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MINUTES OF MEETING  
CALIFORNIA LAW REVISION COMMISSION  
SEPTEMBER 20-21, 2001  
SAN FRANCISCO

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A meeting of the California Law Revision Commission was held in San Francisco on September 20-21, 2001.

**Commission:**

*Present:* Joyce G. Cook, Chairperson  
Howard Wayne, Assembly Member, Vice Chairperson  
David Huebner (Sept. 20; Sept. 21 by teleconference)  
Sanford M. Skaggs

*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:** Brian Gurwitz, Criminal Law (Sept. 20)  
J. Clark Kelso, Trial Court Unification (Sept. 20)  
Mark Overland, Criminal Law (Sept. 20 by teleconference)  
Frederick Tung, Bankruptcy Code (Sept. 20)  
David S. Wesley, Criminal Law (Sept. 20 by teleconference)

**Other Persons:**

Sam Abdulaziz, Abdulaziz & Grossbart, North Hollywood (Sept. 21)  
Yolanda Benson, Mattos & Associates, Sacramento (Sept. 21)  
Saul Bercovitch, State Bar, San Francisco (Sept. 21)  
Sandra Bonato, Executive Council of Homeowners, San Jose (Sept. 21)  
Deborah Brown, Administrative Office of the Courts, San Francisco (Sept. 20)  
Stephen Cogswell, Sentinel Fair Housing, Oakland (Sept. 21)  
Skip Daum, Capitol Communications Group, Sacramento (Sept. 21)  
Pamela Fisk, California Official Court Reporters Association, Redwood City  
(Sept. 20)  
Peter C. Freeman, Lumber Association of California & Nevada, Barr Lumber  
Company, San Bernardino (Sept. 21)  
Joe Furtado, Assemblyman John Dutra's Office, Sacramento (Sept. 21)

Ellen Gallagher, Contractors State License Board, Sacramento (Sept. 21)  
Janet Grove, Administrative Office of the Courts, San Francisco  
Jan Hansen, Lumber Association of California & Nevada, Sacramento (Sept. 21)  
Scott R. Kassahn, Meek's Lumber, Sacramento (Sept. 21)  
Suzanne Murphy, Administrative Office of the Courts, San Francisco  
Marjorie Murray, Oakland (Sept. 21)  
Patrick O'Donnell, Administrative Office of the Courts, San Francisco  
Craig C. Page, California Land Title Association, Sacramento (Sept. 21)  
S. Guy Puccio, Executive Council of Homeowners, Wallace & Puccio, Sacramento  
(Sept. 21)  
Gregory E. Siegler, State Bar Business Law Section, Nonprofit Organizations  
Committee, San Francisco (Sept. 20)  
Karen Sundermier, Administrative Office of the Courts, San Francisco (Sept. 20)  
Stan Wieg, California Association of Realtors, Sacramento (Sept. 21)  
Charles P. Wolff, Executive Committee, State Bar Estate Planning, Trust and Probate  
Law Section, San Francisco (Sept. 20)

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MINUTES OF JUNE 29, 2001, COMMISSION MEETING

1       The Commission approved the Minutes of the June 29, 2001, Commission  
2 meeting as submitted by the staff.

1

## ADMINISTRATIVE MATTERS

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### **Recognition of Service of David Huebner as Chairperson**

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The Commission's Chairperson, Joyce Cook, presented a plaque on behalf of the Commission to David Huebner in appreciation for his distinguished service as the Commission's chairperson during the preceding year.

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### **Meeting Schedule**

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The Commission considered the portion of Memorandum 2001-59 relating to the meeting schedule for the remainder of 2001. The Commission selected downtown Los Angeles as the location for the November 15-16, 2001, meeting. The Commission selected Oakland as the location for the November 30, 2001, meeting.

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## LEGISLATIVE PROGRAM

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The Commission considered Memorandum 2001-61, relating to the Commission's 2001 legislative program. The staff orally updated the chart attached to the memorandum with the information that AB 873 was received by the Governor on September 18 and AB 1103 was chaptered by the Secretary of State on July 11.

18

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

22

### **STUDY B-501 – UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT**

23

The Commission considered Memorandum 2001-47 and its First and Second Supplements, which discuss rules governing property ownership by an unincorporated association. The Commission directed the staff to redraft the proposed statutory language set out in the memorandum and its supplements, consistent with the following decisions:

28

### **Scope of Application**

29

The staff will draft a general provision providing that the law of unincorporated associations does not apply to partnerships, limited liability

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1 companies, or other entities that are subject to entity-specific statutes. In doing  
2 so, the staff will consider whether there are any elements of the law of  
3 unincorporated associations that should properly apply to an entity that would  
4 be excluded under the general provision.

5 **Corp. Code § 18100. Property powers**

6 The “business purposes and objects” limitation on the authority of an  
7 unincorporated association to own property and engage in property transactions  
8 should be deleted from proposed Section 18100. A staff note should be added  
9 asking for input on whether the limitation serves a useful purpose.

10 **Corp. Code § 18110. Transfer of property**

11 Proposed Section 18110 should be revised to clarify whether it grants  
12 authority to transact, specifies who must execute documents, or does both. The  
13 phrase “other head” should be revised for parallelism with the phrase “other  
14 comparable officer.”

15 **Corp. Code § 18115. Recorded statement of authority to transfer**

16 Proposed Section 18115 should be revised to replace the phrase “transfer or  
17 encumber” with “acquire, transfer, or encumber.”

18 **Corp. Code § 18120. Disposition of assets of terminated unincorporated**  
19 **association**

20 In redrafting proposed Section 18120, the staff should consider: (1) the proper  
21 definition of “member” in the context of pro rata distribution of assets to  
22 members, (2) whether use of the phrase “winding up its affairs” could result in  
23 unintended consequences, (3) the effect of the proposed provision on cemetery  
24 associations, (4) whether the assets of an association organized for a non-  
25 charitable public purpose are held in trust, and (5) whether there should be some  
26 de minimis rule for disposal of property of low value.

27 **STUDY D-1100 – MUNICIPAL BANKRUPTCY**

28 The Commission considered Memorandum 2001-65 and the attached draft  
29 tentative recommendation on *Municipal Bankruptcy*. The Commission approved  
30 the draft tentative recommendation to be distributed for comment, after a  
31 number of typographical errors are corrected (e.g., transposed digits on page 11,  
32 lines 4 and 6) and subject to additional minor editorial revision.

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STUDY H-820 – MECHANIC’S LIENS

The Commission considered Memorandum 2001-70, and its First Supplement, concerning the double payment issue in home improvement contracts, and Memorandum 2001-71 concerning general revision of the mechanic’s lien statute.

**Double Payment Issue**

The draft tentative recommendation on *The Double Payment Problem in Home Improvement Contracts*, attached to Memorandum 2001-70, was approved to be distributed for comment, subject to several corrections and editorial revisions, and with the addition of a note soliciting comments on the option of protecting good-faith payments made pursuant to home improvement contracts under \$10,000, without the mandatory bond feature. The staff should forward comments on this tentative recommendation to Commissioners as they are received.

**General Revision**

The Commission approved the proposed disposition of the various general revision issues discussed in Memorandum 2001-71, subject to a number of revisions. The staff will continue to research issues identified for further study in the memorandum and include this information in the forthcoming general revision draft.

*Completion.* The Commission received a written submission from Skip Daum on behalf of the American Subcontractors Association California, Inc., relating to completion issues addressed in SB 938 (Margett). This material will be reproduced for consideration in connection with the next review of the general revision draft. The Commission discussed how to proceed on the issues raised by SB 938, which is before the Assembly Judiciary Committee pending review by the Commission. Since the Legislature will not reconvene before the next Commission meeting, further review of how to address the notice of completion issues in SB 938 was deferred until one of the November meetings.

*Discipline.* The staff should draft for consideration a general provision governing discipline of licensees for failure to comply with the mechanic’s lien statute, to be included in the Contractors’ State License Law in the Business and Professions Code.

1 **Schedule**

2 The Commission reaffirmed the schedule outlined in the First Supplement to  
3 Memorandum 2001-70 for completion of the review of the double payment  
4 problem and the general revision of the mechanic's lien statute.

5 **STUDY H-850 – COMMON INTEREST DEVELOPMENT LAW**

6 The Commission considered Memorandum 2001-63, relating to the structure  
7 of the Davis-Stirling Act. The Commission approved the staff suggestion to  
8 circulate for comment a proposal to add chapter and article headings to the  
9 Davis-Stirling Act, along with a provision disclaiming any intention to affect the  
10 meaning of the statute by the addition of the headings. The proposal should not  
11 be circulated by itself, but should be made a part of whatever substantive  
12 tentative recommendation is next circulated for comment in this area.

13 The Commission also received materials submitted by Marjorie Murray,  
14 relating to a CID Homeowners Bill of Rights. The materials are attached to the  
15 First Supplement to Memorandum 2001-63.

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

17 The Commission considered Memorandum 2001-73, which presents draft  
18 statutory language governing the processes by which a homeowners association  
19 makes an architectural review decision and adopts, amends, or repeals an  
20 operating rule.

21 **Architectural Review Procedure**

22 The Commission directed the staff to redraft the proposed architectural  
23 review provisions, consistent with the following decisions:

- 24 (1) Any architectural review procedure adopted by an association  
25 should be at least as protective of member interests as the  
26 procedure provided in proposed Civil Code Section 1379.
- 27 (2) An architectural review decision should be based on standards  
28 included in the association's governing documents.
- 29 (3) The body making architectural review decisions should post its  
30 agenda in a location accessible to members, including posting of  
31 the agenda to a website if the association has a website.
- 32 (4) If a member other than the applicant formally objects to an  
33 applicant's proposal, before a decision on the application has been

1 issued, that member may appeal an approval decision to the board  
2 of directors.

3 (5) A written decision with findings should only be required in an  
4 appeal to the board of directors.

5 (6) A person making an architectural review decision should do so in  
6 good faith, based on the information presented. This standard  
7 would replace the standard provided in proposed Civil Code  
8 Section 1378(b).

9 (7) The 30-day periods specified in proposed Section 1379 should be  
10 replaced with 45-day periods. The events marking the beginning of  
11 these periods should be clarified.

## 12 **Operational Rulemaking Procedure**

13 The Commission directed the staff to redraft the proposed operational  
14 rulemaking provisions, consistent with the following decisions:

15 (1) An operating rule may not contravene or expand on provisions of  
16 the declaration, articles of incorporation, or by-laws.

17 (2) Members should have a power of referendum to reverse a change  
18 to the operating rules of the association.

## 19 **STUDY J-1306 – CASES IN WHICH COURT REPORTER IS REQUIRED**

20 The Commission considered Memorandum 2001-64, concerning comments on  
21 the revised tentative recommendation on *Cases in Which Court Reporter Is*  
22 *Required*. The Commission directed the staff to make the following revisions in  
23 the draft attached to Memorandum 2001-64:

### 24 **Gov't Code § 69950. Transcription fee**

25 The amendment of Government Code Section 69950 should refer to “the  
26 person *requesting* the original,” instead of “the person *buying* the original.” Thus,  
27 the amendment should read along the following lines:

28 **69950.** The fee for transcription for original ribbon or printed  
29 copy is eighty-five cents (\$0.85) for each 100 words, and for each  
30 copy ~~for the party buying the original made requested~~ requested at the same  
31 time by the person requesting the original, fifteen cents (\$0.15) for  
32 each 100 words. The fee for a first copy to any other person shall be  
33 twenty cents (\$0.20) for each 100 words, and for each additional  
34 copy, made requested at the same time, fifteen cents (\$0.15) for each  
35 100 words.

1           **Comment.** Section 69950 is amended to conform to the rule that  
2           a nonparty is generally entitled to obtain a transcript. See Code Civ.  
3           Proc. § 269 & Comment. The section is also amended to reflect  
4           changes in technology.

5           **Gov't Code § 70141.11. Contra Costa County subordinate judicial officers**

6           The draft attached to Memorandum 2001-64 would revise Code of Civil  
7           Procedure Section 269(a) to make clear that shorthand reporting of the specified  
8           proceedings is required regardless of whether the presiding officer is a judge or a  
9           subordinate judicial officer. The Comment cites Government Code Section  
10          70141.11 as an exception to this general rule, because that provision authorizes  
11          electronic or mechanical reporting of any proceeding before the Contra Costa  
12          County commissioner.

13          These aspects of the draft were acceptable to the Commission, but the staff  
14          should further clarify the interrelationship between Code of Civil Procedure  
15          Section 269 and Government Code Section 70141.11. In the study of statutes  
16          made obsolete by trial court restructuring, the latter provision (whether left in  
17          place or recodified) should explicitly apply “notwithstanding Code of Civil  
18          Procedure Section 269.”

19          **Penal Code § 190.9. Transcript in death penalty case**

20          The first sentence of Penal Code Section 190.9 should refer to “all proceedings  
21          conducted in the superior *court*,” not “all proceedings conducted in the superior  
22          *courts*.” Throughout the draft, the staff should examine other references to “the  
23          superior court” and assess whether referring to “the court” would be sufficient in  
24          some places.

25          **Penal Code § 1539. Special hearing on motion to suppress evidence or motion  
26          for return of seized property**

27          An amendment of Penal Code Section 1539 should be added to the draft,  
28          along the following lines:

29                  1539. (a) If a special hearing be held in ~~the superior court~~ a  
30                  felony case pursuant to Section 1538.5, or if the grounds on which  
31                  the warrant was issued be controverted and a motion to return  
32                  property be made (i) by a defendant on grounds not covered by  
33                  Section 1538.5; (ii) by a defendant whose property has not been  
34                  offered or will not be offered as evidence against ~~him~~ the  
35                  defendant; or (iii) by a person who is not a defendant in a criminal  
36                  action at the time the hearing is held, the judge or magistrate must



1 proceed to take testimony in relation thereto, and the testimony of  
2 each witness must be reduced to writing and authenticated by a  
3 shorthand reporter in the manner prescribed in Section 869.

4 (b) The reporter shall forthwith transcribe ~~his~~ the reporter's  
5 shorthand notes pursuant to this section if any party to a special  
6 hearing in the superior court a felony case files a written request for  
7 its preparation with the clerk of the court in which the hearing was  
8 held. The reporter shall forthwith file in the superior court an  
9 original and as many copies thereof as there are defendants (other  
10 than a fictitious defendant) or persons aggrieved. The reporter shall  
11 be entitled to compensation in accordance with the provisions of  
12 Section 869. In every case in which a transcript is filed as provided  
13 in this section, the ~~county~~ clerk of the court shall deliver the  
14 original of such transcript so filed ~~with him~~ to the district attorney  
15 immediately upon receipt thereof and shall deliver a copy of such  
16 transcript to each defendant (other than a fictitious defendant)  
17 upon demand ~~by him~~ without cost to ~~him~~ the defendant.

18 (c) Upon a motion by a defendant pursuant to this chapter, the  
19 defendant shall be entitled to discover any previous application for  
20 a search warrant in the case which was refused by a magistrate for  
21 lack of probable cause.

22 **Comment.** Section 1539 is amended to make clear that it applies  
23 only to a special hearing in a felony case pursuant to Section 1538.5.  
24 This implements the principle that trial court unification did not  
25 change the extent to which court reporter services or electronic  
26 reporting is used in the courts. 1998 Cal. Stat. ch. 931, § 507; *Trial*  
27 *Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n  
28 Reports 51, 60 (1998); see also 1997 Cal. Stat. ch. 279, § 3 (former  
29 Section 1538.5(g), (i)).

30 Section 1539 is also amended reflect elimination of the county  
31 clerk's role as ex officio clerk of the superior court. See former Gov't  
32 Code § 26800 (county clerk acting as clerk of superior court). The  
33 powers, duties, and responsibilities formerly exercised by the  
34 county clerk as ex officio clerk of the court are delegated to the  
35 court administrative or executive officer, and the county clerk is  
36 relieved of those powers, duties, and responsibilities. See  
37 Government Code Sections 69840 (powers, duties, and  
38 responsibilities of clerk of court), 71620 (trial court personnel).

39 The staff should coordinate this reform with the proposed repeal of Government  
40 Code Section 26800, which is referenced in the Comment. The staff should also  
41 contact Judge Dennis Murray and check whether this amendment satisfies his  
42 concerns.

1                   STUDY J-1310 – APPELLATE JURISDICTION OF COURT OF APPEAL

2           The Commission considered Memorandum 2001-66, relating to abolition of  
3 the appellate division of the superior court. This topic grew out of the trial court  
4 unification study of cases within the jurisdiction of the court of appeal on June  
5 30, 1995.

6           The Commission directed the staff to bring back to the Commission a draft of  
7 a tentative recommendation to implement the concept of a new division of the  
8 court of appeal, staffed by superior court judges sitting by assignment, whose  
9 case load is determined by the court of appeal, replacing the appellate division of  
10 the superior court. The staff should consider appropriate names for the new  
11 division, or whether the new division needs to be named at all in the constitution  
12 and implementing statutes.

13                   STUDY J-1313 – WAIVER OF JURY TRIAL

14           The Commission considered Memorandum 2001-67, concerning a proposal  
15 developed by the Judicial Council’s Joint Working Group on Waiver of Jury  
16 Trial. The Commission decided to await the outcome of the Working Group’s  
17 proposal before taking further action relating to the provision governing waiver  
18 of a jury trial (Code of Civil Procedure Section 631). Patrick O’Donnell from the  
19 Administrative Office of the Courts will alert the Working Group to Prof.  
20 William Slomanson’s concerns regarding the 25-day deadline for depositing jury  
21 fees.

22                   STUDY J-1320 – UNNECESSARY PROCEDURAL DIFFERENCES  
23                   BETWEEN LIMITED AND UNLIMITED CIVIL CASES

24           The Commission considered Memorandum 2001-80, concerning AB 223  
25 (Frommer). The Commission ratified the following amendments and revised  
26 Comments:

27                   **Code Civ. Proc. § 425.10 (amended). Contents of complaint**

28                   SEC. \_\_\_\_\_. Section 425.10 of the Code of Civil Procedure is  
29 amended to read:

30                   425.10. (a) A complaint or cross-complaint shall contain both of  
31 the following:

32                   (a) (1) A statement of the facts constituting the cause of action,  
33 in ordinary and concise language.

1           (b) (2) A demand for judgment for the relief to which the  
2 pleader claims to be entitled. If the recovery of money or damages  
3 be is demanded, the amount thereof demanded shall be stated,  
4 unless the.

5           (b) Notwithstanding subdivision (a), where an action is brought  
6 in the superior court to recover actual or punitive damages for  
7 personal injury or wrongful death, in which case the amount  
8 thereof demanded shall not be stated, except in a limited civil case  
9 but the complaint shall comply with Section 422.30 and, in a limited  
10 civil case, with Section 72055 of the Government Code.

11           **Comment.** Section 425.10 is amended to conform the pleading  
12 requirements in limited and unlimited civil cases. In a complaint  
13 seeking actual or punitive damages for personal injury or wrongful  
14 death, the amount demanded should not be stated, regardless of  
15 the jurisdictional classification of the action. If the case is a limited  
16 civil case, however, the first page of the complaint must (1) identify  
17 the case as a limited civil case as required by Section 422.30, and (2)  
18 state whether the amount demanded exceeds \$10,000, so as to  
19 permit determination of the filing fee. See Gov't Code § 72055 (first  
20 filing fee in limited civil case). For format requirements, see Cal. R.  
21 Ct. Rule 201(f)(8).

22           Technical changes are also made for conformity with preferred  
23 drafting style.

24           **Gov't Code § 72055 (amended). First filing fee in limited civil case**

25           SEC. \_\_\_\_\_. Section 72055 of the Government Code is amended to  
26 read:

27           72055. (a) The total fee for filing of the first paper in a limited  
28 civil case, case shall be ninety dollars (\$90), except that in cases a  
29 case where the amount demanded, excluding attorney's fees and  
30 costs, is ten thousand dollars (\$10,000) or less, the fee shall be  
31 eighty-three dollars (\$83). The amount of the demand shall be  
32 stated on the first page of the paper immediately below the caption.  
33 The first page of the first paper shall state whether the amount  
34 demanded exceeds or does not exceed ten thousand dollars  
35 (\$10,000).

36           (b) This section applies to the initial complaint, petition, or  
37 application, and any papers transmitted from another court on the  
38 transfer of a civil action or proceeding, but does not include  
39 documents filed pursuant to Section 491.150, 704.750, or 708.160 of  
40 the Code of Civil Procedure.

41           (c) The term "total fee" as used in this section and Section 72056  
42 includes any amount allocated to the Judges' Retirement Fund  
43 pursuant to Section 72056.1, any automation fee imposed pursuant  
44 to Section 68090.7, any construction fee imposed pursuant to  
45 Section 76238, and the law library fee established pursuant to

1 Article 2 (commencing with Section 6320) of Chapter 5 of Division 3  
2 of the Business and Professions Code. The term “total fee” as used  
3 in this section and Section 72056 also includes any dispute  
4 resolution fee imposed pursuant to Section 470.3 of the Business  
5 and Professions Code, but the ~~board of supervisors of each county~~  
6 may Judicial Council may authorize any trial court to exclude any  
7 portion of this dispute resolution fee from the term “total fee.”

8 (d) The fee shall be waived in any action for damages against a  
9 defendant, based upon the defendant’s commission of a felony  
10 offense, upon presentation to the clerk of the court of a certified  
11 copy of the abstract of judgment of conviction of the defendant of  
12 the felony giving rise to the claim for damages. If the plaintiff  
13 would have been entitled to recover those fees from the defendant  
14 had they been paid, the court may assess the amount of the waived  
15 fees against the defendant and order the defendant to pay that sum  
16 to the county.

17 **Comment.** Subdivision (a) of Section 72055 is amended to delete  
18 the requirement that the amount of the demand in a limited civil  
19 case be stated on the first page of the first paper immediately below  
20 the caption. It is sufficient to state whether the amount demanded  
21 exceeds \$10,000, so as to permit determination of the proper filing  
22 fee. For formatting requirements, see Cal. R. Ct. 201(f)(8). See also  
23 Code Civ. Proc. § 422.30 (caption of complaint in limited civil case  
24 shall identify case as a limited civil case). Technical changes are also  
25 made for conformity with preferred drafting style.

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

27 **Overview**

28 The Commission considered Memorandum 2001-68, presenting an overview  
29 of the status of the project on statutes made obsolete by trial court restructuring.  
30 The Commission approved the general approach outlined by the staff in the  
31 memorandum, which includes, among other features:

32 (1) Drafting the revisions as a single bill (plus a resolution for proposed  
33 constitutional amendments).

34 (2) Repealing and reenacting the few live provisions buried in larger chapters  
35 of obsolete material.

36 (3) Circulating a tentative recommendation with proposed revisions, possibly  
37 presented in the form of a preprint bill, with the objective of finalizing  
38 recommendations in mid-January.

39 (4) Removing the January 1, 2002, deadline to enable the Commission to  
40 continue to work on revisions that cannot be resolved by the deadline.

1 **Subordinate Judicial Officers**

2 The Commission considered Memorandum 2001-75, relating to subordinate  
3 judicial officers.

4 *Gov't Code § 69897*

5 The Commission decided to recommend revision of the probate  
6 commissioner statute as follows:

7 ~~69897. The superior court of any county with a population of~~  
8 ~~over 600,000 and under 900,000 may appoint a probate~~  
9 ~~commissioner to assist the probate court in disposing of its business~~  
10 ~~connected with the administration of justice. The person appointed~~  
11 ~~shall be designated as probate commissioner of such county. He~~  
12 ~~shall be a citizen of the United States, a resident of this State and~~  
13 ~~have been admitted to practice before the Supreme Court of this~~  
14 ~~State. He shall hold office during the pleasure of the courts~~  
15 ~~appointing him.~~

16 The appointment of the probate commissioner shall be made by  
17 order entered in the minutes of the court.

18 Every subordinate judicial officer appointed as a probate  
19 commissioner so appointed shall be in attendance at all sessions of  
20 the court. He The probate commissioner shall examine all the files  
21 and proceedings and advise the court on them. He The probate  
22 commissioner shall have the powers and duties delegated to him  
23 by the appointing court, including the powers conferred on court  
24 commissioners by this title or the Code of Civil Procedure.

25 **Comment.** Section 69897 is amended to repeal obsolete  
26 provisions. The obsolete provisions are superseded by Section  
27 71622 (subordinate judicial officers).

28 *Fam. Code § 4252*

29 With respect to child support commissioners, the Commission directed the  
30 staff to revise Family Code Section 4252 to:

31 (1) Flesh out the statutory reference to "Title IV-D" child support cases.

32 (2) Clarify the qualification in subdivision (a) that the number of  
33 commissioner positions is "subject to appropriations in the annual Budget Act."

34 (3) Determine whether the "April 1, 1997" date in subdivision (b)(3) is  
35 obsolete.

36 *Gov't Code § 71601*

37 The definition of "subordinate judicial officer" in the Trial Court Employment  
38 Protection and Governance Act should be revised to include a reference to child

1 support commissioners. The language in the Comment to the section relating to  
2 temporary judges should be relocated to the preliminary part of the  
3 recommendation. A note should be added calling attention to the fact that the  
4 reference in the statute to pro tem judges is proposed for deletion.

5 **Court Clerk**

6 The Commission considered Memorandum 2001-76, relating to statutes  
7 affecting the county clerk in the clerk's former role as court clerk.

8 *Code Civ. Proc. § 575.1*

9 The Commission approved revision of Code of Civil Procedure Section 575.1  
10 to require deposit of local court rules with both the court clerks and the county  
11 law library. The Commission considered a general provision enabling the  
12 Judicial Council to prescribe electronic or other posting of local court rules, but  
13 decided this was too far removed from repeal of statutes made obsolete by trial  
14 court restructuring. The Commission noted the reference in the section to the  
15 court "administrative or executive officer", and directed the staff to investigate  
16 whether the reference to the court administrative officer is obsolete.

17 *Gov't Code § 24051*

18 The Commission proposed revision of Section 24051 to eliminate the  
19 inventory of county property by court officials, on the theory that the courts no  
20 longer have county property.

21 24051. On or before July 10th in each year, or at such other  
22 interval designated by the board of supervisors, each county officer  
23 or person in charge of any office, department, service, or institution  
24 of the county, ~~each officer of a judicial district, each judge, or the~~  
25 ~~clerk, secretary, or other administrative officer of each court of~~  
26 ~~record,~~ and the executive head of each special district whose affairs  
27 and funds are under the supervision and control of the board of  
28 supervisors or for which the board is ex officio the governing body  
29 shall file with the county clerk, or with the county auditor,  
30 according to the procedure prescribed by the board, an inventory  
31 under oath, showing in detail all county property in ~~his possession~~  
32 ~~or in his~~ the officer or person's possession or charge at the close of  
33 business on the preceding June 30th. By ordinance the board of  
34 supervisors may prescribe an annual or such other period,  
35 provided that such period shall not be in excess of three years, for  
36 preparation of the inventory and a correspondingly different date  
37 for its filing, and may prescribe the manner and form in which the

1 inventory shall be compiled. The inventories shall be kept of record  
2 by the county clerk or auditor for at least five years. Any inventory  
3 which has been on file for five years or more may be destroyed on  
4 order of the board of supervisors. A true copy of the inventory shall  
5 be delivered by the person who made it to his successor in office,  
6 who shall receipt for it. The receipt shall be filed with the county  
7 clerk or county auditor.

8 *Penal Code § 896 et al.*

9 The Commission directed the staff to propose revisions of the grand jury  
10 statutes to make clear that grand jury selection (as opposed to operations) is a  
11 court function, to be performed by the court clerk, jury commissioner, or other  
12 appropriate court official. The staff should circulate an inquiry to court executive  
13 officers and to county clerks concerning subsequent involvement of the county  
14 clerk (e.g., filing of grand jury reports).

15 *Penal Code § 4007*

16 *Welf. & Inst. Code § 872*

17 The staff should circulate an inquiry to court executive officers and to county  
18 clerks concerning filing of court orders for use of a correctional facility or juvenile  
19 hall in an adjoining county.

## 20 **Official Reporter**

21 The Commission considered Memorandum 2001-77, relating to statutes  
22 governing the status of official reporters and official reporters pro tempore.

23 *Gov't Code § 69941*

24 The Commission approved revision of Government Code Section 69941 along  
25 the following lines:

### 26 **Gov't Code § 69941. Appointment of official reporters**

27 ~~The judge or judges of any~~ A superior court may appoint a as  
28 ~~many competent phonographic reporter, or as many such reporters~~  
29 ~~as there are judges, to be known as official reporter or reporters of~~  
30 ~~such court, and such pro tempore official reporters as the~~  
31 ~~convenience of the court may require. The reporters shall hold~~  
32 ~~office during the pleasure of the appointing judge or judges. pro~~  
33 ~~tempore, as are deemed necessary for the performance of the duties~~  
34 ~~and the exercise of the powers conferred by law upon the court and~~  
35 its members.

1           **Comment.** Section 69941 is amended to reflect unification of the  
2 municipal and superior courts pursuant to Article VI, Section 5(e),  
3 of the California Constitution. See former Gov't Code § 72194  
4 (municipal court reporters).

5           The first sentence is amended to incorporate the general  
6 appointment standard of the Trial Court Employment Protection  
7 and Governance Act. See, e.g., Gov't Code § 71620 (trial court  
8 personnel).

9           The last sentence of Section 69941 is deleted as obsolete. Official  
10 reporters and official reporters pro tempore who are court  
11 employees are subject to the provisions of the Trial Court  
12 Employment Protection and Governance Act. See, e.g., Gov't Code  
13 §§ 71620 (trial court personnel), 71640-71645 (employment selection  
14 and advancement), 71650-71658 (employment protection system),  
15 71673 (authority of court). The employment status of official  
16 reporters and official reporters pro tempore who are not court  
17 employees (including temporary employees hired through agencies  
18 and individuals hired by the trial court pursuant to an independent  
19 contractor agreement) is subject to the terms of their appointment.

20           The section is also amended to delete language referring to “the  
21 judge” of the court. Every superior court has at least two  
22 judgeships as a result of trial court unification. See Gov't Code §  
23 69580 *et seq.* (number of judges). Where a court has only one judge  
24 due to a vacancy or otherwise, a reference to the judges of the court  
25 means the sole judge of the court. See Gov't Code § 13 (plural  
26 includes singular).

27 The Commission reserved decision whether the section should be relocated to  
28 the Trial Court Employment Protection and Governance Act.

29 *Gov't Code § 69947*

30           In connection with Government Code Section 69947 (compensation of official  
31 reporter), a number of concerns were raised. These included whether the  
32 proposed definition of “compensation” is overly broad, whether the statute is  
33 appropriately applied to pro tempore reporters, whether the Trial Court  
34 Employment Protection and Governance Act supersedes special compensation  
35 statutes, and whether the proposed absolute floor of base compensation for  
36 official reporters and official reporters pro tempore is appropriate. The  
37 Commission decided that in order to make both policy and drafting decisions on  
38 these matters, it needs more information about the employment status of official  
39 reporters and official reporters pro tempore in the various counties. The  
40 Commission directed the staff to gather further information and to give further



1 consideration to these matters, and come back to the Commission with a  
2 proposed approach to resolution of the issues.

3 **Sheriffs and Marshals**

4 The Commission considered Memorandum 2001-78, relating to statutes that  
5 reference sheriffs and marshals. The Commission approved the staff  
6 recommendations made in the memorandum:

7 (1) A five-year automatic sunset provision will replace the 15-year sunset  
8 provision previously added to San Diego County's marshal-sheriff consolidation  
9 statute (Gov't Code § 72114.2).

10 (2) The automatic sunset provision will be removed from Shasta County's  
11 marshal-sheriff consolidation statute (Gov't Code § 72116).

12 (3) Stanislaus County's marshal-sheriff consolidation statute (Gov't Code §  
13 74784) will be amended to preserve only those provisions regarding the  
14 assignment of former marshal employees to, and their transfer from, the Court  
15 Services Bureau. The automatic sunset provision will also be retained.

16 (4) Government Code Section 68084 will be excluded from the Commission's  
17 recommended legislation until the stakeholders resolve substantive policy and  
18 fiscal issues regarding fees and bank deposits.

19 **Miscellaneous Issues**

20 The Commission considered Memorandum 2001-79, relating to miscellaneous  
21 issues in the trial court restructuring project.

22 *Jury Venires*

23 The Commission approved the staff draft of the jury venire statutes as set out  
24 in the memorandum. When theses are circulated for comment, they should  
25 include a note that the Commission solicits input on the provision requiring that  
26 a prospective juror be allowed to choose countywide service.

27 *Assessment of Guardianship or Conservatorship Estate for Costs*

28 The Commission decided not to attempt to revise Probate Code Sections  
29 1513.1 and 1851.5 due to the complexity of, and unresolved issues resolved in,  
30 the provisions.

1 *Criminal Witness Fees*

2 The Commission decided to recommend no change in Penal Code Section  
3 1329, relating to county responsibility for criminal witness fees.

4 STUDY L-605 – RULES OF CONSTRUCTION FOR TRUSTS

5 The Commission considered Memorandum 2001-62 and its First Supplement,  
6 reviewing comments received on the tentative recommendation relating to *Rules*  
7 *of Construction for Trusts and Other Instruments* (March 2001). The Commission  
8 made the revisions in the proposal detailed below, and directed the staff to bring  
9 back to the Commission for review the draft of a final recommendation on the  
10 matter. The Commission also approved the concept of the staff assembling a  
11 small working group of knowledgeable and interested persons on this matter for  
12 the purpose of reviewing the staff draft and providing the Commission their  
13 perspectives on it.

14 **Prob. Code § 21102. Intention of transferor**

15 For the purpose of obtaining further input on the matter, the Commission  
16 approved the following revisions of Section 21102 and its Comment:

17 21102. (a) The intention of the transferor as expressed in the  
18 instrument controls the legal effect of the dispositions made in the  
19 instrument.

20 (b) The rules of construction expressed in this part apply where  
21 the intention of the transferor is not indicated by the instrument.

22 (c) Nothing in this section limits the use of extrinsic evidence, to  
23 the extent otherwise authorized by law, to determine the intention  
24 of the transferor.

25 Comment. Subdivision (c) is added to Section 21102 to make  
26 clear the admissibility of extrinsic evidence under the section.  
27 Subdivision (c) neither expands nor limits the extent to which  
28 extrinsic evidence admissible under former law may be used to  
29 determine the transferor's intent as expressed in the instrument. See  
30 generally 12 B. Witkin, Summary of California Law Wills and  
31 Probate §§ 245-47, at 280-84 (9th ed. 1990). Cf. Section 6111.5 (will);  
32 Estate of Anderson, 56 Cal. App. 4th 235, 65 Cal. Rptr. 2d 307 (1997)  
33 (extrinsic evidence admissible). See also Section 12206 (limitation in  
34 will of time for administration of estate is directory only).

35 ....

36 Thus under the parol evidence rule extrinsic evidence may be  
37 available to explain, interpret, or supplement an expressed  
38 intention of the transferor. Code Civ. Proc. § 1856. Likewise, the

1 court has authority to reform an instrument for mistake or  
2 imperfection of writing. Cf. Code Civ. Proc. § 1856(e); Estate of  
3 Smith, 61 Cal. App. 4th 259, 71 Cal. Rptr. 2d 424 (1998) (contestant  
4 bears burden of proof of mistake as to testamentary intent). It  
5 should be noted that before granting reformation, courts require  
6 that the evidence of mistake be clear and convincing; reformation is  
7 denied, for example, if the donor's testimony is equivocal and  
8 unsupported by disinterested witnesses. See W. McGovern, S.  
9 Kurtz & J. Rein, Wills, Trusts and Estates § 6.4 (1988).

10 The preliminary part of the recommendation should be adjusted accordingly:

11 The reference in Section 21102(a) to expressions of the donor's  
12 intention "in the instrument" should not be construed to preclude  
13 reformation in the case of a mistaken writing. Modern theory as  
14 expounded in the academic literature, the Uniform Probate Code,  
15 and the Restatement of Property, all support the concept that  
16 reformation should be available for inter vivos instruments, as it is  
17 for wills.

18 The staff should solicit input from the experts as to whether principles of  
19 reformation should be stated in the statute and, if so, whether it can easily be  
20 done in the context of the present project or whether it is more appropriate to  
21 deal with reformation separately.

22 **Prob. Code § 21104. "At-death transfer" defined**

23 The reference in Section 21104 to "possession or enjoyment" should be left as  
24 it is in existing law, with the addition of commentary language:

25 21104. As used in this part, "~~testamentary gift~~" "at-death  
26 transfer" means a transfer in possession or enjoyment that takes  
27 effect at or after death.

28 **Comment.** Section 21104 is amended to make substitute the  
29 term "at-death transfer" for "testamentary gift." As used in this  
30 part, an at-death transfer does not include a lifetime gift.

31 The reference to a transfer "in possession" includes a transfer to  
32 the trustee of a trust.

33 **Prob. Code § 21109. Requirement that transferee survive transferor**

34 The Commission approved the technical revision to Section 21109 proposed  
35 by the staff in the memorandum:

36 21109. A transferee of an at-death transfer who fails to survive  
37 the transferor of an at-death transfer or until any future time  
38 required by the instrument does not take under the instrument.

1 **Prob. Code § 21110. Anti-lapse**

2 The Commission deferred decision on issues relating to expressions of  
3 contrary intention and irrevocable gifts under the antilapse statute, pending  
4 further input from the State Bar Probate Section.

5 With respect to application of the anti-lapse statute to joint tenancies, the  
6 Commission approved the language proposed in the memorandum to exclude  
7 joint tenancies from its operation:

8 (c) As used in this section, “transferee” means a person, other  
9 than a joint tenant, who is kindred of the transferor or kindred of a  
10 surviving, deceased, or former spouse of the transferor.

11 **Prob. Code § 21111. Failure of transfer**

12 The revisions proposed in the tentative recommendation should be directed  
13 to the new version of Section 21111:

14 21111. Except as provided in Section 21110:

15 (a) If a transfer, ~~other than a residuary gift or a transfer of a~~  
16 ~~future interest~~, fails for any reason, the property is transferred as  
17 follows:

18 (1) If the transferring instrument provides for an alternative  
19 disposition in the event the transfer fails, the property is transferred  
20 according to the terms of the instrument.

21 (2) If the transferring instrument does not provide for an  
22 alternative disposition but does provide for the transfer of a  
23 residue, the property becomes a part of the residue transferred  
24 under the instrument.

25 (3) If the transferring instrument does not provide for an  
26 alternative disposition and does not provide for the transfer of a  
27 residue, the property is transferred to the decedent's estate.

28 (b) If a residuary gift ~~or a future interest~~ is transferred to two or  
29 more persons and the share of a transferee fails for any reason, the  
30 share passes to the other transferees in proportion to their other  
31 interest in the residuary gift or the future interest.

32 The Comment should be expanded to recognize the operation of the new version  
33 of this section:

34 Under subdivision (a)(1), an alternative disposition may take the  
35 form of a transfer of specifically identifiable property (specific gift)  
36 or a transfer from general assets of the transferor (general gift) that  
37 includes the specific property.

1 The Commission approved the concept proposed by Professor McGovern of  
2 treating a gift of “all my estate” as a residuary gift:

3 (c) A transfer of “all my estate” or words of similar import is a  
4 residuary gift for purposes of this section unless the transferring  
5 instrument provides for an alternative disposition in the event the  
6 transfer fails.

7 **Prob. Code § 21118. Satisfaction of pecuniary gift by property distribution**

8 Section 21118 should be revised along the following lines:

9 21118. (a) If an instrument authorizes a fiduciary to satisfy a  
10 pecuniary gift wholly or partly by distribution of property other  
11 than money, property selected for that purpose shall be valued at  
12 its fair market value on the date of distribution, unless the  
13 instrument expressly provides otherwise. If the instrument permits  
14 the fiduciary to value the property selected for distribution as of a  
15 date other than the date of distribution, then, unless the instrument  
16 expressly provides otherwise, the property selected by the fiduciary  
17 for that purpose shall have ~~an aggregate fair market value on the~~  
18 ~~date or dates of distribution that, when added to any cash~~  
19 ~~distributed, will amount to no less than the amount of the~~  
20 ~~pecuniary gift as stated in, or determined by, the instrument fairly~~  
21 reflect net appreciation and depreciation (occurring between the  
22 valuation date and the date of distribution) in all of the assets from  
23 which the distribution could have been made.

24 (b) As used in this section, “pecuniary gift” means a transfer of  
25 property made in an instrument that either is expressly stated as a  
26 fixed dollar amount or is a dollar amount determinable by the  
27 provisions of the instrument.

28 The Comment should note that this language is drawn from Reg. 26.2642-2(b)(2).

29 **Prob. Code § 21132. Change in form of securities**

30 The Commission decided, for the purpose of obtaining further comment on  
31 this provision, to propose that it be applicable to at-death transfers, as a middle  
32 ground between wills and all nonprobate transfers:

33 21132. (a) If a ~~testator~~ transferor ~~executes a will that devises an~~  
34 instrument that makes an at-death transfer of securities and the  
35 testator ~~transferor~~ then owned securities that meet the description  
36 in the ~~will~~, the devise instrument, the transfer includes additional  
37 securities owned by the ~~testator~~ transferor at death to the extent the  
38 additional securities were acquired by the ~~testator after the will~~  
39 transferor after the instrument was executed as a result of the

1 testator's transferor's ownership of the described securities and are  
2 securities of any of the following types:

3 (1) Securities of the same organization acquired by reason of  
4 action initiated by the organization or any successor, related, or  
5 acquiring organization, excluding any acquired by exercise of  
6 purchase options.

7 (2) Securities of another organization acquired as a result of a  
8 merger, consolidation, reorganization, or other distribution by the  
9 organization or any successor, related, or acquiring organization.

10 (3) Securities of the same organization acquired as a result of a  
11 plan of reinvestment.

12 (b) Distributions in cash before death with respect to a described  
13 security are not part of the devise transfer.

14 **Prob. Code § 21133. Proceeds of specific gift**

15 The Commission decided, for the purpose of obtaining further comment on  
16 this provision, that it be applicable to at-death transfers (in order to eliminate  
17 lifetime gifts from its coverage) that take effect in possession or enjoyment (in  
18 order to include trusts in its coverage) at the specified times:

19 21133. A recipient of an at-death transfer of a specific gift has a  
20 right to the property specifically given, to the extent the property is  
21 owned by the transferor at the time the gift takes effect in  
22 possession or enjoyment, and all of the following:

23 (a) Any balance of the purchase price (together with any  
24 security agreement) owing from a purchaser to the transferor at the  
25 time the gift takes effect in possession or enjoyment by reason of  
26 sale of the property.

27 (b) Any amount of an eminent domain award for the taking of  
28 the property unpaid at the time the gift takes effect in possession or  
29 enjoyment.

30 (c) Any proceeds unpaid at death the time the gift takes effect in  
31 possession or enjoyment on fire or casualty insurance on or other  
32 recovery for injury to the property.

33 (d) Property owned by the transferor at the time the gift takes  
34 effect in possession or enjoyment and acquired as a result of  
35 foreclosure, or obtained in lieu of foreclosure, of the security  
36 interest for a specifically given obligation.

37 (e) Real or tangible personal property owned by the transferor  
38 at the time the ~~transfer is effective~~ gift takes effect in possession or  
39 enjoyment that the transferor acquired as a replacement for  
40 specifically given real or tangible personal property.

41 **Comment.** Section 21133 is amended to limit its application to  
42 at-death transfers — transfers in possession or enjoyment that take

1 effect at or after death. See Section 21104 (“at-death transfer”  
2 defined).

3 A cross-reference should be added in the Comment to the definition of a  
4 “specific gift” (Section 21117(a)) here and in other places where the term is used.

5 **Prob. Code § 250. Wills, intestate succession, and family protection**

6 The proposed revision to Probate Code Section 250 should be corrected in the  
7 manner identified in the memorandum and included with in the draft  
8 recommendation:

9 250. (a) A person who feloniously and intentionally kills the  
10 decedent is not entitled to any of the following:

11 (1) Any property, interest, or benefit under a will of the  
12 decedent, or a trust created by or for the benefit of the decedent or  
13 in which the decedent has an interest, including any general or  
14 special power of appointment conferred by the will or trust on the  
15 killer and any nomination of the killer as executor, trustee,  
16 guardian, or conservator or custodian made by the will or trust.

17 (2) Any property of the decedent by intestate succession.

18 (3) Any of the decedent's quasi-community property the killer  
19 would otherwise acquire under Section 101 or 102 upon the death  
20 of the decedent.

21 (4) Any property of the decedent under Part 5 (commencing  
22 with Section 5700) of Division 5.

23 (5) Any property of the decedent under Part 3 (commencing  
24 with Section 6500) of Division 6.

25 (b) In the cases covered by subdivision (a):

26 (1) The property interest or benefit referred to in paragraph (1)  
27 of subdivision (a) passes as if the killer had predeceased the  
28 decedent and Section 21110 does not apply.

29 (2) Any property interest or benefit referred to in paragraph (1)  
30 of subdivision (a) which passes under a power of appointment and  
31 by reason of the death of the decedent passes as if the killer had  
32 predeceased the decedent, and ~~Section 1389.4 of the Civil Code~~ 673  
33 does not apply.

34 (3) Any nomination in a will or trust of the killer as executor,  
35 trustee, guardian, conservator, or custodian which becomes  
36 effective as a result of the death of the decedent shall be interpreted  
37 as if the killer had predeceased the decedent.

38 **Comment.** Section 250 is amended to correct a cross-reference.

1                                   **STUDY M-200 – CRIMINAL SENTENCING STATUTES**

2           The Commission considered Memorandum 2001-69 and its First Supplement,  
3 which discuss comments regarding the Commission’s tentative recommendation  
4 relating to *Criminal Sentencing: Weapon and Injury Enhancements*. The Commission  
5 decided not to proceed with the nonsubstantive reorganization of sentence  
6 enhancement provisions proposed in the tentative recommendation. Instead, the  
7 staff will solicit suggestions from judges and criminal law practitioners as to  
8 whether there are substantive problems with weapon allegation provisions that  
9 might be appropriate for Commission study. If the Commission decides to study  
10 substantive problems it will seek an appropriate amendment to its resolution of  
11 authority.

12                                   **STUDY M-1306 – CASES IN WHICH COURT REPORTER IS REQUIRED**

13           See entry in these Minutes under Study J-1306.

<input type="checkbox"/> APPROVED AS SUBMITTED	_____	Date
<input type="checkbox"/> APPROVED AS CORRECTED (for corrections, see Minutes of next meeting)	_____	Chairperson
	_____	Executive Secretary