A meeting of the California Law Revision Commission was held in Sacramento on February 1-2, 2001.

Commission:

Present:  David Huebner, Chairperson  
          Joyce G. Cook, Vice Chairperson  
          Bion M. Gregory, Legislative Counsel (Feb. 1)  
          Sanford M. Skaggs (Feb. 1)  
          Howard Wayne, Assembly Member  

Absent:  Bill Morrow, Senate Member  

Staff:  Nathaniel Sterling, Executive Secretary  
        Stan Ulrich, Assistant Executive Secretary  
        Barbara S. Gaal, Staff Counsel  
        Brian P. Hebert, Staff Counsel  
        Lynn Urman, Staff Counsel  
        Gail Love, Student Intern (Feb. 2)  

Consultants:  James E. Acret, Mechanic’s Lien Law (Feb. 2)  
              Susan French, Common Interest Development Law (Feb. 2)  
              Keith Honda, Mechanic’s Lien Law (Feb. 2)  
              Gordon Hunt, Mechanic’s Lien Law (Feb. 2)  
              J. Clark Kelso, Trial Court Unification, Administrative  
              Rulemaking  

Other Persons:  

Beth Armstrong, Colfax (Feb. 2)  
Fernando Becerla, Los Angeles County Superior Court Clerk’s Association, Los Angeles (Feb. 1)  
Tyler P. Berding, Executive Council of Homeowners Association (Feb. 2)  
Gene Bicksler, Danville (Feb. 2)  
Herb Bolz, Office of Administrative Law, Sacramento (Feb. 1)  
Sandra Bonato, Executive Council of Homeowners Association, San Jose (Feb. 2)  
Oliver Burford, Executive Council of Homeowners Association, San Jose (Feb. 2)  
Karon Cave, Kingvale (Feb. 2)
Karen D. Conlon, California Association of Community Managers, Irvine (Feb. 2)
Alva S. Cooper, California State Sheriff’s Association, Sacramento (Feb. 1)
Lori Costa, AARP, Sacramento (Feb. 1)
Skip Daum, Community Associations Institute, Sacramento (Feb. 2)
Fred Eichenhofer, Colfax (Feb. 2)
Pamela Fisk, California Court Reporters Association, Redwood City (Feb. 1)
Roger Fisk, Redwood City (Feb. 1)
Gary Funamura, State Bar Real Property Law Section, Construction Subsection, Sacramento (Feb. 2)
Ellen Gallagher, Contractors State License Board, Sacramento (Feb. 2)
Paul R. Geissler, Surety Company of the Pacific, Encino (Feb. 2)
Karleen George, American Federation of State, County and Municipal Employees, District Council 36, Los Angeles (Feb. 1)
Charles Egan Goff, Truckee (Feb. 2)
Ken Grossbart, Abdulazis & Grossbart, North Hollywood (Feb. 2)
Gale Guthrie, San Diego (Feb. 2)
Ron Kingston, California Association of Realtors, Sacramento (Feb. 2)
Joan Lee, Gray Panthers of California, Sacramento (Feb. 2)
Edward Levy, Western League of Savings Institutions, Sacramento (Feb. 2)
Robert Lewin, Irvine (Feb. 2)
Matthew Love, San Mateo (Feb. 2)
Karen M. Lutke, San Mateo County Law Library, Redwood City (Feb. 1)
Deborah Mattos, Lumber Association of California and Nevada, Sacramento (Feb. 2)
Arnold A. McMahon, American Homeowner’s Resource Center, San Clemente (Feb. 2)
Marjorie Murray, Oakland (Feb. 2)
Scott Peifer, Senator Vasconcellos’ Office, Subcommittee on Aging and Long-Term Care, Sacramento (Feb. 2)
Sam Perrotti, Department of Real Estate, Sacramento (Feb. 2)
Alfonso L. Poire, Golden State Lumber, Inc., American Canyon (Feb. 2)
Guy Puccio, Wallace & Puccio, Sacramento (Feb. 2)
Everett C. Raasch, AARP (Feb. 2)
Karen Raasch, AARP (Feb. 2)
Katharine Rosenberry, San Diego (Feb. 2)
S.L. Roullier, S.L.R., Inc. (Law Corp.), Rocklin
Kerri Ruzicka, Sacramento (Feb. 2)
Mylos Sonka, Santa Margarita Improvement Association, Nicasio (Feb. 2)
Les Spahn, California Association of Community Managers, Surety Company of the Pacific, Sacramento (Feb. 2)
Sabrina Spaulding, Wallace & Puccio, Sacramento (Feb. 2)
Curtis Sproul, Weintraub, Genshlea & Sproul, Sacramento (Feb. 2)
Liz West, Senator Tom Torlakson’s Office, Sacramento (Feb. 2)
Stan Wieg, California Association of Realtors, Sacramento (Feb. 2)
Minutes of December 14-15, 2000 Meeting

The Commission approved the Minutes of the December 14-15, 2000, Commission meeting as submitted by the staff.

Administrative Matters

The Commission considered Memorandum 2001-1, relating to amendment of the Commission’s Conflict of Interest Code. The Commission approved the proposed amendment, subject to the revisions described in the memorandum.

Report of Executive Secretary

The Executive Secretary reviewed progress on the Commission’s 2001 legislative program. Senator Morrow will carry the Commission’s resolution of authority, the administrative rulemaking proposals, and technical improvements in civil procedure. The proposal on expired pilot projects has been introduced by Senator Knight as SB 153. We anticipate that the joint Commission-Judicial Council project on civil procedure simplification will be handled as a Senate Judiciary Committee bill. Assembly Member Papan will carry the law library board of trustees bill and the eminent domain early disclosure and dispute resolution bill. We anticipate that the proposal on estate planning during dissolution of marriage will be added to a State Bar Probate Section bill. We have not yet located an appropriate author for the health care decisions miscellaneous revisions; Commission members suggested a number of possible authors.
The Executive Secretary reported on the staff’s initiative to introduce new legislators to the work of the Commission. We have met with about a third of the new legislators so far. The meetings have been positive and productive.

The Executive Secretary reported that the number of major projects the Commission currently has pending, combined with background studies currently due on new projects, will strain the staff’s resources during 2001. The size of the trial court restructuring project, and the amount of staff work it will consume, may make it necessary to decrease Commission meeting time later in the year. However, the staff plans to continue to produce material in a manner that will enable the Commission to make progress on all pending studies.

STUDY H-820 – MECHANIC’S LIENS

The Commission considered Memorandum 2001-18, and its First and Second Supplements, concerning mechanic’s lien reforms in the home improvement contract arena. Professor J. Clark Kelso gave a presentation on his Homeowner Relief Recovery Fund proposal (see material attached to the First Supplement).

After reviewing the materials and hearing the views of interested persons in attendance, the Commission considered three general options to respond to the original request from the Assembly Judiciary Committee that launched this study, as outlined by the Chairperson: (1) prepare a comprehensive report on the options reviewed, including advantages and disadvantages, and perhaps a ranking of proposals, (2) focus a recommendation on one or more reforms to address the double-payment problem relating to single-family, owner-occupied dwellings, and (3) move to a general review and reorganization of the mechanic’s lien statute, postponing further work on the double-payment problem for a while, and with the hope that the Commission will be fully constituted by additional appointments.

The Commission decided to consider general mechanic’s lien law reform at the May meeting. The home improvement contract issues should be considered again at the June meeting. The staff was directed to investigate implementation of a full-payment defense or other limit on the lien right on single-family, owner-occupied dwellings coupled with a fund, bond, or insurance scheme to ameliorate any burden shifted to subcontractors and suppliers. As to home improvement contracts, the intention is to provide a more focused proposal or set of proposals for further consideration by the Commission and review by
interested persons. The Commission is not making a final decision on this issue, but only giving direction for further investigation and drafting to be considered at several future meetings.

STUDY H-850 – COMMON INTEREST DEVELOPMENT LAW

The Commission considered Memorandum 2001-19 and its First Supplement, together with the report of the Commission’s consultant, Professor Susan F. French, relating to the potential scope of the Commission’s study of common interest development law. The Commission also received at or before the meeting additional written submissions on this subject, which are collected in the Second Supplement to Memorandum 2001-19.

Background

The staff noted that this study was authorized by the Legislature in 1999, at the suggestion of the Commission. The Commission in 2000 decided to seek guidance as to scope and priorities for the study, and retained Professors French and Roger Bernhardt for that purpose. Professor French produced a report in consultation with Professor Bernhardt and delivered it to the Commission in November 2000.

Consultant’s Report

At the meeting, Professor French presented the report, *Scope of Study of Laws Affecting Common Interest Developments* (November 2000). After indicating the importance of the law in this area and surveying relevant provisions of California law, Professor French indicated she was unaware of major problems in the law governing development of common interest communities; most of the problems she has identified relate to subsequent operational issues. She suggested that existing law could be improved by redrafting and by collecting the governing law in one place — this could either be in the codes or in a published compilation. The law could also use substantive improvement — both the Uniform Common Interest Ownership Act (UCIOA) and the Restatement of Property (Third), Servitudes, are readily available resources for this purpose.

Professor French advised the Commission to seek sources of satisfaction, as well as sources of complaint, with common interest community life; empirical work here would be helpful. She also indicated it would be worth investigating the possibility of charging a state agency with assistance to common interest
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communities — providing advice, alternative dispute resolution services, responding to complaints, etc. In addition, the Commission might develop a CID homeowners “bill of rights” — limitations beyond which the governing documents may not go. Finally, the law might be extended to associations that do not own common property, so that amendment mechanisms for CC&Rs are available.

Public Comment

The Chairperson noted that ordinarily Commission meetings are focused working sessions, but since this is the Commission’s first occasion to consider this topic, general public comment will be taken.

The Commission heard presentations from members of the public present at the meeting. Key points of the presentations are summarized briefly here. For more detail, reference should be made to any written materials submitted in connection with the presentations, which are also noted here.

• Arnold McMahon noted his longtime involvement with this area. He traced the history of CIDs, observing that this form of housing has evolved to the point that it yields profits for its support industry but the importance of providing a home is often lost sight of. Legislators must bear in mind the need to maximize freedom within this form of organized community. He referred the Commission to the details in his submission (see Second Supplement to Memorandum 2001-19, at Exhibit pp. 15-25), but touched on the importance of an expanded homeowner bill of rights, the need to fully inform potential CID homeowners (well in advance) of what they’re getting into, and the need to consider constitutional issues involved in retroactively extending CID law to associations not currently covered. He concluded by stating that many people are upset, and that our task is to devise means that will enable people to live together harmoniously.

• Katharine Rosenberry noted that she was the senior consultant for the original Davis-Stirling Act. She observed that the law is mess, traceable to the Davis-Stirling Act’s heritage as a political compromise. The law is changed too frequently, and neither the ordinary homeowner not the lawyer specialist can keep up with it or understand it. The main advantage of UCIOA is the promise of stability that uniformity may offer. California should also look to the Restatement, and to the law of other jurisdictions, such as Queensland, for useful improvements, including its dispute resolution system. The Commission should
bear in mind that the problems we see in CIDs are relatively small in number when compared with the vast CID housing market. There is usually more than one side to every dispute, and the Commission needs to hear all sides. Educating people before they invest in a CID is essential. The opportunity available to the Commission is to provide comprehensive treatment of the law in this area.

- Curtis Sproul practices law in this area and was involved in the development of both the Davis-Stirling Act and the Nonprofit Corporation Law. He noted that the law in this area has developed piecemeal and is internally inconsistent. He suggested that any comprehensive treatment of this area not create further inconsistencies in the law. A special body of corporate law might be developed for CIDs. Perhaps corporate law with its oligarchic, top-down management structure, is not necessarily the most appropriate model for CIDs. Also, the rules that have developed concerning enforcement and amendment of CC&Rs has diverged from the common law, and the Commission should take a look at whether this development is appropriate. See also Memorandum 2001-19, at Exhibit pp. 84-91.

- Karon Cave is a homeowner who lives in the snow country and is unable to obtain access to her home because her association’s board will not allow the road to be plowed; the board has assessed a substantial fine against her for using self-help to get access to her home. The law needs to be revised so that homeowners can resolve these disputes without having to hire a lawyer and litigate to establish their rights. For details, see Second Supplement to Memorandum 2001-19, at Exhibit pp. 41-49.

- Karen Raasch spoke on behalf of AARP, which is concerned about several issues, including the lack of meaningful state regulatory oversight of condominium associations, inadequate provision for maintenance reserves, statutory language is too legalese, and foreclosure procedures that include actual notice, due process, and notice of loss of homestead exemption.

- Joan Lee spoke on behalf of the Gray Panthers. She indicated they have heard a number of stories like Mrs. Cave’s. They believe the law has become too complicated for unsophisticated board members; something needs to be done so that the average person can understand the governing rules. The state needs to have a little more oversight and offer more of a guiding hand to associations. In addition, seniors particularly invest substantially in their homes with the expectation of community support, but may end up in a devastating fight with their neighbors. The Commission needs to keep in mind the needs of the senior
homeowner as it reviews the governing laws. See also Memorandum 2001-19, at Exhibit pp. 66-67.

- Bob Lewin has written and been published in the Southern California area on CIDs; he speaks on behalf of homeowners. He addressed the questions of lack of housing choice, justice for home and condominium owners and the lack of affordable recourse; he referred to a variety of horror stories about CIDs, raised the question of reform versus abolition, and questioned whether UCIOA is an appropriate response to these problems. For details, see Second Supplement to Memorandum 2001-19, at Exhibit pp. 26-34; see also Memorandum 2001-19, at Exhibit pp. 72-74.

- Gale Guthrie is an attorney in Cameron Park, in a subdivision which has 50 sets of CC&Rs (some of which are obsolete). However the provisions of the Davis-Stirling Act — which would allow court-approved reasonable amendments on petition of half of the homeowners — are inapplicable because the subdivision has no common area. The Commission should investigate extending these provisions of the Davis-Stirling Act to subdivisions that have CC&Rs even though they may have no common area. He also noted that he represents a number of associations, and that enactment of the Davis-Stirling Act has helped substantially to enable lawyers and others to more easily find the governing law, and has saved associations substantial legal fees.

- Marjorie Murray is a shareholder in a mutual benefit water association, which has been improperly trying to confiscate the home of a disabled person by foreclosure for nonpayment of water dues. This situation illustrates a number of issues the Commission should consider, including whether the Davis-Stirling Act is appropriately applied to this type of entity, what laws prevail in case of a conflict, is foreclosure an appropriate or even authorized remedy in this situation, what safeguards does the homeowner have, should there be limits on the amount a board may assess, should a homeowner have to look to external entities for protection, and should there be incentives or penalties to encourage proper board behavior? For details, see Second Supplement to Memorandum 2001-19, at Exhibit pp. 35-40.

- Mylos Sonka indicated that he and neighbors at the rear of his development are assessed 14 times as much for brush maintenance and fire protection as neighbors at the front of the development. This has been in litigation for 25 years. The law is ambiguous in allowing the board to disproportionately assess on a “fair share” basis. The Commission should try to structure the law in such a way
as to make it more difficult for boards to make bad decisions, since those decisions, once made, are protected by law. California law should be simplified so as to make it easier for boards to do their work, but should be clear and explicit enough to protect the rights of the elderly and numerical minorities from HOA board abuse. Ambiguity invites abuse; clarity prevents it. See also First Supplement to Memorandum 2001-19, at Exhibit pp. 1-5.

- Charles Goff is a dissident member of a homeowners association. He noted that some boards run their associations well and others run them poorly, even though they are governed by the same laws. Homeowners need protection from tyrannical boards, and the law should be structured with checks and balances for that purpose. See also the First Supplement to Memorandum 2001-19, at Exhibit pp. 11-12.

- Skip Daum spoke on behalf of the Community Associations Institute. He agreed with prior speakers that the law needs to be examined and an appropriate balance struck. He has detailed a number of issues in the First Supplement to Memorandum 2001-19, at Exhibit pp. 6-9, and more issues will readily surface as this study progresses. Problems in CID living are inevitable; the objective is to deal with them fairly. He provided the Commission supplemental information relating to past inquiries into CID law. The Commission should give wide-ranging consideration to all issues, including the possibility of a regulatory bureau, and needs to look at the possibility of a performance approach to CID governance (allowing problems to be handled at a local level) since a prescriptive approach cannot solve all problems. CIDs are popular and provide affordable housing for a large number of people. Most associations function well, without problems; an appropriate balance in the law is necessary. In response to questions from the Commission and staff, Mr. Daum indicated that local CAI chapters in California have not taken a position on UCIOA (although they are currently analyzing it), that CAI favors local control of individual association rules and regulations, and that CAI would support an appropriate homeowners bill of rights.

- Tyler Berding spoke on behalf of the Executive Council of Homeowners. He has been involved with previous CID reform efforts, and noted that the same issues always recur. The needs of each type of CID are different, which calls for local control, subject to basic homeowner protections. The biggest problem facing CIDs is the lack of ability to fund adequate maintenance and repair. This requires consensus, which is often lacking in the CID context. The existing law does not
help — it is a patchwork of special interest amendments, resulting in an unworkable document. The Commission should take advantage of this opportunity for a fresh start. The new statute should provide for enforcement of financial responsibility while allowing for local control. It should provide broad statements of policy and avoid detailed regulation. The need for rules must be balanced against the need for individual rights. There should be a mechanism for resolving conflict. The statute should create state oversight authority to ensure financial stability of CIDs. Attention should also be paid to issues concerning dissolution of CIDs. See also Memorandum 2001-19, at Exhibit pp. 92-95.

Karen Conlon spoke on behalf of the California Association of Community Managers. She estimated that there are in excess of 30,000 CIDs in California, averaging 130 units per development and housing an estimated eight million Californians. There are around 200 different types of tasks involved in managing the operation of CIDs, and about 30 different bodies of law that govern them. There are currently no licensing requirements for managers; CACM has around 1,000 professional managers who voluntarily have committed to becoming educated as to proper management. The governing documents of CIDs developed within the past 25 years require professional management (a consequence of financing restrictions).

Gene Bicksler is a long time manager of community associations. He noted that boards of directors are volunteers elected by their neighbors to try to solve operational problems within their CIDs. His experience does not at all resemble the horror stories that have been brought to the Commission’s attention. He suggests that the Commission gather empirical data on what is actually going on and how extensive the problems really are. The Barton and Silverman study of some years ago, for example, suggests substantial satisfaction with the operation of CIDs at that time. See also Memorandum 2001-19, at Exhibit pp. 55-56.

Beth Armstrong related the story of the small community in which her parents live, where a $140,000 trust fund for maintenance was dissipated by the board on legal fees for unwarranted litigation, and a subsequent assessment of $30,000 imposed to pay for additional legal fees. Her parents are unable to pay the assessment, were subjected to foreclosure proceedings on their home, and were only able to get the board to back off by hiring an attorney to represent their interests. Homeowners, particularly the elderly, are susceptible to and traumatized by abusive board behavior. The Commission must look beyond the industry and academia to reach what is really happening to people.
• Fred Eichenhoffer is a homeowner in the small association referred to by Ms. Armstrong. The board members of that association, by virtue of their ownership of 50% of the parcels, effectively control the association. Because he disagreed with the board’s attempt to assess members for legal fees, he was subjected to board harassment and was improperly drawn into various legal proceedings by the board’s enforcement effort. Boards need to be made more accountable for their actions in order to deter this sort of abuse.

Commission Action

Commission members observed that the Commission intends to examine issues taking into account all perspectives and all sides of the debate.

After discussion of the information that has been presented to it so far, the consensus of the Commission was to proceed with this project on three fronts:

(1) The study should not be restricted in the issues that are examined — the Commission will cast its net broadly. The study should cover the full range of problems and solutions that have been identified. The staff should compile and organize a catalog of issues for this purpose.

(2) The Commission is interested in investigating whether the Uniform Act may or may not be desirable to replace the Davis-Stirling Act in California. The staff should prepare an analysis of the Uniform Act and how it would impact California law if adopted. The staff should also prepare information relating to the Restatement of Servitudes and its coverage of CID law.

(3) On a priority basis, the Commission will investigate nonjudicial dispute resolution mechanisms and alternatives.

STUDY J-1301 – REPORT ON STATUS OF TRIAL COURT UNIFICATION STUDIES

The Commission considered Memorandum 2001-2, concerning the status of trial court unification follow-up studies. The Commission approved the attached draft report for printing and submission to the Legislature, with revisions to insert page references when available and update the status of the study on the authority to appoint receivers.

STUDY J-1302 – AUTHORITY TO APPOINT RECEIVERS

The Commission considered Memorandum 2001-14, concerning revision of the previously approved recommendation on Authority to Appoint Receivers. The Commission approved the attached draft as a revised recommendation, for
printing and submission to the Legislature, with the following additional revisions:

**Usages of Courts of Equity**

Code of Civil Procedure Section 564(b)(8) should be revised as follows:

(b) In superior court a receiver may be appointed by the court in which an action or proceeding is pending, or by a judge thereof, in the following cases, other than in a limited civil case:

....

(8) (9) In all other cases where receivers have heretofore been appointed by the usages of courts of equity necessary to preserve the property or rights of any party.

The Comment should refer to cases establishing that under the “usages of courts of equity” standard, a receiver should be appointed only where less extreme measures would be inadequate. Conforming revisions should also be made in the preliminary part (narrative portion) of the recommendation.

**STUDY J-1307 – LAW LIBRARY BOARD OF TRUSTEES**

The Commission considered Memorandum 2001-21 and its First and Second Supplements, concerning the composition of a law library board of trustees. The Commission approved the draft attached to the Second Supplement as a final recommendation, for printing and submission to the Legislature, with the following revisions:

**Limit on Number of Laypersons**

Proposed Business and Professions Code Section 6301(b) should read as follows:

(b) No more than two (2) law library trustees may be residents of the county who are not judges of the county, members of the State Bar, or members of the board of supervisors of the county.

**Replacements for Judges**

The Comment to Business and Professions Code Section 6301 and the preliminary part (narrative portion) of the recommendation should be revised to track the statutory language on appointment or designation of replacements for superior court judges.
STUDY J-1320 – CIVIL PROCEDURE AFTER TRIAL COURT UNIFICATION:

UNNECESSARY PROCEDURAL DIFFERENCES

The Commission considered Memorandum 2001-3, concerning Unnecessary
Procedural Differences Between Limited and Unlimited Civil Cases. The Commission
approved the attached draft as a final recommendation, for printing and
submission to the Legislature, with the following revisions:


The Commission decided to formally request that the Judicial Council act on
this matter in February. If the Judicial Council approves the proposed
amendments in February, then this matter should be included in the
Commission’s report. Otherwise, the provisions on undertakings should be
omitted from the recommendation and the staff should update the Commission
on the status of this proposal at the Judicial Council.

Code Civ. Proc. § 631. Waiver of jury

The Commission considered whether to participate in the working group
proposed by the Case Management Subcommittee of the Civil and Small Claims
Advisory Committee. The Commission decided not to devote further resources
to this matter at this time. If the proposed working group develops a proposal,
the staff should present that proposal to the Commission for consideration.


The Commission decided to formally request that the Judicial Council act on
this matter in February. If the Judicial Council approves the proposed
amendment in February, then this proposal should be included in the
Commission’s report. Otherwise, it should be omitted from the recommendation
and the staff should update the Commission on the status of this proposal at the
Judicial Council.

Proposed Code Civ. Proc. § 89. Implied court authority in limited and
unlimited civil cases

The Commission considered whether instead of adding proposed Section 89,
similar language should be inserted in each provision that grants authority in a
limited civil case but is silent as to an unlimited civil case, or vice versa. The
Commission decided that adding proposed Section 89 was preferable. Under the
suggested alternative approach, there is a danger that a pertinent provision
might be overlooked or a new provision granting authority in only one type of case might be added without including language along the lines proposed. Improper inferences might be drawn from such omissions.

The Commission further decided that additional work on this matter probably would not yield a better proposal than proposed Section 89. Because the Judicial Council has not approved proposed Section 89, and does not appear likely to do so in the near future, the Commission directed the staff to omit it from the recommendation relating to the joint study. It should be introduced in the Legislature as a Commission proposal, not as part of the package jointly recommended by the Commission and the Judicial Council.

**Gov’t Code § 72055. First filing fee in limited civil case**

The amendment of Government Code Section 72055 should be revised to set the filing fee at $87, instead of $85:

72055. (a) The total fee for filing of the first paper in a limited civil case shall be ninety dollars ($90), except that in cases where the amount demanded, excluding attorney’s fees and costs, is ten thousand dollars ($10,000) or less, the fee shall be eighty-three dollars ($83). The amount of the demand shall be stated on the first page of the paper immediately below the caption eighty-seven dollars ($87).

The intent is to achieve a proposal that neither increases nor decreases the revenue of the courts. The preliminary part should make clear that the proposed $87 fee is based on analysis by the Administrative Office of the Courts, not by the Commission.

**STUDY J-1320 – CIVIL PROCEDURE AFTER TRIAL COURT UNIFICATION: TECHNICAL CORRECTIONS**

The Commission considered Memorandum 2001-4, concerning *Civil Procedure: Technical Corrections*. The Commission approved the attached draft as a final recommendation, for printing and submission to the Legislature, with the following revisions:
Civil Code § 2924j. Proceeding to discharge trustee and distribute proceeds

The amendment of Civil Code Section 2924j should be deleted from the recommendation, because this provision warrants further study, as discussed in Memorandum 2001-4, at pages 3-4.

Code Civ. Proc. § 86. Petition to release a mechanic’s lien

Code of Civil Procedure Section 86(a)(6) should be amended along the following lines:

86. (a) The following civil cases and proceedings are limited civil cases:

   (6) Actions to enforce and foreclose, or petitions to release, liens of mechanics, materialmen, artisans, laborers, and of all other persons to whom liens are given under the provisions of Chapter 2 (commencing with Section 3109) of Title 15 of Part 4 of Division 3 of the Civil Code, or to enforce and foreclose an assessment lien on a common interest development as defined in Section 1351 of the Civil Code, where the amount of the liens is twenty-five thousand dollars ($25,000) or less. However, where an action to enforce the lien affects property that is also affected by a similar pending action that is not a limited civil case, or where the total amount of the liens sought to be foreclosed against the same property aggregates an amount in excess of twenty-five thousand dollars ($25,000), the action is not a limited civil case, and if the action is pending in a municipal court, upon motion of any interested party, the municipal court shall order the action or actions pending therein transferred to the proper superior court. Upon making the order, the same proceedings shall be taken as are provided by Section 399 with respect to the change of place of trial.

Comment. Subdivision (a)(6) of Section 86 is amended to clarify the jurisdictional classification of a petition to release a mechanic’s lien. This is declaratory of existing law. See Code Civ. Proc. § 85 (limited civil cases) & Comment. See also Code Civ. Proc. §§ 85.1 (original jurisdiction), 88 (unlimited civil case).

Subdivision (a)(6) is also amended to reflect elimination of the municipal courts as a result of unification with the superior courts pursuant to Article VI, Section 5(e), of the California Constitution. For reclassification of an action in a unified superior court, see Sections 403.010-403.090.

In the legislative process, the staff should take steps to coordinate this proposed amendment with the proposed amendment of Section 86 in the Commission’s
revised recommendation on Authority to Appoint Receivers. See Study J-1302 supra; Memorandum 2001-14.

As a separate matter, the staff should investigate and analyze the points raised by Mr. John Jones relating to appeals arising from parking tickets, toll road tickets, and municipal code violations. See Memorandum 2001-14, Exhibit p. 3. It may also be appropriate to examine appeals from superior court orders enforcing small claims judgments.

**Code Civ. Proc. § 396a. Statement of jurisdictional facts**

The amendment of Code of Civil Procedure Section 396a should be deleted from the recommendation. The technical reforms proposed in the tentative recommendation should be delayed pending study of substantive issues relating to this provision, as discussed in Memorandum 2001-4, at pages 6-7.

**Code Civ. Proc. § 398. Selection of court for transfer**

The amendment of Code of Civil Procedure Section 398 should be deleted from the recommendation. The reforms proposed in the tentative recommendation should be incorporated in the Commission’s study of general municipal court statutes. See Memorandum 2001-4, p. 7; Memorandum 2001-11.

**Code Civ. Proc. § 631. Waiver of jury trial**

The amendment of Code of Civil Procedure Section 631 should be deleted from the recommendation. The reform proposed in the tentative recommendation should be delayed pending study of substantive issues relating to this provision, as discussed in Memorandum 2001-4, at pages 8-9.

**Gov’t Code § 946.6. Petition for relief from claim-filing requirements**

Government Code Section 946.6(a) should be amended along the following lines:

> 946.6. (a) Where an application for leave to present a claim is denied or deemed to be denied pursuant to Section 911.6, a petition may be made to the court for an order relieving the petitioner from Section 945.4. The proper court for filing the petition is a court which would be a competent the superior court that would be the proper court for the trial of an action on the cause of action to which the claim relates and which is located in a county or judicial district which would be a proper place for the trial of the action, and if the petition is filed in a court which is not a proper court for the determination of the matter, the court, on motion of any party, shall transfer the proceeding to a proper court.
action on the cause of action to which the claim relates would be a
limited civil case, a proceeding pursuant to this section is a limited
civil case.

Comment. Section 946.6 is amended to reflect elimination of the
municipal courts as a result of unification with the superior courts
pursuant to Article VI, Section 5(e), of the California Constitution,
and the consequent elimination of associated judicial districts. See
Section 38 (judicial districts).

Section 946.6 is also amended to clarify the jurisdictional
classification of a proceeding for relief from the requirements of
Section 945.4 following rejection of an application for leave to
present a late claim. This is declaratory of existing law. See Code
Civ. Proc. § 85 (limited civil cases) & Comment. See also Code Civ.
Proc. §§ 85.1 (original jurisdiction), 88 (unlimited civil case).

Comments to Provisions with Obsolete Docket References

The Comments to the proposed amendments of the following provisions
should be revised to reflect the elimination of the municipal courts: Code Civ.
Proc. §§ 472b, 638, 912, 1206; Food & Agric. Code § 11937; Veh. Code §§ 16370,
16373, 16379. See Memorandum 2001-4, p. 8.

Further Study

The staff should analyze the suggestions made by Mr. Jones regarding Code
of Civil Procedure Sections 12a, 200, 472, and 904. See Memorandum 2001-4, p. 6
& Exhibit p. 4. The staff should also investigate the possibility of amending
provisions that authorize the judge to substitute for the clerk if there is no clerk.

STUDY J-1400 – STATUTES MADE OBSOLETE BY TRIAL COURT RESTRUCTURING

The Commission considered Memorandum 2001-5 and the memoranda
following, relating to statutes made obsolete by trial court restructuring. The staff
noted that the last municipal courts in the state — those in Kings County — will
unify with the superior court as of February 8. This will enable the Commission
to deal more effectively with the obsolete statutes.

Action on each of the specific subjects of the memoranda is set out below.

Judges

The Commission considered Memorandum 2001-6, relating to the number of
superior judges in each county. The staff noted that legislation enacted in 2000
adds judges in selected counties, increasing the total number of judges by 20. The
staff will implement those changes in the draft before it is circulated for comment.

The Commission requested the staff to revise the draft set out in the memorandum to spell out numbers under 10 and to consistently use the phrase “there are” — rather than “there shall be” — a prescribed number of judges in a county. The Commission accepted the staff proposal to clean out references to the “presiding or sole judge” in a county, with an appropriate amendment of Government Code Section 69508.5 (presiding judge), as set out in the memorandum.

Subordinate Judicial Officers

The Commission considered Memorandum 2001-7, relating to subordinate judicial officers. The staff should examine the reference to the consent of “an” appearing party in Code of Civil Procedure Section 259(e) and suggest an appropriate revision. The staff should look at the use of the term “pro tem judge” in Government Code Section 71601(i) and suggest clarifying language to avoid the implication that the authority of a temporary judge is derived from Article VI, Section 22 of the California Constitution, relating to subordinate judicial officers.

In the process of cleaning up subordinate judicial officer statutes, the staff should begin the process of standardizing terminology. Thus for example, Government Code Section 69897, relating to appointment of probate commissioners, could be revised to provide that the superior court “may appoint a subordinate judicial officer to assist the probate court in disposing of its business connected with the administration of justice. The person appointed shall be designated as probate commissioner of such the county.” The definition of “subordinate judicial officer” in Section 71601(i) should be expanded to include the various types of SJO authorized by statute, including, if not already covered, juvenile hearing officers under the Welfare and Institutions Code.

The portion of Government Code Section 72190 relating to retired annuitants may not be obsolete. The staff should take a closer look at this provision. Similarly, in connection with Section 72403, the staff should investigate whether provisions relating to participation of new employees (as opposed to current employees) in the county retirement plan are superseded by TCEPGA, particularly with respect to referees.
Welfare and Institutions Code Section 247 establishes a separate appointing authority (the juvenile court judge) for juvenile court referees. The staff should bring the proposed repeal of this provision to the attention of the affected parties. The staff should bracket the proposed saving clause for now, and towards the end of the project return to the question whether such a clause would be helpful. The staff should circulate this material to the Court Commissioners Association and the California Judges Association, as well as to personnel in specifically affected counties.

**Court Reporters**

The Commissioner considered Memorandum 2001-8, relating to court reporters.

The Commission directed the staff to attempt to develop a compensation setting mechanism for court reporters that enables the court in each county, by negotiation or otherwise, to set an amount appropriate for that county, preserving current compensation as a base. Something like this is already being done for those reporters who are court employees under TCEPGA, and such a scheme could be extended to independent contractors.

Likewise, the staff should attempt to develop general language governing the duties of court reporters, overriding specific provisions such as those found in Government Code Section 73674.1 relating to reporting board of equalization hearings in Solano County. The concept is that specific duties, along with amount of compensation, should be subject to negotiation in light of the circumstances of each court.

With respect to use of electronic reporting by the court commissioner in Contra Costa County (Gov’t Code § 70141.11), the Commission decided not to disturb the status quo.

**Sheriff/Marshal**

The Commission considered Memorandum 2001-9, relating to the sheriffs and marshals. The Commission deferred decision on whether to revise statutes that refer to sheriffs and marshals so that they refer only to sheriffs, in reliance on a new provision that would make clear that “sheriff” means “marshal” in those counties where court services are authorized by law to be provided by the marshal. The staff should do further research on the number and types of statutes in which this is a problem or issue.
County-Specific Municipal Court Statutes

The Commission considered Memorandum 2001-10, relating to county-specific municipal court statutes. The Commission approved the approach proposed by the staff — the county-specific municipal court statutes presumptively should be repealed, subject to the staff’s review for special provisions that should be continued in the superior court. The staff will gather together the statutes for each county and send them to the court personnel, including employee representatives, for that county to make sure there is agreement on the proposed disposition of the statutes.

General Municipal Court Statutes

The Commission considered Memorandum 2001-11, relating to general municipal court statutes. The staff noted that, with the unification of Kings County, the cleanout of general municipal court statutory references becomes a higher priority.

In connection with the proposed repeal of Code of Civil Procedure Section 75, the Commission decided for the purpose of seeking comment that the provision be broadened to apply to courts with more than one judge.

The staff should consider whether Code of Civil Procedure Section 85.1 should be repealed, in light of unification, rather than amended.

In connection with Code of Civil Procedure Section 116.210 (small claims division), the staff should research whether the superior courts generally are using the terminology of small claims “division”, “department”, “calendar”, or some other phrase.

County-Specific Superior Court Statutes

The Commission considered Memorandum 2001-12, relating to county-specific superior court statutes. The Commission noted that much of the discussion in the memorandum concerning the impact of unification on the county-specific superior court statutes is eclipsed by enactment of TCEPGA, and need not be carried over into the preliminary part of the tentative recommendation. (Also, there is a typo in the reference to the unification date of Los Angeles County on page 13 — the correct date is January 22, rather than January 23.) The Commission approved the staff’s suggested approach of treating this statutory material in the same way it treats the county-specific municipal court statutes.
Constitutional Amendment

The Commission considered Memorandum 2001-13, relating to the amendment of the California Constitution for conformity with trial court unification. In connection with the proposed revisions, the Commission requested the staff to prepare material concerning the possibility of relocating from the Constitution to the statutes the provision of Article VI, Section 11, to the effect that courts of appeal have appellate jurisdiction “in causes of a type within the appellate jurisdiction of courts of appeal on June 30, 1995.”

STUDY L-4004 – HEALTH CARE DECISIONS LAW: TECHNICAL REVISIONS

The Commission considered Memorandum 2001-15 discussing comments on the Tentative Recommendation on the Health Care Decisions Law: Technical Revisions distributed in December 2000. The title of the recommendation will be changed to read “Miscellaneous Revisions.” The Commission approved a final recommendation, subject to the following revisions and with the omission of language dealing with the duration of a surrogate designation under Probate Code Section 4711. The staff will seek introduction of a bill, subject to these revisions and omissions. The recommendation will not be printed until a final decision is made on revision of Section 4711 (discussed below).


To meet the objection that bifurcating the capacity definition draws too great a distinction between health care decisionmaking and advance directive execution, this definition should be revised to read substantially as follows:

4609. “Capacity” means a patient’s person’s ability to understand the nature and consequences of a decision and to make and communicate a decision, and includes, in the case of proposed health care, including the ability to understand its significant benefits, risks, and alternatives, and to make and communicate a health care decision.

The consensus was that there is one basic capacity standard, and the language concerning health care decisionmaking is an elaboration of the standard, not a different rule. Stating two differently worded standards could be confusing. At the same time, the elaboration provides some useful additional guidance in determining capacity to make health care decisions, whether it is stated in a separate subdivision, as an added clause of the sentence, or in the Comment.
Prob. Code § 4711. Patient’s designation of surrogate

The Commission reviewed the commentary on this section and discussed a number of options, including providing for a general 30-day limit on surrogate designations under this section, whether in acute care or long-term care institutions, and whether there should be exceptions to this type of duration limit. The Commission did not approve a final recommendation on this issue because interested persons who have been urging amendment of Section 4711 were not present and the issue merits further review and consideration. Accordingly, the staff was directed to revise the bill draft to omit the material concerning duration of surrogate designations. Appropriate language can be amended into the bill at a later time when a consensus on the best approach can be achieved.

STUDY N-306 – ADMINISTRATIVE RULEMAKING CLEANUP

The Commission considered Memorandum 2001-16 and its First Supplement, relating to technical cleanup of recent legislation affecting administrative rulemaking procedure. The Commission approved the tentative recommendation as its final recommendation, with one revision: Section 11340.85(c)(1) should be amended as follows:

Any public notice required by this chapter or by a regulation implementing this chapter. For the purposes of this paragraph, “public notice” means a notice that is required to be given by an agency to persons who have requested notice of the agency’s regulatory actions.

☐ APPROVED AS SUBMITTED

☐ APPROVED AS CORRECTED

(for corrections, see Minutes of next meeting)