
MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
JUNE 29, 2001
SACRAMENTO

A meeting of the California Law Revision Commission was held in Sacramento on June 29, 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
Amy Ash, Student Legal Assistant
Curtis Renoe, Student Legal Assistant

Consultants: Keith Honda, Mechanic's Lien Law
Gordon Hunt, Mechanic's Lien Law

Other Persons:

Sam Abdulaziz, Abdulaziz & Grossbart, North Hollywood
Yolanda Benson, Mattos & Associates, Lumber Association of California & Nevada,
Sacramento
Sandra Bonato, Executive Council of Homeowners Association, San Jose
Peter C. Freeman, Lumber Association of California & Nevada, Barr Lumber
Company, San Bernardino
Joe Furtado, Assemblyman John Dutra's Office, Sacramento
Ellen Gallagher, Contractors State License Board, Sacramento
Paul R. Geissler, Surety Company of the Pacific, Encino
Charles Egan Goff, Truckee
Fredrick D. Goings, Livingston & Mattesich, Sacramento
Jan Hansen, Lumber Association of California & Nevada, Sacramento

1 expressed his willingness to serve on condition that the matter be revisited in six
2 months' time, assuming new Commission members will have been appointed
3 and will have some experience by then.

4 **Meeting Schedule**

5 The Commission noted that the September meeting is scheduled for Thursday
6 and Friday, September 20-21. In the event there is insufficient material for a two-
7 day meeting, the Commission directs that the Thursday portion of the meeting
8 should be dropped and the Friday portion retained.

9 **Report of Executive Secretary**

10 The Executive Secretary introduced the Commission's two summer interns,
11 Stanford Law School students Amy Ash and Curtis Renoe.

12 **LEGISLATIVE PROGRAM**

13 The Commission considered Memorandum 2001-50 and its First Supplement,
14 relating to the Commission's 2001 legislative program. The staff orally updated
15 the chart attached to the memorandum with the following information:

16 AB 223 (Frommer) – Unnecessary procedural differences between
17 limited and unlimited civil cases. The hearing has been postponed
18 until July 3.

19 AB 1103 (Papan) – Law library board of trustees. The Assembly
20 concurred in Senate amendments on June 27.

21 SB 561 (Morrow) – Administrative rulemaking cleanup. The bill was
22 approved by the policy committee on June 26.

23 SB 562 (Morrow) – Civil procedure technical corrections. The bill was
24 received by the Governor on June 22.

25 SB 563 (Morrow) – Rulemaking under Penal Code Section 5058. The
26 bill was approved by the policy committee on June 26.

27 SCR 13 (Morrow) – Resolution of authority. The bill was approved by
28 the fiscal committee on June 27.

29 The Commission also took action on the following legislative program
30 matters:

31 **AB 223 (Frommer) – Unnecessary procedural differences between limited**
32 **and unlimited civil cases.** For Commission action on AB 223 (Frommer), see the
33 entry in these Minutes under Study J-1320.

1 **AB 873 (Harman) – Estate planning during dissolution of marriage.** For
2 Commission action relating to AB 873 (Harman), see the entry in these Minutes
3 under Study L-910.

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

6 **SB 562 (Morrow) – Authority to appoint receivers.** For Commission action
7 on SB 562 (Morrow), see the entry in these Minutes under Study J-1302.

8 **STUDY F-910 – EFFECT OF DISSOLUTION OF MARRIAGE**
9 **ON NONPROBATE TRANSFERS**

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

11 **STUDY F-911 – ESTATE PLANNING DURING DISSOLUTION OF MARRIAGE**

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

13 **STUDY H-820 – MECHANIC’S LIENS**

14 The Commission considered Memorandum 2001-52, and its First and Second
15 Supplements, concerning the double payment issue in home improvement
16 contracts, and Memorandum 2001-53, and its First Supplement, concerning
17 general revision of the mechanic’s lien statute.

18 **Double Payment Issue**

19 The Commission considered the elements of the staff draft addressing the
20 double payment issue and approved the outlined approach, except that the
21 mandatory 50% payment bond floor set out in draft Civil Code Section 3244.10
22 should be raised from \$5,000 to \$10,000. The draft tentative recommendation on
23 this subject will be considered in greater detail at the September meeting, at
24 which time the staff will have fleshed out the preliminary part that explains and
25 justifies the proposed revisions.

26 The proposed one-year deferred operative date was approved. The other
27 alternatives discussed in Memorandum 2001-52 were viewed as too complex.

28 The tentative recommendation should discuss any constitutional issues
29 concerning implementation of good-faith payment as a defense to lien claims by
30 subcontractors and suppliers who are not in privity with the owner.

1 **General Revision**

2 The Commission considered the general statutory revisions sampler attached
3 to Memorandum 2001-53. It was recognized that the general statutory revision
4 would need to be scaled to the time available for its completion to meet the
5 deadlines for submitting legislation in 2002.

6 **Schedule**

7 The Commission approved the schedule outlined in Memorandum 2001-53
8 for completion of the review of the double payment problem and the general
9 revision of the mechanic's lien statute, as well as preparation of a separate report
10 on other options for addressing the double payment problem. The basic goal is to
11 complete the work that needs to be done to have recommended legislation ready
12 in January 2002.

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

14 The Commission considered Memorandum 2001-54 and its First and Second
15 Supplements, relating to an administrative hearing procedure for resolving
16 common interest development disputes. The Commission also considered
17 material distributed at the meeting, attached to the Third Supplement to
18 Memorandum 2001-54.

19 The Commission also considered Memorandum 2001-55, which describes
20 regulatory and statutory procedures governing decisionmaking by a
21 homeowners association and discusses the extent to which “due process” is
22 required in association decisionmaking.

23 After hearing from interested persons and after discussion of the issues raised
24 in these materials, the Commission decided not to pursue the concept of vesting
25 an administrative agency with authority to resolve common interest
26 development disputes by administrative adjudication. Instead, the Commission
27 directed the staff to review the existing law governing mediation and arbitration
28 of common interest development disputes, and to propose to the Commission
29 any improvements in that law that appear called for.

30 Consistent with recommendations made in Memorandum 2001-55, the
31 Commission instructed the staff to draft statutory decisionmaking procedures
32 governing: (1) adoption of “operational rules,” and (2) architectural review. The
33 rulemaking procedure should include a provision defining the scope of effect of
34 “operational rules.” The architectural review procedure should be flexible

1 enough to provide basic due process in disputed cases, without imposing undue
2 procedural burdens in routine cases.

3 In addition, the Commission will consider the possibility of improving lien
4 foreclosure procedures, such as by imposing a mediation requirement, by
5 precluding lien imposition for fines (as opposed to assessments), by limiting use
6 of nonjudicial foreclosure techniques for non-assessment liens, or some other
7 technique. The Commission will also consider whether there may be an
8 appropriate means of tempering board action, either by some sort of personal
9 responsibility of directors or liability of the association. This would need to be
10 done in such a way as not to discourage able persons from serving on the board
11 or to discourage the board from acting effectively when the need arises.

12 STUDY H-910 – EFFECT OF DISSOLUTION OF MARRIAGE
13 ON NONPROBATE TRANSFERS

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

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

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

17 STUDY J-1302 – AUTHORITY TO APPOINT RECEIVERS

18 The Commission considered Memorandum 2001-58, concerning SB 562
19 (Morrow). As discussed in the memorandum, the Comment to Code of Civil
20 Procedure Section 564 should be revised to read:

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

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

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

1 ~~the constitution of a six member or seven member board of library~~
2 ~~trustees, the board of library trustees may consist of where there are~~
3 ~~no more than three judges of the superior court, the board of~~
4 ~~supervisors, with the concurrence of a majority of the incumbent~~
5 ~~judges of the superior court, may reduce the number of law library~~
6 ~~trustees to not less than three members.~~

7 STUDY J-1320 – UNNECESSARY PROCEDURAL DIFFERENCES BETWEEN
8 LIMITED AND UNLIMITED CIVIL CASES

9 The staff orally recommended that the Comment to Code of Civil Procedure
10 Section 685.030 (satisfaction of judgment) be revised to delete an obsolete
11 reference to a municipal court provision. The Commission approved the
12 suggested revision:

13 **Comment.** Subdivision (e) of Section 685.030 is amended to
14 eliminate that difference in treatment between limited and
15 unlimited civil cases.

16 For the register of actions in superior court, see Gov't Code §§
17 69845, 69845.5. ~~For the register of actions in municipal court, see~~
18 ~~Code Civ. Proc. §§ 1052, 1052.1.~~

19 A technical change is also made for conformity with preferred
20 drafting style.

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

22 The Commission considered Memorandum 2001-56, relating to statutes made
23 obsolete by trial court restructuring.

24 The Commission decided to explore an alternative approach to Court of
25 Appeal appellate jurisdiction. The staff should develop the concept of making the
26 superior court appellate division in effect a division of the Court of Appeal. That
27 division could be staffed by pro tempore appellate judges sitting by assignment
28 from the superior court, depending on the court's resources and case load. An
29 appropriate name for that division would need to be devised. Presumptively
30 limited civil cases and misdemeanor and infraction cases would be heard in that
31 division, but the Court of Appeal could determine which appeals would go to
32 that division. This would also eliminate the problem of dismissal or transfer
33 between courts of an appeal filed in the wrong court.

1 patient privilege), or 1035.8 (sexual assault victim-counselor
2 privilege), or 1037.5 (domestic violence victim-counselor privilege),
3 when such disclosure is reasonably necessary for the
4 accomplishment of the purpose for which the lawyer, physician,
5 psychotherapist, or sexual assault counselor, or domestic violence
6 counselor was consulted, is not a waiver of the privilege.

7 **Comment.** Section 912 is amended to make clear that
8 unintentional disclosure of a privileged communication does not
9 waive the privilege. This is not a substantive change. See State
10 Compensation Insurance Fund v. Telanoff, 70 Cal. App. 4th 644,
11 654, 82 Cal. Rptr. 2d 799 (1999); O'Mary v. Mitsubishi Electronics
12 America, Inc., 59 Cal. App. 4th 563, 577, 69 Cal. Rptr. 2d 389 (1997);
13 People v. Gardner, 151 Cal. App. 3d 134, 141, 198 Cal. Rptr. 452
14 (1984); see also KL Group v. Case, Kay & Lynch, 829 F.2d 909, 919
15 (9th Cir. 1987); Federal Deposit Ins. Corp. v. Fidelity & Deposit Co.
16 of Maryland, 196 F.R.D. 375, 380 (S.D. Cal. 2000); Cunningham v.
17 Connecticut Mutual Life Ins., 845 F. Supp. 1403, 1410-11 (S.D. Cal.
18 1994). Evidence that the holder of a privilege was notified in
19 advance of employer monitoring or other disclosure bears on the
20 holder's intent.

21 Section 912 is also amended to make clear that it applies to the
22 privilege for confidential communications between a domestic
23 violence victim and counselor, which did not exist when the statute
24 was originally enacted in 1965. See Sections 1037-1037.7 (domestic
25 violence victim).

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

27 The amendment of Evidence Code Section 917 should be revised to read:

28 917. (a) Whenever a privilege is claimed on the ground that the
29 matter sought to be disclosed is a communication made in
30 confidence in the course of the lawyer-client, physician-patient,
31 psychotherapist-patient, clergyman-penitent, or husband-wife,
32 sexual assault victim-counselor, or domestic violence victim-
33 counselor relationship, the communication is presumed to have
34 been made in confidence and the opponent of the claim of privilege
35 has the burden of proof to establish that the communication was
36 not confidential.

37 (b) No communication between persons in a relationship listed
38 in subdivision (a) loses its privileged character for the sole reason
39 that it is communicated by electronic means or because persons
40 involved in the delivery, facilitation, or storage of electronic
41 communication may have access to the content of the
42 communication.

43 (c) For purposes of this section, "electronic" has the meaning
44 provided in Section 1633.2 of the Civil Code.

1 **Comment.** Subdivision (a) of Section 917 is amended to make
2 clear that it applies to confidential communication privileges
3 created after its original enactment in 1965. See Sections 1035-1036.2
4 (sexual assault victim); 1037-1037.7 (domestic violence victim).

5 Subdivision (b) is drawn from New York law (N.Y. C.P.L.R.
6 4548 (McKinney 2000)) and from language formerly found in
7 Section 952 relating to confidentiality of an electronic
8 communication between a client and a lawyer. For waiver of
9 privileges, see Section 912 & Comment.

10 Under subdivision (c), the definition of “electronic” is broad,
11 including any “intangible media which are technologically capable
12 of storing, transmitting and reproducing information in human
13 perceivable form” Uniform Electronic Transactions Act,
14 Comment to Section 2 (enacted as Civil Code Section 1633.2).

15 For discussion of ethical considerations where a lawyer
16 communicates with a client by electronic means, see Bus. & Prof.
17 Code § 6068(e) (attorney had duty to “maintain inviolate the
18 confidence, and at every peril to himself or herself to preserve the
19 secrets, of his or her clients”); ABA Standing Committee on Ethics
20 & Professional Responsibility, Formal Op. 99-413 (“Protecting the
21 Confidentiality of Unencrypted E-Mail”); ABA Standing Committee
22 on Ethics & Professional Responsibility, Formal Op. 92-368
23 (“Inadvertent Disclosure of Confidential Materials”).

24 For examples of provisions on the admissibility of electronic
25 communications, see Evid. Code §§ 1521 & Comment (Secondary
26 Evidence Rule), 1552 (printed representation of computer
27 information or computer program), 1553 (printed representation of
28 images stored on video or digital medium); Code Civ. Proc. §
29 1633.13 (“In a proceeding, evidence of a record or signature may
30 not be excluded solely because it is in electronic form.”). See also
31 *People v. Martinez*, 22 Cal. 4th 106, 990 P.2d 563, 91 Cal. Rptr. 2d
32 687 (2000); *People v. Hernandez*, 55 Cal. App. 4th 225, 63 Cal. Rptr.
33 2d 769 (1997); *Aguimatang v. California State Lottery*, 234 Cal. App.
34 3d 769, 286 Cal. Rptr. 57 (1991); *People v. Lugashi*, 205 Cal. App. 3d
35 632, 252 Cal. Rptr. 434 (1988).

36 **STUDY L-910 – EFFECT OF DISSOLUTION OF MARRIAGE**
37 **ON NONPROBATE TRANSFERS**

38 The Commission considered the First Supplement to Memorandum 2001-50,
39 discussing Assembly Bill 873 (Harman), which implements two Commission
40 recommendations: *Effect of Dissolution Of Marriage on Nonprobate Transfers* and
41 *Estate Planning During Dissolution Of Marriage*. The supplement discusses
42 concerns raised by the Senate Judiciary Committee staff and the California Land

- 1 Title Association and sets out proposed amendments to address those concerns.
- 2 The Commission approved the proposed amendments and the associated
- 3 Comment revisions.

4 STUDY L-911 – ESTATE PLANNING DURING DISSOLUTION OF MARRIAGE

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

APPROVED AS SUBMITTED

_____ Date

APPROVED AS CORRECTED

_____ Chairperson

(for corrections, see Minutes of next meeting)

_____ Executive Secretary