commission resources permit." The Commission decided last year at this time to give the matter a rest while it tends to other priority business and observes the Legislature's reaction to the double payment recommendation.

This posture has not gone unnoted in the Legislature. In its analysis of another mechanic's lien bill this session, the Assembly Judiciary Committee staff observes:

The California Law Revision Commission Was Previously Requested to Study and Make Recommendations on This Issue, But Has Not Yet Done So. The subject of this bill first came before this Committee in 1999 in the form of AB 171 (Margett). Rather than take action on this and other proposals to repeatedly amend the mechanics' lien laws, the Committee requested via letter dated June 28, 1999, that the CLRC provide the Legislature with a comprehensive review of mechanics' lien laws. Pursuant to that request, the CLRC agreed to conduct this review on a priority basis. (See California Law Revision Commission, Staff Memorandum, Study H-820 (November 16, 1999).) In the interim, the CLRC staff person with primary responsibility for the mechanics' lien study retired. The CLRC did complete its work on one issue in the mechanics' lien review, the issue of homeowner double payment problems. This issue is the subject of AB 286 (Dutra), which is currently pending in the Senate. The CLRC has since taken on new projects, such as a study of financial privacy issues, which it has prioritized over the mechanics' lien review. As a result, the issue presented by this bill has not yet been reviewed. Moreover, the CLRC wishes that the Committee not defer its consideration of this issue pending the outcome of its review.

We have in hand a background study prepared by our consultant, Gordon Hunt, suggesting a number of improvements of the mechanic's lien law. We have a substantial amount of background staff work in place. We have the Legislature still looking to us for reform proposals. And we have a Commission report indicating that revision is called for. The staff thinks that, despite diminishing Commission resources and other large priority projects, **it's time to move forward on the general mechanic's lien study.** We would try to work it into the agenda as we are able.

**Obsolete provisions resulting from trial court restructuring.** The Legislature directed that the Commission deliver a recommendation on statutes made obsolete by trial court structuring by January 1, 2002. Gov't Code § 71674. The

Commission delivered its recommendation more or less on schedule, but the recommendation was necessarily incomplete. The deadline has since been removed from the statute and the Commission has submitted followup legislation. See SB 79 (Sen. Judic. Comm.). One problem with completing work in this area is that some of the underlying policy issues are still unresolved among stakeholders, for example the question of court reporter compensation and the issue of court v. county collection of statutory fees and fines. **The staff would discontinue priority status for this study.** We would basically leave it to Judicial Council or other stakeholders to complete the cleanup as substantive issues are resolved, and would submit our own cleanup proposals from time to time as issues come to the fore.

**Trial court unification procedural reform.** Although the Legislature has not directed the Commission to give trial court unification procedural reform a priority, there is perhaps more urgency to this than other topics on the Commission's agenda. We have spent a fair amount of time on all aspects of procedural reform — appellate and writ review, criminal procedure, and jurisdictional limits in civil cases. We are awaiting the outcome of budget discussions, and the results of a Judicial Council survey of perceptions of impropriety. **The staff recommends that we continue to give these matters a priority** and pursue them to completion as soon as the budget and survey processes are done.

### **Consultant Studies**

To the extent delivery of a background study by a consultant affects Commission priorities, it is useful to review studies recently delivered and to be delivered.

**Discovery Improvements from Other Jurisdictions.** The Commission's consultant is Professor Gregory Weber of McGeorge Law School. Prof. Weber's background study for the Commission is published as Weber, *Potential Innovations in Civil Discovery: Lessons for California from the State and Federal Courts*, 32 McGeorge L. Rev. 1051 (2001). The Commission has commenced work on this project. See Memorandum 2003-17, scheduled for consideration at the September 2003 Commission meeting.

**Comparison of California Evidence Code with Federal Rules of Evidence.** The Commission's consultant is Professor Miguel Mendez of Stanford Law School. He has delivered the first two parts of his study comparing the California

Evidence Code with the Federal Rules of Evidence (and, where significant, the revised Uniform Rules of Evidence). The parts delivered to date are published as Mendez, *Hearsay and Its Exceptions: Conforming the Evidence Code to the Federal Rules*, 37 U.S.F. L. Rev. 351 (2003), and Mendez, *Expert Testimony and the Opinion Rule: Conforming the Evidence Code to the Federal Rules*, 37 U.S.F. L. Rev. 411 (2003). Prof. Mendez expects to deliver the remaining six parts over the course of the next year and a half. The Commission has commenced work on this project. See Memorandum 2003-26, scheduled for consideration at the September 2003 Commission meeting.

**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 State Bar Trusts and Estates Section has agreed to cover the consultant's compensation for this study. Prof. English currently anticipates completion of the study by the end of summer.

When the study is delivered, the staff would circulate it to interested persons and organizations (including the State Bar Trusts and Estates Section and the California Bankers Association) for review and comment before scheduling it for Commission consideration.

**Arbitration improvements from other jurisdictions.** The Commission has contracted with Professor Roger Alford of Pepperdine Law School for a background study on contractual arbitration provisions from other jurisdictions that may be appropriate for adoption in California. Prof. Alford has delivered a preliminary draft to the staff, and expects to deliver his final report this summer. The staff will make proposals for proceeding on this study, based on the tenor of the report, when we have the final draft in hand.

**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. Mr. Gould has completed a substantial amount of work, including review of statutes of other jurisdictions, and has delivered an outline of the study. He has also circulated a detailed questionnaire to obtain empirical data from persons active in the field. The response to the questionnaire has been significant, and Mr. Gould is currently analyzing and compiling the information obtained. He has not set a completion date for his work, and the staff is not pressuring him, given the other demands on the Commission's time. The funds

available for the project have been exhausted, and no further funds will be made available.

**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 has been postponed pending key litigation in both state and federal courts on the issue. The contract has expired and funding has lapsed, 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 2004 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 try to give a reasonably high priority to these matters, so that, once activated, they do not become stale. However, the Commission's workload and resources are such that it is unlikely that steady progress can be made on all topics.

**Common interest development law.** This is a very large project. The Commission has given priority to nonjudicial dispute resolution procedures under CID law. Next in the study we will review the Uniform Common Interest Ownership Act, and following that will analyze the hundreds of problems that have been identified with the Davis-Stirling Act.

**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.

**Uniform Unincorporated Nonprofit Association Act.** The Commission has made substantial progress on this topic. We have issued a tentative recommendation on liability, property, and procedural issues. We may be able to conclude this project with work on governance issues during the coming year.

## CONCLUSION

The Commission's agenda continues to be as full as it has ever been, or fuller. 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, and beyond.

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) other matters that have been previously activated but not completed. Projects falling within each of these categories are identified above.

The staff recommends that no new topics be added to the Commission's calendar, and recommends no new priorities for other topics already calendared. (The one exception is to resume active work on mechanic's lien law reform, if possible.) If we have occasion to run a resolution on the Commission's calendar of topics, we would drop the criminal sentencing topic.

Next year at this time we would reassess whether we are in a position to schedule startup of any of the other backed-up topics such as covenants that run with the land, standardization of attorney's fee statutes, the Uniform Custodial Trust Act, and the Subdivision Map Act.

Respectfully submitted,

Nathaniel Sterling  
Executive Secretary

Exhibit

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## 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 SCR 4 (Morrow), enacted as 2003 Cal. Stat. res. ch. xxx.

**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), 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, and related matters.

**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 restriction on land use or relating to land, powers of termination, 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, 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. Alternative dispute resolution.** Whether the law relating to arbitration, mediation, and other alternative dispute resolution techniques 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 litigant 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. Common interest developments.** Whether the law governing common interest housing development 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.

**17. 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.

**18. 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.

**19. Criminal sentencing.** Whether the law governing criminal sentences for enhancements relating to weapons or injuries should be revised to simplify and clarify the law and eliminate unnecessary or obsolete provisions.

**20. Subdivision Map Act and Mitigation Fee Act.** Whether the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code), and the Mitigation Fee Act (Chapter 5 (commencing with Section 66000), Chapter 6 (commencing with Section 66010), Chapter 7 (commencing with Section 66012), Chapter 8 (commencing with Section 66016), and Chapter 9 (commencing with Section 66020) of Division 1 of Title 7 of the Government Code) should be revised to improve their organization, resolve inconsistencies, clarify and rationalize provisions, and related matters.

**21. Uniform Statute and Rule Construction Act.** Whether the Uniform Statute and Rule Construction Act (1995) should be adopted in California in whole or part, and related matters.

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April 4, 2003

California Law Revision Commission  
4000 Middlefield Road Room D-1  
Palo Alto, CA 91303-4739

Law Revision Commission  
RECEIVED

APR 7 2003

File: \_\_\_\_\_

Dear Chairman,

I believe the time has arrived to revise the **Law in Landlord-Tenant** cases.

The Landlord should be able to show 'proof of service' by sending to tenant the notice or summons by certified mail to the address of rented premises. I believe due process it met, or by contract the tenant should agree to receive the summons by certified mail if you need an explanation, kindly contact me.

Thanks for your time.

Regards,



Eliezer Kapuya, Esq  
Attorney At Law

703 Creekside Court  
Roseville, CA 95678  
(916) 541-5472

May 19, 2003

Law Revision Commission  
RECEIVED

California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94353-4739

MAY 21 2003

File: \_\_\_\_\_

Re: Proposal (Pre-Notice of Abstract of Judgment)

To Whom It May Concern:

I find it odd that a pre-notice of recording an Abstract of Money or Support Judgment is not required by statute. To be more specific, section 697.310 of the California Code of Civil Procedure does not allow pre-notification.

In doing my due diligence on the matter, I refer you to section 1367.1 of the Civil Code which states a pre-lien notice must be given to owners of real property via certified mail 30 days prior to the recording of a lien (homeowner association).

Likewise, section 3097 allows a claimant to enforce a lien only if he or she has given a preliminary 20-day notice (mechanics' lien) to the homeowner. Unless, you can point me to another code section that requires a pre-notice must be given prior to recording of a lien in a Support Judgment matter, I propose the following language be adopted:

**[Written Notice]** The local child support agency ("hereinafter LCSA") must provide written notice to the obligor. This only applies if the obligor owns real property. At least 90 days before directing a lien be recorded, the LCSA must provide a written notice to the obligor at the obligor's last known address (via certified mail) indicating that:

- (3) the LCSA intends to enter a lien on any real property deed of trust issued in the obligor's name;
- (4) the obligor must make a written request for a hearing within 30 days of the date of the notice to contest the action. If the obligor makes a written request for hearing within 30 days of the date of notice, a court hearing must be held. At least 14 days before the hearing, the LCSA must serve the obligor by certified mail at the obligor's last known address with a notice including the hearing time and place;

The above would give the obligor sufficient notice and time to clear any outstanding monies owed prior to placing a cloud on his or her title. It is my hope that your organization considers this request.

I feel a pre-notice should be given in all cases where a lien may be placed on real property. As a taxpayer, I think this is only right. Do you not agree?

If you have any questions, please feel free to contact the undersigned at the above address.

Thank you for your time and consideration on this matter.

Very Truly Yours,

**CURTIS C. PRESCOTT JR.**

Curtis C. Prescott, Jr.

**From:** "alt323" <alt323@pacbell.net>  
**To:** <commission@clrc.ca.gov>  
**Subject:** Revision of Family Code Section 297  
**Date:** Thu, 30 Jan 2003 16:05:15 -0800  
**X-Priority:** 3

I am writing to you in regards to Family Code section 297. Section 297 refers to the definition of a domestic partnership. The current definition covers homosexual relationships but excludes heterosexual relationships in which one or more of the participants are under age 62. I am curious as to why heterosexual relationships are not given the same weight and age requirements as a homosexual relationship within the definition of the domestic partnership. I would like to request that this inequity be reviewed for possible revision to make the Family Code fair to all and not just a select group.

Thank you for your time.  
A.L. Tuter

**From:** Richard L. Haeussler <haeu@ix.netcom.com>  
**To:** commission@clrc.ca.gov <commission@clrc.ca.gov>  
**Cc:** General Counsel Judicial Council of Calif <feedback@jud.ca.gov>;  
Diane Nunn Judicial Council <CFCC@jud.ca.gov>  
**Date:** Saturday, January 11, 2003 8:48 AM  
**Subject:** Judicial Council Project on Limited Scope of Jurisdiction in Divorce  
Cases

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The Judicial Council in conjunction with the State Bar is making a proposal in the area of Family Law that would allow an attorney to enter into a LIMITED SCOPE OF APPEARANCE AGREEMENT WITH THE CLIENT and is requesting comments on the rule and forms.

In making a comment, I noted that nothing was pointed to the monolingual client, and then remembered Civil Code Section 1632(a)(5) about the Spanish Language. I have suggested that the Judicial Council establish a rule that if the representation agreement is in other than English that this all be explained to the client [in writing] in the client's native language. I believe that the provisions of Civil Code Sect 1632(a)(5) should be expanded to include all of the languages and Request that the Law Revision Commission and the Judicial Council coordinate this revision of the the rules of conduct governing lawyers especially in the areas where monolingual clients are involved.

**RICHARD HAEUSSLER**

P. O. Box 10757

Newport Beach, CA 92585-5007

714-641-9110; FAX 714-641-5016

[haeu@ix.netcom.com](mailto:haeu@ix.netcom.com)

1/11/03

Date: Sun, 26 Jan 2003 12:13:21 -0700 (MST)  
To: feedback@clrc.ca.gov  
From: chihealing@aol.com  
Subject: 16601 Sell of Business goodwill and non competition agreement

This is the Feedback form submitted by  
Shasta T. Tayam on Sunday, January 26, 2003 at 12:13:21

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Message: I am writing to you regarding the poorly written statute of Business Code 16601 that states that a person can sell the goodwill of their business .. and can sell an agreement not to compete within a specific city, or county... for so long as the person buying the business is in business or whoever they heir it to.

My problem with this code is that California is supposed to be the most reasonable in not accepting non competition and ensuring people's right to work. But because this statute does not specify that **TI BE ENFORCED THERE SHOULD BE A REASONABLE AMOUNT OF DISTANCE, TIME AND SCOPE SPECIFIED** in the non competition agreement (which is what case law *Monoram Indus. v. Sar Indus. Inc (1976) 64 CA3d 692, 698, 134 Cr 714, 718*) says.

The problem is that when a contract of the sale of the goodwill of a business containing a covenant not to compete is **INDETERMINATE AS TO THE PERIOD OF ITS OPERATION OR IS WITHOUT TIME LIMIT, IT IS VALID AS TO THE TIME COVERED BY LAW.** (*Gregory v. Spieker, Mahlstedt v. Fugit, Loral Corp. V. Moyes*).

This is a big problem in the writing of this law because if someone does not know that if they **FORGET TO PUT A TIME LIMIT** (as my lawyer did and admits to doing) then the business seller is locked out of working for a very **UNREASONABLE AMOUNT OF TIME (SO LONG AS THE PERSON HOLDING TITLE TO THE GOODWILL OR WHOEVER THEY HEIR IT TO IS IN BUSINESS)**. Also, the law should state that when selling the non competition agreement the seller must be paid **FULL MARKET VALUE FOR THE GOODWILL** or the non competition agreement can not be enforced or sold, as the buyer did not pay for the goodwill ( *Hill Medical Corp. V. Wycoff (2001) 86 Ca. App. 4th 895, 103 Ca. Rptr. 2d 779*).

This statute 16601 **MUST BE REWRITTEN AS I HAVE STATED, AS THE STATE BLUE PENCIL'S IN THE "FOR SO LONG AS THE PERSON IS IN BUSINESS OR WHOEVER THEY HEIR IT TO" TIME LIMIT** even if it is not explicitly stated and assumes that the seller and buyer knew the law and that the seller was paid extra money to account for it, and does not take into account the rare occurrence where an uneducated lawyer (like mine) **FORGETS TO PUT A TIME LIMIT** and does not know the law as it is now stated, which means that he is essentially selling your business for who knows how long, you are really screwed.

PLEASE REVISE HOW 16601 IS WRITTEN, AS ALL OTHER 49 STATES STATE THAT THE NON COMPETITION AGREEMENTS MUST BE REASONABLE IN TIME, DISTANCE AND SCOPE TO BE ENFORCED AND MUST HAVE THESE THREE COMPONENTS WRITTEN TO BE ENFORCED, AND ALSO THAT THERE MUST BE CONSIDERATION GIVEN (I.E.EXTRA MONEY PAID AND SO STATED IN THE SELLS CONTRACT OF HOW MUCH MONEY IS THE FOR THE GOODWILL AND NON COMPETITION AGREEMENT).

Please write me back about this, as I sold my acupuncture business two years ago for only \$15k, and the market value was mininum 70K plus, and I was not paid anything extra for the non competition agreement and my lawyer forgot to put a time limit on in, thinking these were only upheld for a reasonable amount of time (i.e. 1 1/2 to 2 years). In my contract my lawyer did not deliniate what part of the business was being sold for how much, it was all in one lump sum, so I never even knew what goodwill meant or what the law about that was.

Please e-mail me back about this.

Sincerely,  
S. Tayam L.Ac.

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**DEPARTMENT OF CORPORATIONS**  
*California's Investment and Financing Authority***DEMETRIOS A. BOUTRIS**  
California Corporations Commissioner  
Sacramento, CaliforniaIN REPLY REFER TO:  
FILE NO: OP 17/00Law Revision Commission  
RECEIVED

FEB 18 2003

February 14, 2003

File: \_\_\_\_\_

David Huebner, Chairperson  
California Law Revision Commission  
4000 Middle Field Road, Room D-1  
Palo Alto, CA 94353-4735

RE: Uniform Money Services Act (As Adopted 2000)

Dear Mr. Huebner:

Enclosed is a copy of the Uniform Money Services Act (as adopted 2000), approved by the National Conference of Commissioners on Uniform State Laws in August 2000.

Pursuant to Government Code Section 8289(b), a copy of the Uniform Money Services Act is being forwarded to the California Law Revision Commission for consideration, study and recommendations, with respect to any necessary changes in California's money services laws. To help guide the Commission, enclosed is a copy of Senate Concurrent Resolution No. 81 from 2002. Although SCR No. 81 did not pass due to current budget constraints, we are hopeful the California Law Revision Commission can achieve the resolution's goals, to the extent funding becomes available.

- ♦ Securities ♦ Franchises ♦ Off-Exchange Commodities ♦ Investment and Financial Services ♦
- ♦ Independent Escrows ♦ Consumer and Commercial Finance Lending ♦ Residential Mortgage Lending ♦

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1390 MARKET STREET  
(415) 557-3787LOS ANGELES 90013-2344  
320 WEST 4<sup>TH</sup> STREET  
(213) 576-7500SAN DIEGO 92101-3697  
1350 FRONT STREET  
(619) 525-4233

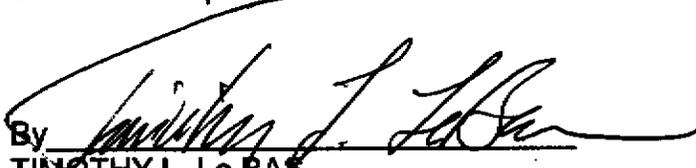
David Huebner  
February 14, 2003  
Page 2 of 2

Please contact me at the telephone number listed below should you need additional information. Also, please add the undersigned as a contact (and to any mailing list) when the California Law Revision Commission begins its study of the Uniform Money Services Act, as proposed by SCR 81.

Thank you.

Very truly yours,

DEMETRIOS A. BOUTRIS  
California Corporations Commissioner

By 

TIMOTHY L. LeBAS  
Deputy Commissioner and General Counsel  
Office of Law and Legislation  
(916) 322-3553

TLL:kc

AMENDED IN SENATE MAY 16, 2002

**Senate Concurrent Resolution**

**No. 81**

**Introduced by Senator Machado**

April 22, 2002

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Senate Concurrent Resolution No. 81—Relative to the Uniform Money Services Act.

LEGISLATIVE COUNSEL'S DIGEST

SCR 81, as amended, Machado. Uniform Money Services Act.

This measure would direct the California Law Revision Commission, with the assistance of the Department of Corporations and the Department of Financial Institutions, to conduct a study and make a recommendation to the Legislature by December 31, ~~2004~~ 2005, regarding the advisability of California consolidating and revising licensing laws relating to money transmission, sales and issuance of payment instruments, sales and issuance of traveler's checks, check cashing, and currency exchange into a single law similar to the Uniform Money Services Act proposed by the National Conference of Commissioners on Uniform State Laws.

Fiscal committee: yes.

1     WHEREAS, Under current law, businesses providing various  
2 nonbank money services are regulated under at least four different  
3 licensing laws that do not encompass the entire range of nonbank  
4 money services businesses available in the expanding  
5 marketplace; and

6     WHEREAS, The four licensing laws for nonbank money  
7 services, including the laws regulating transmitters of money  
8 abroad (Chapter 14 (commencing with Section 1800) of Division

1 1 of the Financial Code), the Travelers Checks Act (Chapter 14A  
2 (commencing with Section 1850) of Division 1 of the Financial  
3 Code), the Check Sellers, Bill Payers and Proraters Law (Division  
4 3 (commencing with Section 12000) of the Financial Code), and  
5 the Payment Instruments Law (Division 16 (commencing with  
6 Section 33000) of the Financial Code), are administered by two  
7 separate regulatory agencies, the Department of Corporations and  
8 the Department of Financial Institutions, in addition, check  
9 cashers are licensed and regulated (Title 1.6F (commencing with  
10 Section 1789.30 of Part 4 of Division 3 of the Civil Code) and  
11 currency exchangers are also regulated (Chapter 21.5  
12 (commencing with Section 22515) of Division 8 of the Business  
13 and Professions Code); and

14 WHEREAS, The fundamental activities of these nonbank  
15 money services businesses all involve fiduciary responsibility  
16 over the receipt of money on behalf of individuals and businesses;  
17 and

18 WHEREAS, The different licensing and regulatory laws do not  
19 have consistent licensing and regulatory approaches, including  
20 safety and soundness, reporting, examination, and enforcement  
21 provisions; and

22 WHEREAS, These licensing and regulatory laws may be  
23 viewed as antiquated in their jurisdictional boundaries, both in  
24 terms of activities regulated and in terms of the licensing of  
25 physical locations in the State of California, and the laws have gaps  
26 in regulatory scope; and

27 WHEREAS, In recent years new nonbank businesses have  
28 emerged using new technologies such as stored value and the  
29 Internet to perform money services transactions that may not come  
30 within the definitions under the current nonbank money services  
31 laws, including allowing an individual to send money, paying bills  
32 on behalf of an individual, or facilitating electronic purchases; and

33 WHEREAS, The lack of regulatory oversight over new high  
34 technology funds transfer businesses may pose a risk of loss to  
35 persons who entrust their money to businesses not falling within  
36 the regulatory jurisdiction of the existing licensing laws; and

37 WHEREAS, Businesses subject to the jurisdiction of the current  
38 licensing and regulatory laws are disadvantaged by new  
39 businesses providing nonbank money services that may fall  
40 outside the jurisdiction of the existing laws; and

1 WHEREAS, Many states have adopted licensing and regulatory  
2 laws that consolidate money transmission (including Internet  
3 funds transmission) and sales and issuance of payment instruments  
4 (including stored value products) in one statute, thereby allowing  
5 the regulatory agency to issue one license for diverse functions;  
6 and

7 WHEREAS, The Money Transmitter Regulators Association  
8 has approved and recommended a model legislative outline that  
9 has formed the basis for legislation enacted in several states and  
10 that provides a template for the essential elements to be included  
11 in a unitary licensing law; and

12 WHEREAS, The National Conference of Commissioners on  
13 Uniform State Laws has also approved and recommended for  
14 enactment in all states the Uniform Money Services Act; and

15 WHEREAS, The Uniform Money Services Act sets forth a  
16 comprehensive regulatory scheme for nonbank entities engaging  
17 in the following types of financial activities: money transmission,  
18 such as wire transfers, that include Internet payment mechanisms,  
19 such as online bill payment services, Internet funds transfer  
20 services, and similar types of services; the sale of payment  
21 instruments, such as money orders, traveler's checks, and stored  
22 value; check cashing; and foreign currency exchange; and

23 WHEREAS, There has been an increased interest in the  
24 adequacy of the consumer protections provided by the exemption  
25 for certain consumer credit counselors under the Check Sellers,  
26 Bill Payers and Proraters Law; and

27 WHEREAS, There has been a recent increased focus on the  
28 adequacy of the consumer protections provided under the laws  
29 regulating transmitters of money abroad; and

30 WHEREAS, Many entities are licensed under one or more of  
31 the existing laws regulating nonbank money services, thereby  
32 increasing the compliance costs for the regulated entities, as well  
33 as the costs imposed on the state agencies entrusted with the  
34 responsibility of administering these licensing laws; and

35 WHEREAS, Different regulatory standards apply to check  
36 cashers and currency exchange businesses on the one hand and  
37 money transmitters and traveler's checks and payment instrument  
38 issuers on the other; and

39 WHEREAS, The traditional marketplace for nonbank money  
40 services, individuals who lack an affiliation with a banking

1 institution, has expanded with the growth of money services  
2 businesses through the Internet and otherwise to add additional  
3 customers, while the existing licensing and regulatory laws  
4 applicable to money services businesses may have failed to evolve  
5 to recognize the new marketplace; now, therefore, be it

6 *Resolved by the Senate of the State of California, the Assembly*  
7 *thereof concurring,* That the California Law Revision  
8 Commission, with the assistance of the Department of  
9 Corporations and the Department of Financial Institutions, and  
10 with technical assistance from the regulated industry *consumer*  
11 *representative groups,* is hereby directed through existing  
12 resources to study and make a recommendation to the Legislature  
13 by December 31, ~~2004~~ 2005, regarding the following:

14 (1) Whether it is necessary and appropriate to consolidate the  
15 existing licensing laws regulating money transmission, sales and  
16 issuance of payment instruments, sales and issuance of traveler's  
17 checks, check cashing, and currency exchange businesses into a  
18 single law based upon the Uniform Money Services Act, the model  
19 legislation outline of the Money Transmitters Regulators  
20 Association, and whether additional provisions are necessary  
21 under any recodification to reflect the concerns articulated herein;

22 (2) Whether the licensing laws relating to the sale or issuance  
23 of traveler's checks, payment instruments, and funds transmission  
24 should be modified in any manner to deal with the emergence of  
25 new high technology funds transfer vehicles, such as Internet  
26 funds transmission and stored value products;

27 (3) Whether some or all of the existing licensing laws can be  
28 combined so that cost savings can be achieved for both the  
29 regulated entities and the appropriate regulator as a result of  
30 consolidated licensing procedures used in other states;

31 ~~Set forth consumer protections for businesses offering~~  
32 ~~consumer credit counseling in addition to money services; and~~  
33 *Whether consumer protections in existing law relating to nonbank*  
34 *money services, including the business of consumer credit*  
35 *counseling, are sufficient in light of the rapidly changing*  
36 *businesses involved in money services and consumer credit*  
37 *counseling, and what further provisions may be appropriate to*  
38 *strengthen those consumer protections; and*

39 (5) Set forth any additional provisions deemed necessary and  
40 appropriate; and be it further

1 , RESOLVED, *That the study the California Law Revision*  
2 *Commission is directed to conduct shall not prevent or delay any*  
3 *reform the Legislature may find necessary to correct problems in*  
4 *the subject of nonbank money services and transactions, as*  
5 *described, prior to completion of the study; and be it further*  
6 *Resolved, That the Secretary of the Senate transmit copies of*  
7 *this resolution to the California Law Revision Commission, the*  
8 *Department of Corporations, and the Department of Financial*  
9 *Institutions.*

Date: Fri, 11 Apr 2003 19:49:25 -0600 (MDT)  
To: feedback@clrc.ca.gov  
From: lgdl@pacific.net  
Subject: Nonprofit Corporation Law

This is the Feedback form submitted by  
Laura Golino de Lovato on Friday, April 11, 2003 at 19:49:25  
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Message: Commision:

I have been working in the nonprofit field for almost 20 years. Over that time I have become more and more familiar with the details of California's laws governing public benefit nonprofit corporations, but until now I did not believe that any major revisions to these laws needed to be made.

I am currently the Executive Director of a small nonprofit organization in northern California that is a formal membership organization - the members have the rights stated in Section 5056 of the Nonprofit Corp. Code. I have held the Director position at other nonprofits that were also membership organizations and have frequently wondered about the practicality and efficacy of having a membership at large make decisions that are of incredible importance to an organization. In my current position I am witnessing the detrimental affects of the membership having control and the "catch-22" in which the board is put. If the members are not acting in the best interest of the agency, but the board cannot change the structure of the organization (make it a non-membership organization) without the approval of the members! It is truly ridiculous. Whatever good might have been intended in allowing members to vote for directors and to changes to the bylaws and articles, the reality is that today's nonprofit organization cannot operate effectively when its members are in control.

Our organization is seeking legal advise to address our specific situation, but I now believe that no nonprofit organization should be set up to provide the degree of power and control to people whose only qualification may be that they paid \$20 per year to be a member. It is the board of directors, as a body, who should have the control. Most nonprofits go to some trouble to recruit directors with skills, commitment, etc., and those boards have a legally binding obligation to see to it that the organization is fiscally sound and achieving its goals. From what I understand, members need not meet any criteria, nor do they carry any legal obligations. So why are the board's actions in some area subject to the members' vote?

I would like the Commission to review the nonprofit laws related to membership, members rights, revocations of those rights, etc. I believe that there is a way to structure a nonprofit organization so that it can achieve its

mission, recruit and retain good boards of directors and serve its "informal" membership (those without voting rights). I would also like to see a provision for changing membership status of an organization without having to have the members' input.

Thank you very much for taking time to read this. I truly appreciate it.

Laura Golino de Lovato  
Executive Director  
Ukiah Senior Center

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Date: Mon, 10 Feb 2003 16:07:26 -0800  
From: "Judge Rolf M. Treu" <rtreu@LASuperiorCourt.org>  
To: <commission@clrc.ca.gov>  
Subject: Request for public comment  
X-Guinevere: 1.0.13 ; Los Angeles Superior

I am in receipt of CLRC's public comment request on Small Claims and Limited Jurisdiction cases doubling their jurisdictional limit. The reason given is adjustment for inflation, and to improve access to justice.

May I ask if there is any action underway to raise the limit of general damages in medical malpractice cases from the current limit of \$250,000 which was established in 1975. It would appear to me that the same rationale would apply for a reasonable increase in this category as argued for the small claims and limited jurisdiction cases.

X-Sender: slomansonb@postoffice.worldnet.att.net  
Date: Tue, 03 Jun 2003 16:42:25 -0700  
To: Barbara Gaal <bgaal@clrc.ca.gov>  
From: William Slomanson <slomansonb@worldnet.att.net>  
Subject: Re: GENDER-NEUTRALITY

Hi, gang:

While working my way through revising my CA Civ Pro course, I ran across a matter which I believe should be addressed sooner than later & budget-crunch or no. There may be more examples, but the Standards of Judicial Admin. § 5 contains the general recommendation that "he" (the judge) use BAJI/CALJIC.

FWIW, I have a hard time educating my 1L female law students to use gender-neutral language in their hypos, class discussions, etc. Although that standard was written over 30 years ago, that was then & this is now. So I'm doing my small part to suggest that our State not be content with language that is IMHO quite inappropriate. BTW, when I got out of the military the year that these standards were promulgated, you can guess where I was on woman's issues...then I had two daughters. So the first time you hear someone respond that this is not important enough to spend the \$, I hope you'll at least remember my plea.

Regards,  
Bill