

Memorandum 2007-28

Miscellaneous Hearsay Exceptions: Legislative Assignment

Yesterday, the Commission received a letter from the Chair of the Senate Committee on Judiciary, Senator Ellen Corbett, who also serves as the Commission's Senate member. A copy of the letter is attached. The letter directs the Commission to study two evidence issues and report its findings to the Legislature "no later than March 1, 2008."

The two evidence issues are:

- Whether California should create an exception to the hearsay rule for a present sense impression, similar to Federal Rule of Evidence 803(1).
- Whether California should create an exception to the hearsay rule for forfeiture by wrongdoing, similar to Federal Rule of Evidence 804(b)(6). A related issue is whether the definition of an "unavailable" witness should be amended to include, under certain circumstances, a witness who refuses to testify. The Commission is also being asked to study this related issue.

The Commission previously examined these issues to some extent in a study comparing the hearsay rule under the Evidence Code with the hearsay rule as codified in the Federal Rules of Evidence. That study was put on hold before the Commission issued a tentative recommendation.

In reactivating work on these particular hearsay issues, the Commission will have to move quickly to be able to meet the deadline of March 1, 2008. The staff plans to give this matter high priority.

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

California Legislature
Senate Committee on Judiciary

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Law Revision Commission
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August 20, 2007

Brian Hebert
Executive Secretary
California Law Revision Commission
3200 5th Ave
Sacramento, CA 95817

Dear Mr. Hebert:

This letter is to request that the California Law Revision Commission conduct a study on the "forfeiture by wrongdoing" and "present sense impression" hearsay exceptions as these provisions are stated in Sections 1, 3 and 4 of the May 3, 2007 version of AB 268 (Calderon).

I understand that the Commission is currently conducting a review of the Evidence Code, including a comparison of the hearsay exceptions in California with those in the Federal Rules of Evidence. However, the Commission has yet to issue tentative recommendations on whether the hearsay exceptions in the Evidence Code should be conformed to the Federal Rules of Evidence.

Both of the above-listed exceptions are currently codified in the Federal Rules of Evidence and have been proposed as additions to the Evidence Code by AB 268. I am requesting that the Commission complete its study, report its findings to the Legislature, and issue a recommendation as to whether these provisions should be codified as exceptions to the hearsay rule in the California Evidence Code no later than March 1, 2008.

Sincerely,

Handwritten signature of Ellen M. Corbett in black ink.
Senator Ellen M. Corbett
Senate Judiciary Committee
Chair