
MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
MAY 18, 2001
SAN DIEGO

A meeting of the California Law Revision Commission was held in San Diego on May 18, 2001.

Commission:

Present: David Huebner, Chairperson
Joyce G. Cook, Vice Chairperson
Sanford M. Skaggs
Howard Wayne, Assembly Member

Absent: Bion M. Gregory, Legislative Counsel
Bill Morrow, Senate Member

Staff: Nathaniel Sterling, Executive Secretary
Stan Ulrich, Assistant Executive Secretary
Barbara S. Gaal, Staff Counsel
Brian P. Hebert, Staff Counsel
Lynne I. Urman, Staff Counsel

Consultants: Joseph B. Harvey, Evidence Code
Gordon Hunt, Mechanic's Lien Law

Other Persons:

Sam Abdulaziz, Abdulaziz & Grossbart, North Hollywood
Samuel L. Dolnick, Community Associations Institute, California Legislative Action Committee, La Mesa
Maxine Ferguson, Caltrans, Sacramento
Ellen Gallagher, Contractors State License Board, Sacramento
Robert Garland, Law Offices of Robert Garland, San Diego
William C. George, Chief Consultant, Assembly Banking and Finance Committee, Sacramento
Jan Hansen, Lumber Association of California & Nevada, Sacramento
Jean Henning-Brunton, Lumber Association of California & Nevada, Sacramento
David C. McKee, American Residential Services, San Diego
Greg Moss, Moss Lumber, Redding
James Veltmann, State Bar Family Law Section, San Diego
Norman Widman, Dixieline Lumber, San Diego

1	July 2001	No Meeting
2	August 2001	No Meeting
3	September 2001	San Francisco
4	Sept. 20 (Thur.)	10:00 am – 5:00 pm
5	Sept. 21 (Fri.)	9:00 am – 4:00 pm
6	October 2001	No Meeting
7	November 2001	Los Angeles
8	Nov. 15 (Thur.)	10:00 am – 5:00 pm
9	Nov. 16 (Fri.)	9:00 am – 4:00 pm
10	<u>November 2001</u>	<u>TBA</u>
11	<u>Nov. 30 (Fri.)</u>	<u>10:00 am – 5:00 pm</u>
12	December 2001	No Meeting
13	<u>January 2002</u>	<u>Sacramento</u>
14	<u>Jan. 17 (Thur.)</u>	<u>10:00 am – 5:00 pm</u>
15	<u>Jan. 18 (Fri.)</u>	<u>9:00 am – 4:00 pm</u>

16 November 30 was added as a special one-day meeting at which comments on the
17 mechanic’s lien tentative recommendation could be considered and decisions
18 made, with the intention of finalizing a recommendation on the matter at the
19 January 2002 meeting.

20 **Practices and Procedures**

21 The Commission considered Memorandum 2001-22, presenting the main text
22 of the Commission’s Handbook of Practices and Procedures. The Commission
23 approved the Handbook as proposed to be revised, except that a reference
24 should be added to the “meet and greet” process for introducing the Commission
25 to new members of the Legislature. The staff will compile the text and the
26 appendices and issue a new edition in the near future.

27 With respect to late-arriving material for a meeting, the Commission left it to
28 staff’s judgment and discretion whether to email or express mail the material to
29 the Commission before the meeting or to collect it for distribution at the meeting,
30 depending on the character of the material. The staff should adhere to the
31 expressed preference of individual Commissioners as to the mode of
32 transmission (hard copy v. electronic copy).

1 **Report of Executive Secretary**

2 The Executive Secretary reported that the Commission's budget for 2001-02
3 has been approved by budget subcommittees in both houses of the Legislature,
4 but that there may be some reduction as part of a government-wide reduction
5 resulting from the economic downturn.

6 The Executive Secretary and Chairperson have located a suitable consultant
7 for the study of arbitration improvements from other jurisdictions. We have
8 executed a contract with Professor Roger Alford of Pepperdine Law School. The
9 contract amount is \$7500; the study is due December 31, 2002.

10 The Commission will have two Stanford Law School students working as
11 interns this summer, at no cost to the Commission.

12 **LEGISLATIVE PROGRAM**

13 The Commission considered Memorandum 2001-38 and its First and Second
14 Supplements, relating to the Commission's 2001 legislative program.

15 The Commission also considered the attached chart showing the status of
16 bills in the Commission's 2001 legislative program. The Executive Secretary
17 updated the chart with the following information concerning the bills:

- 18 AB 223 (Frommer) – passed first house May 10
- 19 AB 237 (Papan) – passed first house May 10
- 20 AB 873 (Harman) – amended May 10, passed fiscal committee May 16
- 21 AB 1103 (Papan) – passed first house May 10
- 22 SB 561 (Morrow) – passed first house May 14
- 23 SB 563 (Morrow) – amended May 1, passed fiscal committee May 14

24 The Commission took action on the following matters in the 2001 legislative
25 program:

26 **AB 237 (Papan) – Early disclosure of valuation data and resolution of issues**
27 **in eminent domain.** For Commission action on AB 237 (Papan), see the entry in
28 these Minutes under Study Em-458 (early disclosure of valuation data and
29 resolution of issues in eminent domain).

30 **AB 873 (Harman) – Estate planning and dissolution of marriage.** For
31 Commission action on AB 873 (Harman), see the entry in these Minutes under
32 Study L-910 (estate planning and dissolution of marriage).

1 **AB 1103 (Papan) – Law library board of trustees.** For Commission action on
2 AB 1103 (Papan), see the entry in these Minutes under Study J-1307 (law library
3 board of trustees).

4 **AB 1278 (Wayne) – Health Care Decisions Law: miscellaneous revisions.**
5 For Commission action on 1278 (Wayne), see the entry in these Minutes under
6 Study L-4004 (health care decisions law: miscellaneous revisions).

7 **SB 561 (Morrow) – Administrative rulemaking cleanup.** For Commission
8 action on SB 562 (Morrow), see the entry in these Minutes under Study N-306
9 (administrative rulemaking cleanup).

10 **SB 562 (Morrow) – Civil procedure after trial court unification: technical**
11 **corrections.** For Commission action on SB 562 (Morrow), see the entry in these
12 Minutes under Study J-1320 (civil procedure after trial court unification: technical
13 corrections).

14 **STUDY D-1003 – DEBTOR-CREDITOR LAW: TECHNICAL REVISIONS**

15 The Commission considered Memorandum 2001-45 reviewing comments
16 received on the Tentative Recommendation on *Debtor-Creditor Law: Technical*
17 *Revisions* (March 2001). The staff reported that a message had been received from
18 Michael Torres, Los Angeles County Sheriff’s Department, whose letter initiated
19 this topic, saying that he approved of the tentative recommendation.

20 The Commission approved the recommendation for printing, with the
21 revisions suggested in the memorandum. In addition, the rule in Code of Civil
22 Procedure Section 703.580(f), concerning disposition of property claimed to be
23 exempt in a case where the creditor’s motion in opposition to an exemption claim
24 is taken off calendar, should be revised to provide that the property is released
25 from levy if the motion is not heard within the statutory time limits. The staff will
26 prepare the recommendation for printing and attempt to have the amendments
27 added to an appropriate bill in the current legislative session.

28 **STUDY EM-458 – EARLY DISCLOSURE OF VALUATION DATA**
29 **AND RESOLUTION OF ISSUES IN EMINENT DOMAIN**

30 The Commission considered Memorandum 2001-48 and its First Supplement,
31 relating to AB 237 (Papan) (early disclosure of valuation data and resolution of
32 issues in eminent domain). The Commission approved the following revision of
33 proposed Code of Civil Procedure Section 1250.420(c):

1 The arbitrator's decision in a nonbinding arbitration is final unless
2 within 30 days after service of the arbitrator's decision a party
3 moves the court for a trial of the eminent domain proceeding. If the
4 judgment in the eminent domain proceeding is not more favorable
5 to the moving party, ~~the moving party shall, notwithstanding any~~
6 ~~other statute, pay the costs and litigation expenses of the parties in~~
7 ~~the eminent domain proceeding. the court shall order that party to~~
8 pay to the other parties the following nonrefundable costs and fees,
9 unless the court finds in writing and upon motion that the
10 imposition of costs and fees would create such a substantial
11 economic hardship as not to be in the interest of justice:

12 (1) All costs specified in Section 1033.5, limited to those incurred
13 from the time of election of the trial de novo. Nothing in this
14 subdivision affects the right of a defendant to recover costs
15 otherwise allowable pursuant to Section 1268.710, incurred before
16 election of a trial de novo, except that a defendant may recover the
17 costs of determining the apportionment of the award made
18 pursuant to subdivision (b) of Section 1260.220 whenever incurred.

19 (2) The reasonable costs of the services of expert witnesses who
20 are not regular employees of any party, actually incurred and
21 reasonably necessary in the preparation or trial of the case, limited
22 to those incurred from the time of election of the trial de novo.

23 (3) The compensation paid by the parties to the arbitrator.

24 STUDY F-910 – EFFECT OF DISSOLUTION OF MARRIAGE
25 ON NONPROBATE TRANSFERS

26 See the entry in these Minutes under Study L-910.

27 STUDY F-911 – ESTATE PLANNING DURING DISSOLUTION OF MARRIAGE

28 See the entry in these Minutes under Study L-910.

29 STUDY H-820 – MECHANIC'S LIENS

30 The Commission considered Memorandum 2001-41, and its First and Second
31 Supplements, concerning general revision of the mechanic's lien statute. The
32 Commission discussed the scope of the study and the best approach to revision
33 of the statute to make minor substantive and technical revisions. The
34 Commission also heard the views of interested persons on these matters.

35 As to scheduling, the Commission set a goal of approving final
36 recommendations for revision of the mechanic's lien law at or before the January
37 2002 meeting. This will enable introduction of one or more bills in the 2002

1 legislative session. An extra meeting may need to be scheduled in November to
2 meet this schedule.

3 The Commission directed the staff to focus efforts on preparing a draft
4 tentative recommendation addressing the double payment problem for the June
5 meeting. It is hoped that a tentative recommendation on this part of the project
6 can be approved for distribution not later than the September meeting.

7 If time permits, the staff should also present proposals for minor substantive
8 and technical revision of the mechanic's lien statute and related provisions. The
9 Commission will consider the extent to which the statute should be generally
10 revised after further review, but the general view was that the staff should start
11 with the existing statute and make proposed revisions to simplify and clarify the
12 law, rather than starting from a blank slate and building a new statute. If a
13 general revision can be prepared in time for a bill in 2002, it will necessarily be a
14 more limited project than would be possible in a multi-year project. In view of
15 other mandated projects and pending studies, Commissioners generally
16 expressed the view that it would not be productive to get involved in a lengthy
17 overall revision of the mechanic's lien statute, particularly if a consensus could
18 not be reached, resulting in eventual abandonment of the project.

19 **STUDY H-851 – NONJUDICIAL DISPUTE RESOLUTION UNDER CID LAW**

20 **General Approach**

21 The Commission considered Memorandum 2001-42 and its First Supplement,
22 concerning the Commission's general approach to nonjudicial dispute resolution
23 under common interest development law.

24 The Commission also heard remarks of Samuel L. Dolnick. Among the points
25 made by Mr. Dolnick were:

26 (1) Mediation does not appear to be particularly helpful in resolving common
27 interest development disputes.

28 (2) Existing alternative dispute resolution mechanisms are inadequate
29 because they are not mandatory.

30 (3) State oversight of financial affairs of common interest developments is
31 needed.

32 (4) Copies of governing documents should be given to a prospective buyer
33 three days before the close of escrow so that the buyer will have an opportunity
34 to review them and back out if unhappy with them.

1 (5) Some common interest development governing documents require
2 insurance that is not available.

3 (6) Close attention must be given to the definition of common areas. A large
4 number of common interest development disputes relate to allocation of
5 responsibility for maintenance of common areas.

6 In terms of its general inquiry into nonjudicial dispute resolution for common
7 interest developments, the Commission requested the staff to investigate the
8 possibility of an administrative hearing process provided at the state level.
9 Suggestions for state departments that could be in a position to provide this
10 service included the Department of Fair Employment and Housing, and the
11 Department of Real Estate. The concept is that there would be a commissioner or
12 administrative law judge who could hear and resolve CID disputes following
13 informal administrative hearing procedures. Judicial review would be available
14 by writ of mandate (perhaps with independent judgment review, depending on
15 the deference to be afforded to the expertise of the decisionmaker). Funding of
16 such a system would also be an issue. The staff should develop this concept for
17 the next meeting at which CID matters are considered.

18 The Commission also decided that in the course of this study, it will review
19 the Department of Real Estate regulations for consistency with current insurance
20 practice.

21 **Jurisdiction of Small Claims Court**

22 The Commission considered Memorandum 2001-43, relating to the
23 jurisdiction of the small claims court and use of the small claims court for
24 resolution of common interest development disputes. After hearing the practical
25 limitations on expansion of small claims court jurisdiction, the Commission
26 decided not to pursue the concept of extending the court's equitable powers.

27 The Commission was interested in seeing whether certain types of disputes,
28 such as nonpayment of assessments, ought to be within the exclusive jurisdiction
29 of the small claims court. The Commission requested the staff, when it has
30 completed the task of compiling a catalogue of CID issues and problems, to
31 categorize the issues and suggest whether some types may be appropriate for
32 small claims court exclusive jurisdiction. An alternative approach would be to
33 limit the monetary recovery that could be obtained for certain types of disputes
34 so that, as a practical matter, they are channeled into the small claims court.

1 **Role of Attorney General**

2 The Commission considered Memorandum 2001-44, relating to the role of the
3 Attorney General in enforcing laws applicable to governance of common interest
4 developments. The Commission decided not to investigate possible expansion of
5 the Attorney General's enforcement role in CIDs.

6 STUDY H-910 – EFFECT OF DISSOLUTION OF MARRIAGE
7 ON NONPROBATE TRANSFERS

8 See entry in these Minutes under Study L-910.

9 STUDY H-911 – ESTATE PLANNING DURING DISSOLUTION OF MARRIAGE

10 See entry in these Minutes under Study L-910.

11 STUDY J-1302 – AUTHORITY TO APPOINT RECEIVERS

12 See entry in these Minutes under Study J-1320.

13 STUDY J-1307 – LAW LIBRARY BOARD OF TRUSTEES

14 The Commission considered the Second Supplement to Memorandum 2001-
15 38, concerning AB 1103 (Papan), which would implement the Commission's
16 recommendation on *Law Library Board of Trustees*. The Commission decided not
17 to make any revisions in response to the opposition of the Fresno County Law
18 Library Board of Trustees ("Fresno Board"). The staff should contact the Fresno
19 Board and explain the Commission's position.

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

22 The Commission considered Memorandum 2001-40 and its First Supplement,
23 concerning SB 562 (Morrow). The Commission made the following decisions:

24 **Code Civ. Proc, § 86. Miscellaneous limited civil cases**

25 SB 562 would combine revisions of Code of Civil Procedure Section 86
26 recommended in the study on *Civil Procedure: Technical Corrections*, with revisions
27 of the same provision recommended in the study on *Authority to Appoint*
28 *Receivers*. The Comment to Section 86 should reflect this as follows:

1 **Comment.** Subdivision (a)(6) of Section 86 is amended to clarify
2 the jurisdictional classification of a petition to release a mechanic's
3 lien. This is declaratory of existing law. See Code Civ. Proc. § 85
4 (limited civil cases) & Comment. See also Code Civ. Proc. § 88
5 (unlimited civil case).

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

11 Subdivision (a)(8) is amended to delete the language on
12 circumstances for appointment of a receiver in a limited civil case,
13 and insert a cross-reference to Section 564, which now governs
14 appointment of receivers in both limited and unlimited civil cases.
15 The language deleted from the first clause of subdivision (a)(8) is
16 continued in Section 564(b)(8), but broadened to apply to all cases.
17 See Section 564 Comment. The language deleted from the second
18 clause of subdivision (a)(8) is not continued, because it is redundant
19 with Section 564(b)(3) and (b)(4).

20 **Code Civ. Proc, § 564. Appointment of receiver**

21 The Comment to Code of Civil Procedure Section 564 should be revised to
22 read:

23 **Comment.** For purposes of simplification, Section 564 is
24 broadened to govern appointment of a receiver in all cases,
25 regardless of the jurisdictional classification of the case. Formerly, a
26 separate provision governed appointment of a receiver in a limited
27 civil case. 1998 Cal. Stat. ch. 931, § 29 (former Section 86(a)(8)).

28 Although Section 564 covers both limited and unlimited civil
29 cases, some of the types of actions listed in the statute may only be
30 brought as an unlimited civil case. For example, Section 564(b)(7)
31 refers to appointment of a receiver where the Public Utilities
32 Commission requests a receiver pursuant to Public Utilities Code
33 Section 855 or 5259.5. Such a proceeding may only be brought as an
34 unlimited civil case. See Section 85 & Comment.

35 To aid practitioners, subdivision (b)(5) of Section 564 is
36 amended to refer to Section 565 (appointment of receiver on
37 dissolution of corporation).

38 Subdivision (b)(9) (former subdivision (b)(8)) is amended to
39 delete language authorizing appointment of a receiver "where
40 receivers have heretofore been appointed by the usages of court of
41 equity," and insert more readily understandable language formerly
42 found in Section 86. The deleted language conferred broad
43 authority to appoint a receiver, but only where other remedies were
44 found to be inadequate. See, e.g., *Golden State Glass Corp. v.*

1 Superior Court, 13 Cal. 2d 384, 393, 90 P.2d 75 (1939) (superior court
2 should appoint receiver only where necessary to “adequately
3 protect the rights of the parties”); Alhambra-Shumway Mines, Inc.
4 v. Alhambra Gold Mine Corp., 116 Cal. App. 2d 869, 873, 254 P.2d
5 599 (1953) (where less severe remedy will adequately protect
6 parties, court ordinarily should not appoint receiver); see also
7 Murray v. Murray, 115 Cal. 266, 275, 47 p. 37 (1896) (in equity,
8 receiver may be appointed where plaintiff has equitable claim to
9 property and “receiver is necessary to preserve the same from
10 loss”). Similarly, subdivision (b)(9) authorizes appointment of a
11 receiver only “where necessary to preserve the property or rights of
12 any party.” (Emphasis added.)

13 As before, the general language of subdivision (b)(9) does not
14 override specific requirements enumerated elsewhere in the statute.
15 See, e.g., Marsch v. Williams, 23 Cal. App. 4th 238, 246 n.8, 28 Cal.
16 Rptr. 2d 402 (1994); Dabney Oil Co. v. Providence Oil Co., 22 Cal.
17 App. 233, 237, 133 P. 1155 (1913).

18 Subdivision (b)(10) (former subdivision (b)(9)) is amended to
19 correct the cross-reference. Health and Safety Code Section 436.222
20 was repealed in 1995 and its substance recodified in Section 129173.
21 See 1995 Cal. Stat. ch. 415, §§ 9, 79.5.

22 For other provisions concerning receivers, see Sections 565-570,
23 708.610-708.630, 712.060, 1422. See also Civ. Code § 3439.07; Corp.
24 Code §§ 1801, 1803, 16504; Fam. Code § 290; Ins. Code §§ 1064.1-
25 1064.12.

26 Veh, Code § 16373. Certification to judgment creditor

27 The amendment of Vehicle Code Section 16373 should be revised to read:

28 16373. (a) ~~The clerk of a court, or the judge of a court which has~~
29 ~~no clerk,~~ shall, subject to subdivision (b), issue upon the request of a
30 judgment creditor a certified copy of any judgment or a certified
31 copy of the ~~docket entries~~ register of actions in an action resulting
32 in a judgment for damages, and a certificate of facts relative to the
33 judgment on a form provided by the department.

34 (b) The judgment creditor may pay the required fees and
35 request the documents specified in subdivision (a) upon the
36 expiration of 30 days after the judgment has become final, if the
37 judgment has not been stayed or satisfied within the amounts
38 specified in this chapter as shown by the records of the court. The
39 court shall determine the required fees, which shall be
40 commensurate with the cost incurred by the court in carrying out
41 this section.

42 **Comment.** Section 16373 is amended to delete the reference to
43 “docket entries,” and substitute a reference to the register of
44 actions, because courts no longer maintain a record denominated a

1 “docket” in civil cases. Formerly, justice courts maintained a docket
2 in civil cases, which was a record of actions taken in open court, as
3 well as documents filed and other proceedings in the case. See
4 former Gov’t Code §§ 71614 (1953 Cal. Stat. ch. 206, § 1, repealed by
5 1977 Cal. Stat. ch. 1257, § 71) (judge of justice court shall keep a
6 book denominated a “docket”), 71614.5 (1959 Cal. Stat. ch. 671, § 2,
7 repealed by 1977 Cal. Stat. ch. 1257, § 72) (clerk or judge of justice
8 court shall keep the “docket” and other records of the court). Now
9 actions taken in open court are recorded in the minutes of a
10 superior court. Gov’t Code § 69844; see also *Copley Press v.*
11 *Superior Court*, 6 Cal. App. 4th 106, 110, 7 Cal. Rptr. 2d 841 (1992).
12 Documents filed or lodged and other proceedings in a civil case are
13 recorded in the register of actions. See Gov’t Code §§ 69845 (clerk of
14 superior court may keep a register of actions), 69845.5 (alternative
15 to maintaining register of actions in superior court).

16 The amendment also deletes the clause authorizing the judge to
17 substitute for the clerk if there is no clerk. That provision is obsolete
18 because every superior court has a clerk. See Gov’t Code §§
19 24000(c) (county clerk), 26800 (county clerk as clerk of superior
20 court). Additionally, a judge has authority to perform any act that a
21 court clerk is allowed to perform. Code Civ. Proc. § 167.

22 **Veh. Code § 16376. Action against nonresident**

23 Vehicle Code Section 16376 should be amended along the following lines:

24 16376. (a) If the person against whom judgment is rendered is a
25 nonresident and the person fails within the prescribed time to
26 satisfy the judgment in full or to the extent specified in this chapter,
27 all privileges of operating a motor vehicle in this state given to the
28 person under this code shall be suspended while the judgment
29 remains in effect and unsatisfied and until the nonresident gives
30 proof of his or her financial responsibility in the manner and to the
31 extent provided in Chapter 3 (commencing with Section 16430) for
32 accidents occurring after the date of the giving of proof.

33 (b) The department shall forward a certified copy of the
34 judgment of a court of record ~~or a certified copy of the docket of a~~
35 ~~court not of record~~ to the appropriate officer in charge of the
36 licensing of drivers in the state of which the person is a resident.

37 **Comment.** Section 16376 is amended to insert subdivisions and
38 eliminate the reference to “the docket of a court not of record,”
39 which is obsolete because all courts are “courts of record.” Cal.
40 Const. art. VI, § 1.

41 **Veh. Code § 16379. Payment of judgment in installments**

42 The amendment of Vehicle Code Section 16379 should be revised to read:

1 **County-Specific Consolidation Statutes**

2 The Commission approved the staff recommendation to add an automatic 15-
3 year sunset provision to each consolidation statute or article with the following
4 changes:

5 (1) A saving clause should be added that provides that the repeal of the
6 consolidation statute or article shall not affect any right or benefit to which any
7 employee of the consolidated office was entitled prior to the date of repeal.

8 (2) The Comment language should be revised, where appropriate, to include
9 a cross-reference to Government Code Section 71265 (marshals' powers, duties
10 and liabilities), to reflect that the marshals attend the superior courts in some
11 counties.

12 **Retirement Statutes**

13 After considering the staff's workload and the fact that the office of constable
14 was only recently eliminated, the Commission decided to preserve references to
15 "constables" and "deputy constables" in the statutory retirement plans.

16 **STUDY K-500 – EVIDENCE CODE CHANGES REQUIRED**
17 **BY ELECTRONIC COMMUNICATIONS**

18 The Commission considered Memorandum 2001-29, concerning Evidence
19 Code changes required by electronic communications. The Commission made
20 the following decisions:

21 **Evid. Code § 912. Waiver**

22 Evidence Code Section 912 should be revised to apply to the privilege for
23 confidential communications between a counselor and a domestic violence
24 victim. No other substantive revisions appear necessary at this time. It is already
25 sufficiently well-established that an inadvertent disclosure of a privileged
26 communication is not a waiver of the privilege.

27 **Evid. Code § 917. Presumption of confidentiality**

28 Evidence Code Section 917 should be revised along the following lines:

29 917. (a) Whenever a privilege is claimed on the ground that the
30 matter sought to be disclosed is a communication made in
31 confidence in the course of the lawyer-client, physician-patient,
32 psychotherapist-patient, clergyman-penitent, or husband-wife,
33 sexual assault victim and counselor, or domestic violence victim

1 and counselor relationship, the communication is presumed to
2 have been made in confidence and the opponent of the claim of
3 privilege has the burden of proof to establish that the
4 communication was not confidential.

5 (b) (1) No communication privileged under this article loses its
6 privileged character for the sole reason that it is communicated by
7 electronic means or because persons involved in the delivery or
8 facilitation of electronic communication may have access to the
9 content of the communication.

10 (2) For purposes of this section, “electronic” has the meaning
11 defined in Section 1633.2 of the Civil Code.

12 **Work Product Privilege**

13 Disclosure of materials protected by the work product privilege should be
14 addressed in the Commission’s study of discovery improvements, not in this
15 study.

16 **STUDY L-910 – EFFECT OF DISSOLUTION OF MARRIAGE** 17 **ON NONPROBATE TRANSFERS**

18 The Commission considered Memorandum 2001-39, discussing Assembly Bill
19 873 (Harman), which implements two Commission recommendations: *Effect of*
20 *Dissolution of Marriage on Nonprobate Transfers* and *Estate Planning During*
21 *Dissolution of Marriage*. The memorandum describes amendments made to AB
22 873 during the legislative process, and proposes conforming changes to the
23 Comment to proposed Probate Code Section 5600. The Commission ratified the
24 amendments and approved the Comment changes.

25 **STUDY L-911 – ESTATE PLANNING DURING DISSOLUTION OF MARRIAGE**

26 See the entry in these Minutes under Study L-910.

27 **STUDY L-4004 – HEALTH CARE DECISIONS LAW: MISCELLANEOUS REVISIONS**

28 The Commission considered the First Supplement to Memorandum 2001-38,
29 concerning proposed revisions of AB 1278, the bill implementing the
30 Recommendation on *Health Care Decisions Law: Miscellaneous Revisions*. The
31 Commission approved the proposal to revise the language in Health and Safety
32 Code Section 7100(a)(1) to clarify its relation to the agent’s powers and duties
33 under the Health Care Decisions Law, thereby addressing the concerns of the

1 California Funeral Directors Association. The provision should be amended
2 substantially as follows:

3 7100. (a) The right to control the disposition of the remains of a
4 deceased person, the location and conditions of interment, and
5 arrangements for funeral goods and services to be provided, unless
6 other directions have been given by the decedent pursuant to
7 Section 7100.1, vests in, and the duty of disposition and the liability
8 for the reasonable cost of disposition of the remains devolves upon,
9 the following in the order named:

10 (1) An agent under a power of attorney for health care governed
11 by who has the right and duty of disposition under Division 4.7
12 (commencing with Section 4600) of the Probate Code, except that
13 the agent is liable for the costs of disposition only in either of the
14 following cases:

15 (A) Where the agent makes a specific agreement to pay the costs
16 of disposition.

17 (B) Where, in the absence of a specific agreement, the agent
18 makes decisions concerning disposition that incur costs, in which
19 case the agent is liable only for the reasonable costs incurred as a
20 result of the agent's decisions, to the extent that the decedent's
21 estate or other appropriate fund is insufficient.

22 STUDY N-306 – ADMINISTRATIVE RULEMAKING CLEANUP

23 In connection with the Commission's consideration of Memorandum 2001-38,
24 the staff reported that technical amendments had been made to address concerns
25 raised by the staff of the Senate Judiciary Committee concerning SB 561
26 (Morrow) – administrative rulemaking cleanup. In addition, the staff
27 recommended a change to the Comment to Government Code Section 11340.85
28 (as described in the memorandum). The Commission ratified the amendments
29 and approved the change to the Comment.

APPROVED AS SUBMITTED

Date

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

Chairperson

Executive Secretary