
MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
FEBRUARY 1-2, 2001
SACRAMENTO

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 Spahnn, 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)

1 The Executive Secretary reported on the staff's initiative to introduce new
2 legislators to the work of the Commission. We have met with about a third of the
3 new legislators so far. The meetings have been positive and productive.

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

11 STUDY H-820 – MECHANIC'S LIENS

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

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

27 The Commission decided to consider general mechanic's lien law reform at
28 the May meeting. The home improvement contract issues should be considered
29 again at the June meeting. The staff was directed to investigate implementation
30 of a full-payment defense or other limit on the lien right on single-family, owner-
31 occupied dwellings coupled with a fund, bond, or insurance scheme to
32 ameliorate any burden shifted to subcontractors and suppliers. As to home
33 improvement contracts, the intention is to provide a more focused proposal or set
34 of proposals for further consideration by the Commission and review by

1 interested persons. The Commission is not making a final decision on this issue,
2 but only giving direction for further investigation and drafting to be considered
3 at several future meetings.

4 STUDY H-850 – COMMON INTEREST DEVELOPMENT LAW

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

11 **Background**

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

18 **Consultant’s Report**

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

30 Professor French advised the Commission to seek sources of satisfaction, as
31 well as sources of complaint, with common interest community life; empirical
32 work here would be helpful. She also indicated it would be worth investigating
33 the possibility of charging a state agency with assistance to common interest

1 communities — providing advice, alternative dispute resolution services,
2 responding to complaints, etc. In addition, the Commission might develop a CID
3 homeowners “bill of rights” — limitations beyond which the governing
4 documents may not go. Finally, the law might be extended to associations that do
5 not own common property, so that amendment mechanisms for CC&Rs are
6 available.

7 **Public Comment**

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

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

15 • Arnold McMahon noted his longtime involvement with this area. He traced
16 the history of CIDs, observing that this form of housing has evolved to the point
17 that it yields profits for its support industry but the importance of providing a
18 home is often lost sight of. Legislators must bear in mind the need to maximize
19 freedom within this form of organized community. He referred the Commission
20 to the details in his submission (see Second Supplement to Memorandum 2001-
21 19, at Exhibit pp. 15-25), but touched on the importance of an expanded
22 homeowner bill of rights, the need to fully inform potential CID homeowners
23 (well in advance) of what they’re getting into, and the need to consider
24 constitutional issues involved in retroactively extending CID law to associations
25 not currently covered. He concluded by stating that many people are upset, and
26 that our task is to devise means that will enable people to live together
27 harmoniously.

28 • Katharine Rosenberry noted that she was the senior consultant for the
29 original Davis-Stirling Act. She observed that the law is mess, traceable to the
30 Davis-Stirling Act’s heritage as a political compromise. The law is changed too
31 frequently, and neither the ordinary homeowner not the lawyer specialist can
32 keep up with it or understand it. The main advantage of UCIOA is the promise
33 of stability that uniformity may offer. California should also look to the
34 Restatement, and to the law of other jurisdictions, such as Queensland, for useful
35 improvements, including its dispute resolution system. The Commission should

1 bear in mind that the problems we see in CIDs are relatively small in number
2 when compared with the vast CID housing market. There is usually more than
3 one side to every dispute, and the Commission needs to hear all sides. Educating
4 people before they invest in a CID is essential. The opportunity available to the
5 Commission is to provide comprehensive treatment of the law in this area.

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

17 • Karon Cave is a homeowner who lives in the snow country and is unable to
18 obtain access to her home because her association's board will not allow the road
19 to be plowed; the board has assessed a substantial fine against her for using self-
20 help to get access to her home. The law needs to be revised so that homeowners
21 can resolve these disputes without having to hire a lawyer and litigate to
22 establish their rights. For details, see Second Supplement to Memorandum 2001-
23 19, at Exhibit pp. 41-49.

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

29 • Joan Lee spoke on behalf of the Gray Panthers. She indicated they have
30 heard a number of stories like Mrs. Cave's. They believe the law has become too
31 complicated for unsophisticated board members; something needs to be done so
32 that the average person can understand the governing rules. The state needs to
33 have a little more oversight and offer more of a guiding hand to associations. In
34 addition, seniors particularly invest substantially in their homes with the
35 expectation of community support, but may end up in a devastating fight with
36 their neighbors. The Commission needs to keep in mind the needs of the senior

1 homeowner as it reviews the governing laws. See also Memorandum 2001-19, at
2 Exhibit pp. 66-67.

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

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

21 • Marjorie Murray is a shareholder in a mutual benefit water association,
22 which has been improperly trying to confiscate the home of a disabled person by
23 foreclosure for nonpayment of water dues. This situation illustrates a number of
24 issues the Commission should consider, including whether the Davis-Stirling Act
25 is appropriately applied to this type of entity, what laws prevail in case of a
26 conflict, is foreclosure an appropriate or even authorized remedy in this
27 situation, what safeguards does the homeowner have, should there be limits on
28 the amount a board may assess, should a homeowner have to look to external
29 entities for protection, and should there be incentives or penalties to encourage
30 proper board behavior? For details, see Second Supplement to Memorandum
31 2001-19, at Exhibit pp. 35-40.

32 • Mylos Sonka indicated that he and neighbors at the rear of his development
33 are assessed 14 times as much for brush maintenance and fire protection as
34 neighbors at the front of the development. This has been in litigation for 25 years.
35 The law is ambiguous in allowing the board to disproportionately assess on a
36 “fair share” basis. The Commission should try to structure the law in such a way

1 as to make it more difficult for boards to make bad decisions, since those
2 decisions, once made, are protected by law. California law should be simplified
3 so as to make it easier for boards to do their work, but should be clear and
4 explicit enough to protect the rights of the elderly and numerical minorities from
5 HOA board abuse. Ambiguity invites abuse; clarity prevents it. See also First
6 Supplement to Memorandum 2001-19, at Exhibit pp. 1-5.

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

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

31 • Tyler Berding spoke on behalf of the Executive Council of Homeowners. He
32 has been involved with previous CID reform efforts, and noted that the same
33 issues always recur. The needs of each type of CID are different, which calls for
34 local control, subject to basic homeowner protections. The biggest problem facing
35 CIDs is the lack of ability to fund adequate maintenance and repair. This requires
36 consensus, which is often lacking in the CID context. The existing law does not

1 help — it is a patchwork of special interest amendments, resulting in an
2 unworkable document. The Commission should take advantage of this
3 opportunity for a fresh start. The new statute should provide for enforcement of
4 financial responsibility while allowing for local control. It should provide broad
5 statements of policy and avoid detailed regulation. The need for rules must be
6 balanced against the need for individual rights. There should be a mechanism for
7 resolving conflict. The statute should create state oversight authority to ensure
8 financial stability of CIDs. Attention should also be paid to issues concerning
9 dissolution of CIDs. See also Memorandum 2001-19, at Exhibit pp. 92-95.

10 • Karen Conlon spoke on behalf of the California Association of Community
11 Managers. She estimated that there are in excess of 30,000 CIDs in California,
12 averaging 130 units per development and housing an estimated eight million
13 Californians. There are around 200 different types of tasks involved in managing
14 the operation of CIDs, and about 30 different bodies of law that govern them.
15 There are currently no licensing requirements for managers; CACM has around
16 1,000 professional managers who voluntarily have committed to becoming
17 educated as to proper management. The governing documents of CIDs
18 developed within the past 25 years require professional management (a
19 consequence of financing restrictions).

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

28 • Beth Armstrong related the story of the small community in which her
29 parents live, where a \$140,000 trust fund for maintenance was dissipated by the
30 board on legal fees for unwarranted litigation, and a subsequent assessment of
31 \$30,000 imposed to pay for additional legal fees. Her parents are unable to pay
32 the assessment, were subjected to foreclosure proceedings on their home, and
33 were only able to get the board to back off by hiring an attorney to represent their
34 interests. Homeowners, particularly the elderly, are susceptible to and
35 traumatized by abusive board behavior. The Commission must look beyond the
36 industry and academia to reach what is really happening to people.

1 • Fred Eichenhoffer is a homeowner in the small association referred to by
2 Ms. Armstrong. The board members of that association, by virtue of their
3 ownership of 50% of the parcels, effectively control the association. Because he
4 disagreed with the board's attempt to assess members for legal fees, he was
5 subjected to board harassment and was improperly drawn into various legal
6 proceedings by the board's enforcement effort. Boards need to be made more
7 accountable for their actions in order to deter this sort of abuse.

8 **Commission Action**

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

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

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

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

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

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

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

30 **STUDY J-1302 – AUTHORITY TO APPOINT RECEIVERS**

31 The Commission considered Memorandum 2001-14, concerning revision of
32 the previously approved recommendation on *Authority to Appoint Receivers*. The
33 Commission approved the attached draft as a revised recommendation, for

1 printing and submission to the Legislature, with the following additional
2 revisions:

3 **Usages of Courts of Equity**

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

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

8

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

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

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

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

22 **Limit on Number of Laypersons**

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

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

28 **Replacements for Judges**

29 The Comment to Business and Professions Code Section 6301 and the
30 preliminary part (narrative portion) of the recommendation should be revised to
31 track the statutory language on appointment or designation of replacements for
32 superior court judges.

1 might be overlooked or a new provision granting authority in only one type of
2 case might be added without including language along the lines proposed.
3 Improper inferences might be drawn from such omissions.

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

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

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

14 72055. (a) The total fee for filing of the first paper in a limited
15 civil case, case shall be ~~ninety dollars (\$90), except that in cases~~
16 ~~where the amount demanded, excluding attorney's fees and costs,~~
17 ~~is ten thousand dollars (\$10,000) or less, the fee shall be eighty-three~~
18 ~~dollars (\$83). The amount of the demand shall be stated on the first~~
19 ~~page of the paper immediately below the caption eighty-seven~~
20 ~~dollars (\$87).~~

21

22 The intent is to achieve a proposal that neither increases nor decreases the
23 revenue of the courts. The preliminary part should make clear that the proposed
24 \$87 fee is based on analysis by the Administrative Office of the Courts, not by the
25 Commission.

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

28 The Commission considered Memorandum 2001-4, concerning *Civil*
29 *Procedure: Technical Corrections*. The Commission approved the attached draft as a
30 final recommendation, for printing and submission to the Legislature, with the
31 following revisions:

1 **Civ. Code § 2924j. Proceeding to discharge trustee and distribute proceeds**

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

5 **Code Civ. Proc. § 86. Petition to release a mechanic's lien**

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

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

10

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

29

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

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

40 In the legislative process, the staff should take steps to coordinate this proposed
41 amendment with the proposed amendment of Section 86 in the Commission's

1 revised recommendation on *Authority to Appoint Receivers*. See Study J-1302 *supra*;
2 Memorandum 2001-14.

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

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

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

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

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

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

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

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

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

26 946.6. (a) Where an application for leave to present a claim is
27 denied or deemed to be denied pursuant to Section 911.6, a petition
28 may be made to the court for an order relieving the petitioner from
29 Section 945.4. The proper court for filing the petition is ~~a court~~
30 ~~which would be a competent~~ the superior court that would be the
31 proper court for the trial of an action on the cause of action to
32 which the claim relates and ~~which is located in a county or judicial~~
33 ~~district which would be a proper place for the trial of the action,~~
34 ~~and if~~ . If the petition is filed in a court which is not a proper court
35 for the determination of the matter, the court, on motion of any
36 party, shall transfer the proceeding to a proper court. Where an

1 action on the cause of action to which the claim relates would be a
2 limited civil case, a proceeding pursuant to this section is a limited
3 civil case.

4

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

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

16 **Comments to Provisions with Obsolete Docket References**

17 The Comments to the proposed amendments of the following provisions
18 should be revised to reflect the elimination of the municipal courts: Code Civ.
19 Proc. §§ 472b, 638, 912, 1206; Food & Agric. Code § 11937; Veh. Code §§ 16370,
20 16373, 16379. See Memorandum 2001-4, p. 8.

21 **Further Study**

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

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

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

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

33 **Judges**

34 The Commission considered Memorandum 2001-6, relating to the number of
35 superior judges in each county. The staff noted that legislation enacted in 2000
36 adds judges in selected counties, increasing the total number of judges by 20. The

1 staff will implement those changes in the draft before it is circulated for
2 comment.

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

10 **Subordinate Judicial Officers**

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

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

30 The portion of Government Code Section 72190 relating to retired annuitants
31 may not be obsolete. The staff should take a closer look at this provision.
32 Similarly, in connection with Section 72403, the staff should investigate whether
33 provisions relating to participation of new employees (as opposed to current
34 employees) in the county retirement plan are superseded by TCEPGA,
35 particularly with respect to referees.

1 Welfare and Institutions Code Section 247 establishes a separate appointing
2 authority (the juvenile court judge) for juvenile court referees. The staff should
3 bring the proposed repeal of this provision to the attention of the affected parties.

4 The staff should bracket the proposed saving clause for now, and towards the
5 end of the project return to the question whether such a clause would be helpful.

6 The staff should circulate this material to the Court Commissioners
7 Association and the California Judges Association, as well as to personnel in
8 specifically affected counties.

9 **Court Reporters**

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

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

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

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

27 **Sheriff/Marshal**

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

1 **County-Specific Municipal Court Statutes**

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

10 **General Municipal Court Statutes**

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

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

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

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

24 **County-Specific Superior Court Statutes**

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

1 **Constitutional Amendment**

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

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

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

19 **Prob. Code § 4609. “Capacity”**

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

23 4609. “Capacity” means a ~~patient’s~~ person’s ability to
24 understand the nature and consequences of a decision and to make
25 and communicate a decision, and includes, in the case of proposed
26 health care, including the ability to understand its significant
27 benefits, risks, and alternatives, ~~and to make and communicate a~~
28 ~~health care decision.~~

29 The consensus was that there is one basic capacity standard, and the language
30 concerning health care decisionmaking is an elaboration of the standard, not a
31 different rule. Stating two differently worded standards could be confusing. At
32 the same time, the elaboration provides some useful additional guidance in
33 determining capacity to make health care decisions, whether it is stated in a
34 separate subdivision, as an added clause of the sentence, or in the Comment.

1 **Prob. Code § 4711. Patient's designation of surrogate**

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

13 **STUDY N-306 – ADMINISTRATIVE RULEMAKING CLEANUP**

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

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

APPROVED AS SUBMITTED

Date

APPROVED AS CORRECTED
(for corrections, see Minutes of next meeting)

Chairperson

Executive Secretary