
MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
NOVEMBER 15-16, 2001
LOS ANGELES

A meeting of the California Law Revision Commission was held in Los Angeles on November 15-16, 2001.

Commission:

Present: Joyce G. Cook, Chairperson
Howard Wayne, Assembly Member, Vice Chairperson
David Huebner
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: James E. Acret, Mechanic's Lien Law (Nov. 16)
Brian Gurwitz, Criminal Law (Nov. 16)
Gordon Hunt, Mechanic's Lien Law (Nov. 16)

Other Persons:

Sandra Bonato, Executive Council of Homeowners, San Jose (Nov. 16)
Deborah Brown, Administrative Office of the Courts, San Francisco (Nov. 15)
Liliana Campos, Planning and Research Unit, Los Angeles Superior Court, Los Angeles (Nov. 16)
Frank Collard, Catalina Pacific Concrete, Glendora (Nov. 16)
Gary Cramer, California Court Reporters Association, Service Employees International Union, LACCRA (Nov. 15)
Paul R. Geissler, Surety Company of the Pacific, Encino (Nov. 16)
Karleen George, AFSCME DC 36, Los Angeles (Nov. 15)
Pamela Green, Valley Village (Nov. 16)
Ken Grossbart, Abdulaziz & Grossbart, North Hollywood (Nov. 16)
Jon B. Hultman, Planning and Research Unit, Los Angeles Superior Court, Los Angeles (Nov. 16)
Eric Jorgensborg, Fisher Lumber Co., Lumber Association of California and Nevada, Los Angeles (Nov. 16)

- Cila Leshem, Ferguson Enterprises, Van Nuys (Nov. 16)
Robert Lewin, Irvine (Nov. 16)
James Lingl, Community Associations Institute, Camarillo (Nov. 16)
Christopher Moore, State Bar Estate Planning, Trust and Probate Law Section,
Torrance (Nov. 15)
Dick Nash, Building Industry Credit Association, Los Angeles (Nov. 16)
Claudia Ortega, Administrative Office of the Courts, San Francisco (Nov. 15)
George Peate, Surety Company of the Pacific, Encino (Nov. 16)
S. Guy Puccio, Executive Council of Homeowners, Wallace & Puccio, Sacramento
(Nov. 16)
Paul Runyon, Los Angeles Superior Court, Los Angeles (Nov. 15)
Robert Solton, Barristers Domestic Violence Project, Los Angeles (Nov. 15)
Terry Weiss, Los Angeles Superior Court, Los Angeles (Nov. 15)
Norman Widman, Dixieline Lumber Co., San Diego (Nov. 16)
Pat Zongker, Dixieline Lumber Co., San Diego (Nov. 16)

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MINUTES OF SEPTEMBER 20-21, 2001, COMMISSION MEETING

- 1 The Commission approved the Minutes of the September 20-21, 2001,
2 Commission meeting as submitted by the staff, subject to the following
3 correction:
4 On page 17, line 24, “theses” should be “these”.

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ADMINISTRATIVE MATTERS

Meeting Schedule

The Commission considered Memorandum 2001-81, relating to the Commission's meeting schedule for the remainder of 2001 and for 2002. The Commission adopted the following meeting schedule:

November 2001	Los Angeles
Nov. 30 (Fri.)	10:00 am – 5:00 pm
December 2001	No Meeting
January 2002	Sacramento
Jan. 17 (Thur.)	10:00 am – 5:00 pm
Jan. 18 (Fri.)	9:00 am – 4:00 pm
February 2002	No Meeting
March 2002	Sacramento
Mar. 14 (Thur.)	10:00 am – 5:00 pm
Mar. 15 (Fri.)	9:00 am – 4:00 pm
April 2002	No Meeting
May 2002	Sacramento
May 16 (Thur.)	10:00 am – 5:00 pm
May 17 (Fri.)	9:00 am – 4:00 pm
June 2002	No Meeting
July 2002	San Diego
July 11 (Thur.)	10:00 am – 5:00 pm
July 12 (Fri.)	9:00 am – 4:00 pm
August 2002	No Meeting
September 2002	San Francisco
Sept. 12 (Thur.)	10:00 am – 5:00 pm
Sept. 13 (Fri.)	9:00 am – 4:00 pm
October 2002	No Meeting
November 2002	Los Angeles
Nov. 7 (Thur.)	10:00 am – 5:00 pm
Nov. 8 (Fri.)	9:00 am – 4:00 pm

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December 2002
Dec. 13 (Fri.)

Los Angeles
10:00 am – 5:00 pm

New Topics and Priorities

The Commission considered Memorandum 2001-60 and its First Supplement, relating to new topics and priorities. Except as noted below, the Commission agreed with the staff recommendations in the memorandum that we request no new topics and establish no new priorities, that we give highest priority to wrapping up work on recommendations for the 2002 legislative session, that we address background studies shortly after their delivery by consultants, and that we attempt to make steady progress on projects that have already been activated. (Note: The Commission also decided to expand the scope of the criminal sentencing project. See entry in these Minutes under Study M-200.)

The Commission directed the staff to follow up with the California Judges Association concerning their views on what needs to be done in the attorney’s fees study.

The Commission agreed with the staff’s concept of enlisting law student help for further study of the law governing inheritance from a child born out of wedlock, in light of *Estate of Griswold*, 108 Cal. Rptr. 2d 165 (2001).

With respect to digital signature laws and notarization, the Commission will consider the possibility of a study after it has received the revised Model Notary Act addressing the matter.

Annual Report

The Commission considered Memorandum 2001-82 and the draft *2001-2002 Annual Report*. The report was approved, subject to revision to conform to decisions made on legislative priorities for 2002 and other editorial revisions. In addition, the date on page 21 should be changed to November 16, 2001, and footnote 28 relating to vacancies should be deleted. The discussion of attendance at NCCUSL meetings on pages 23-24 should be revised for clarity.

Report of Executive Secretary

The Executive Secretary reported that as a result of budget reductions and a hiring freeze, we do not expect to be able to hire a new attorney when the Assistant Executive Secretary retires in September 2002. We have discontinued our recruitment effort. In addition, we will seek alternative funding for payment

1 of the consultant on the Trust Code study, freeing up the funds previously
2 allocated for that study.

3 The Executive Secretary reported that we have received a letter from the staff
4 director of the Senate Committee on Local Government (Peter Detwiler), with
5 complimentary words about the Commission's work:

6 In the early 1980's, while researching a bill analysis on eminent
7 domain, I discovered your Commission's report on that topic. That
8 carefully detailed explanation was my model for compiling *Parks,*
9 *Progress, and Public Policy.* A section-by-section presentation and
10 commentary on a statute, along with source and disposition tables
11 can be a tremendous resource for those who come after us. It helps
12 answer the future question, "What were they thinking?"

13 Thanks for setting a high professional standard for the rest of
14 us.

15 The Commission suggested that this letter be included in its Annual Report.

16 LEGISLATIVE PROGRAM

17 The Commission considered Memorandum 2001-84, containing a final report
18 on the Commission's 2001 legislative program. This was an informational item
19 requiring no Commission action.

20 In connection with the Commission's 2002 legislative program, the Executive
21 Secretary distributed copies of Preprint Assembly Bill No. 2 (Papan), which
22 would implement the Commission's recommendation on *Evidence of Prejudgment*
23 *Deposit Appraisal in Eminent Domain.*

24 STUDY D-1100 – MUNICIPAL BANKRUPTCY

25 The Commission considered Memorandum 2001-86 concerning comments on
26 the Tentative Recommendation on *Municipal Bankruptcy* (September 2001). The
27 Commission approved the recommendation for printing and introduction as a
28 bill in 2002, subject to the technical revisions set out in the memorandum.

29 STUDY H-820 – MECHANIC'S LIENS

30 The Commission considered Memorandum 2001-92, its First Supplement, and
31 the staff draft of Chapters 1 and 2 of the general mechanic's lien statute. The
32 Commission discussed draft Sections 3084.5 ("completion" defined) and 3085
33 ("construction lender" defined) in some detail, and heard the views of experts on

1 mechanic's lien law at the meeting on the question of the need for reform. The
2 Commission concluded that these sections demonstrated the need for further
3 detailed, technical review and rewriting of the mechanic's lien statutes. The staff
4 was directed to form a working group to conduct the necessary section-by-
5 section review of the draft and report back to the Commission with a proposed
6 redraft of the mechanic's lien statute. It was recognized that this process would
7 necessarily delay submission of any general revision recommendation. The
8 report to the Assembly Judiciary Committee on mechanic's lien law will need to
9 address the status of the general revision and will be part of the report prepared
10 for Commission review at the January 2002 meeting.

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

12 The Commission considered Memorandum 2001-94 and its First Supplement,
13 presenting a draft tentative recommendation relating to procedural fairness in
14 certain aspects of common interest development governance. The Commission
15 did not have an opportunity to consider the provisions of the draft relating to
16 review of a proposed alteration of a homeowner's separate interest property. The
17 Commission did consider provisions relating to the "operating rules" of a
18 homeowners association and directed staff to prepare a revised draft tentative
19 recommendation that includes the following changes to those provisions.

20 **Civ. Code § 1357.1. "Operating rule" defined**

21 The language providing that an operating rule must be adopted under the
22 procedure provided in proposed Civil Code Section 1357.3 or 1357.4 should be
23 moved from proposed Civil Code Section 1357.1 to Section 1357.2.

24 Exceptions to the definition of "operating rule" should be added for the
25 following: (1) A mere restatement of an association's governing documents. (2) A
26 rule conforming an association's governing documents to a nondiscretionary
27 statutory requirement.

28 **Civ. Code § 1357.3. Rulemaking procedure**

29 The description of a proposed rulemaking action provided to homeowners by
30 the board of directors pursuant to proposed Civil Code Section 1357.3(a)(1)
31 should include a description of the purpose of the rulemaking action. The staff
32 should consider whether the second sentence of proposed Civil Code Section

1 1357.3(b) should be deleted or revised to eliminate any unintended implication
2 regarding the timing of a decision by the board of directors.

3 **Civ. Code § 1357.4. Emergency rulemaking procedure**

4 Proposed Section 1357.4 should be revised to provide that a threat must be
5 “imminent” in order to justify use of the emergency rulemaking procedure. A
6 change to operating rules adopted under the emergency rulemaking procedure
7 should only be effective for 120 days.

8 **Civ. Code § 1357.5. Member referendum**

9 The following changes should be made to the proposed referendum
10 procedure: (1) A petition challenging an operating rule should only be permitted
11 within a specified period after distribution of the rule to members. (2) The
12 petition should suspend operation of a rule, rather than repealing it. (3) In an
13 election regarding a suspended rule, the outcome should be decided by a
14 majority of those voting, rather than a majority of a quorum of the membership.
15 (4) The proposed law should specify the form of the question presented in an
16 election regarding a suspended rule.

17 **Transition Provision**

18 Language should be added providing that the proposed law is prospective.

19 **STUDY J-1304 – STAY OF MECHANIC’S LIEN ENFORCEMENT**
20 **PENDING ARBITRATION**

21 The Commission considered Memorandum 2001-93, which reexamines the
22 April 2000 recommendation on *Stay of Mechanic’s Lien Enforcement Pending*
23 *Arbitration*. The Commission made the following decisions:

24 (1) The proposal should be updated to reflect the elimination of the municipal
25 courts through trial court unification.

26 (2) The staff should prepare and circulate a new tentative recommendation,
27 proposing that a mechanic’s lien enforcement action is automatically stayed
28 where the plaintiff alleges in the complaint that the dispute is subject to
29 arbitration. If a party objects to arbitration of a dispute, the party could move to
30 lift the stay.

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

2 The Commission considered Memorandum 2001-89, concerning *Cases in*
3 *Which Court Reporter Is Required*. The Commission approved the attached draft as
4 a final recommendation, subject to the following revisions.

5 **Definitions of “judicial officer” and “subordinate judicial officer”**

6 The staff should review existing usage of the terms “judicial officer” and
7 “subordinate judicial officer” in the Code of Civil Procedure, and consider
8 adding definitions of those terms to the code. It might be appropriate to use the
9 definition of “subordinate judicial officer” in Government Code Section 71601(i).

10 **Gov’t Code § 69950. Transcription fee**

11 The terms “purchasing” and “purchased” should be used instead of
12 “requesting” and “requested.” The amendment should make clear that the
13 provision applies where a court purchases a transcript. The staff should
14 determine how to redraft the provision consistent with these decisions.

15 **Penal Code § 190.9. Record in death penalty cases**

16 The proposed amendment of Penal Code Section 190.9 is satisfactory, except
17 that (1) the second sentence of subdivision (a) should refer to “the court” instead
18 of “the superior court,” and (2) the staff should check whether the reference to
19 “the clerk” in subdivision (b) is consistent with the terminology in the current
20 version of Rule 39.53 of the California Rules of Court.

21 **Penal Code § 1539. Transcript of special hearing**

22 Penal Code Section 1539 should be amended along the following lines:

23 1539. (a) If a special hearing be held in ~~the superior court~~ a
24 felony case pursuant to Section 1538.5, or if the grounds on which
25 the warrant was issued be controverted and a motion to return
26 property be made (i) by a defendant on grounds not covered by
27 Section 1538.5; (ii) by a defendant whose property has not been
28 offered or will not be offered as evidence against ~~him~~ the
29 defendant; or (iii) by a person who is not a defendant in a criminal
30 action at the time the hearing is held, the judge or magistrate must
31 proceed to take testimony in relation thereto, and the testimony of
32 each witness must be reduced to writing and authenticated by a
33 shorthand reporter in the manner prescribed in Section 869.

34 (b) The reporter shall forthwith transcribe ~~his~~ the reporter’s
35 shorthand notes pursuant to this section if any party to a special

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

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

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

25 As before unification, Section 1539 does not address whether
26 shorthand or other verbatim reporting is required at a special
27 hearing in a misdemeanor case pursuant to the state or federal
28 Constitution or some other provision of law. For discussion of the
29 extent to which a defendant is entitled to a verbatim record at
30 public expense in a misdemeanor case, see *In re Armstrong*, 126
31 Cal. App. 3d 565, 574, 178 Cal. Rptr. 902 (1981) (on request, all
32 misdemeanor defendants are constitutionally entitled to verbatim
33 record at public expense); but see *Andrus v. Municipal Court*, 143
34 Cal. App. 3d 1041, 1050, 192 Cal. Rptr. 341 (1983) (nothing in state
35 or federal Constitution requires free verbatim record in
36 misdemeanor case on request without showing of indigency).

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

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

2 The Commission considered Memorandum 2001-90, relating to the concept of
3 eliminating the appellate division of the superior court and replacing it with a
4 limited jurisdiction division of the court of appeal. The Commission approved
5 the draft tentative recommendation to circulate for comment, with the revision
6 described below. The comment deadline should be set in such a way as to allow
7 ample opportunity for interested persons and organizations to respond to the
8 proposal. The Commission plans to review comments in spring 2002.

9 **Gov't Code § 69162. Judges of limited jurisdiction division**

10 Each limited jurisdiction division should consist of three judges, “or when the
11 Chief Justice finds it necessary, a greater number.”

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

13 The Commission considered Memorandum 2001-88 and its First Supplement,
14 and Memorandum 2001-96 and its First Supplement, concerning *Statutes Made*
15 *Obsolete by Trial Court Restructuring*. The Commission made the following
16 decisions regarding the draft tentative recommendation.

17 **Concurrent Jurisdiction**

18 The staff should check whether the treatment of provisions raising concurrent
19 jurisdiction issues is consistent throughout the draft. A brief explanation of these
20 issues should be added to the preliminary part (narrative portion) of the draft.

21 **Court Executive or Administrative Officer**

22 The Commission adopted the staff recommendation regarding statutory
23 references to a court “administrative officer.” See Memorandum 2001-88, pp. 1-2.

24 **Court Facilities**

25 The staff should check whether the treatment of provisions relating to court
26 facilities is consistent throughout the draft. For example, Government Code
27 Section 74916 pertains to court facilities in Yuba County, but the proposed repeal
28 of this provision does not include the standard Note on court facilities.

29 **Court Interpreters**

30 The staff should do further analysis of provisions relating to court
31 interpreters.

1 **Cross-References to Provisions that the Commission Proposes to Repeal**

2 The staff should develop a consistent approach for referring to provisions that
3 the Commission is proposing to repeal. For example, the Commission is
4 proposing to repeal Article VI, Section 23, of the California Constitution. All
5 references to this provision (in Comments and elsewhere) should be treated
6 similarly: Either they should all refer to “former Article VI, Section 23,” or they
7 should all refer to “Article VI, Section 23.”

8 In developing this approach, it might be appropriate to differentiate between
9 constitutional provisions proposed for repeal and statutes proposed for repeal
10 For example, constitutional provisions could be cited as if they remain in effect
11 (“Article VI, § 23”), whereas statutes could be cited as if they have been repealed
12 as proposed (“former Government Code Section 68202”). It might also be helpful
13 to use a Note to explain the status of a provision.

14 **Judicial Benefits**

15 The staff should check whether the treatment of provisions relating to judicial
16 benefits is consistent throughout the draft.

17 **Jury Commissioner**

18 The staff should do further analysis of provisions relating to jury
19 commissioners. The tentative recommendation should include Notes soliciting
20 comment on such provisions (e.g. Penal Code § 903.2).

21 **Local Venue**

22 The staff should check whether the treatment of provisions raising local
23 venue issues is consistent throughout the draft.

24 **Notes**

25 The tentative recommendation should draw attention to the Notes soliciting
26 comment, perhaps by including the word “Note” after pertinent entries in the
27 table of contents. Each Note should indicate that the Commission has not yet
28 resolved how to treat the provision and would like to receive input on that point.

29 **Official Reporters**

30 After hearing opposing views on the matter, the Commission decided it
31 would be helpful to have representatives of interested and affected groups and
32 entities meet to determine whether a generally acceptable approach to resolution

1 of the issues can be developed. The objective would be to report back to the
2 Commission on the matter at its January 17-18, 2002, meeting. Meanwhile, the
3 tentative recommendation should note that disposition of official reporter
4 compensation statutes has not yet been resolved, and should solicit comment on
5 the matter.

6 **Preliminary Part**

7 The preliminary part refers to “cleansing of the statutes.” See p. 1, line 12; p. 3,
8 lines 12-13. This phrase should not be used.

9 The staff should double-check whether growth in revenues from fines is split
10 between the counties and the state’s Trial Court Improvement Fund, as stated at
11 page 4, lines 28-30, of the draft.

12 **Sessions**

13 The staff should check whether the treatment of provisions relating to
14 sessions of the superior court is consistent throughout the draft. For example,
15 compare the proposed repeal of Government Code Section 69746.5 with the
16 proposed amendment of Government Code Section 69744.

17 **Cal. Const. art. VI, § 23. Transitional provision**

18 The draft proposes to repeal Article VI, Section 23, of the California
19 Constitution. The Administrative Office of the Courts (“AOC”) suggested
20 retaining this provision, but the Commission decided to proceed with its
21 proposal for purposes of the tentative recommendation.

22 **Bus. & Prof. Code § 6302.5. Board of law library trustees of Los Angeles**
23 **County**

24 The last three paragraphs of Business and Professions Code Section 6302.5
25 specify a method for staggering the terms of the law library board in Los Angeles
26 County. The staff should investigate whether these provisions are obsolete or
27 could be simplified.

28 **Code Civ. Proc. § 73e. Session at location of juvenile hall**

29 The draft would revise this provision to state that under certain
30 circumstances a session or sessions of the superior court “may be held or
31 continued in any *place* in the county in which the juvenile hall is located and
32 thereafter such session or sessions of the superior court may be held or continued

1 in the *place* designated in such order.” (Emphasis added.) To improve clarity, the
2 second reference to “place” should be replaced with “location.”

3 **Code Civ. Proc. § 85. Limited civil cases**

4 As discussed in the First Supplement to Memorandum 2001-88, the tentative
5 recommendation should not include a proposed amendment of Code of Civil
6 Procedure Section 85.

7 **Code Civ. Proc. § 116.940. Advisory services**

8 The draft includes the following amendment of Code of Civil Procedure
9 Section 116.940:

10 116.940. (a) Except as otherwise provided in this section or in
11 rules adopted by the Judicial Council, the characteristics of the
12 small claims advisory service required by Section 116.260 shall be
13 determined by each ~~county~~ superior court in accordance with local
14 needs and conditions.

15 (b) Each advisory service shall provide the following services:

16

17 (3) Adjacent Superior courts in adjacent counties may provide
18 advisory services jointly.

19 (c) In any county in which the number of small claims actions
20 filed annually is 1,000 or less as averaged over the immediately
21 preceding two fiscal years, the ~~county~~ superior court may elect to
22 exempt itself from the requirements set forth in subdivision (b).
23 This exemption shall be formally noticed through the adoption of a
24 ~~resolution by the board of supervisors~~ local rule. If a ~~county~~
25 superior court so exempts itself, the ~~county~~ superior court shall
26 nevertheless provide the following minimum advisory services in
27 accordance with rules adopted by the Judicial Council:

28

29 (2) Small claims information booklets shall be provided in the
30 court clerk’s office of each ~~municipal~~ superior court, ~~the court~~
31 ~~clerk’s office of each superior court in a county in which there is no~~
32 ~~municipal court, the county administrator’s office, other~~
33 appropriate county offices, and in any other location that is
34 convenient to prospective small claims litigants in the county.

35

36 **Comment.** Section 116.940 is amended to reflect unification of
37 the municipal and superior courts pursuant to Article VI, Section
38 5(e), of the California Constitution. The section is also amended to
39 reflect enactment of the Trial Court Funding Act. See Gov’t Code §§
40 77003 (“court operations” defined), 77200 (state funding of trial
41 court operations); Cal. R. Court 810, Function 10.

1 The AOC commented that “with the exception of paragraph (c)(2), it would not
2 be appropriate to amend the statute as indicated.” (Email from Janet Grove
3 (11/14/01).) According to the AOC, it might be appropriate to amend the statute
4 to direct the county to provide advisory services “in consultation with the
5 superior court.” *Id.*

6 The AOC’s position needs to be reconciled with California Rule of Court 810,
7 Function 10, which lists “small claims advisor program costs” as a court
8 operation. To promote discussion of how to resolve this matter, the Commission
9 decided to leave the proposed amendment of Section 116.940 in the tentative
10 recommendation, but insert a Note soliciting comment on the proper treatment
11 of the provision.

12 **Code Civ. Proc. § 194. Definitions**

13 The proposed amendment of Code of Civil Procedure Section 194(b) should
14 read along the following lines:

15 (b) “Court” means the a superior and municipal courts court of
16 this state, and includes, when the context requires, any judge of the
17 court.

18 **Code Civ. Proc. § 215. Fees and mileage for jurors**

19 Code of Civil Procedure Section 215 should refer to the “superior court,” not
20 the “superior courts”:

21 215. (a) Beginning July 1, 2000, the fee for jurors in the superior
22 and municipal courts court, in civil and criminal cases, is fifteen
23 dollars (\$15) a day for each day’s attendance as a juror after the first
24 day.

25 (b) Unless a higher rate of mileage is otherwise provided by
26 statute or by county or city and county ordinance, jurors in the
27 superior and municipal courts court shall be reimbursed for
28 mileage at the rate of fifteen cents (\$0.15) per mile for each mile
29 actually traveled in attending court as a juror, in going only.

30 **Code Civ. Proc. § 575.1. Local court rules**

31 The second sentence of Code of Civil Procedure Section 575.1(b) should be
32 revised along the following lines: “The Judicial Council shall deposit a copy of
33 each rule and amendment with each county law library or county clerk clerk of
34 the superior court, where it shall be made available for public examination.” The
35 provision should also require the county law library or clerk of the superior court
36 to maintain a hard-copy of the document, regardless of whether it is transmitted

1 electronically or otherwise. The proposed amendment should be circulated to
2 county law libraries for comment.

3 **Code Civ. Proc. § 904.2. Taking appeal in limited civil case**

4 The staff should analyze this provision further. The tentative
5 recommendation should not include a proposed amendment of this provision.

6 **Food & Agric. Code § 31503. Complaint by person damaged**

7 Food and Agricultural Code Section 31503 should authorize the injured
8 person to file a complaint “in the superior court,” not “with any judge of the
9 superior court.”

10 **Food & Agric. Code § 31622. Determination and appeal**

11 The staff should examine whether the reference to “a court authorized to hear
12 the appeal” should be changed to “the superior court.”

13 **Gov’t Code § 811.9. Representation, defense, and indemnification of trial court
14 judges, judicial officers, court executive officers, and employees**

15 The proposed Comment should be revised as follows:

16 **Comment.** Section 811.9 is amended to reflect unification of the
17 municipal and superior courts pursuant to Article VI, Section 5(e),
18 of the California Constitution. The references to the municipal
19 courts are revised rather than deleted, because a claim might still be
20 asserted against a person ~~formerly employed by~~ who served a
21 municipal court, even though the court itself no longer exists. For
22 application of the Tort Claims Act to former employees generally,
23 see Sections 825, 825.2, 825.6.

24 The tentative recommendation should include a Note soliciting comment on the
25 proper treatment of the provision.

26 **Gov’t Code § 20437. “County peace officer” as including constables, marshals,
27 and deputies**

28 This provision should be revised to more clearly cover a constable of a justice
29 court.

30 **Gov’t Code § 23396. Superior court officers, attachés and other employees**

31 This provision should be amended to provide that the Trial Court
32 Employment Protection and Governance Act applies in a proposed county, but
33 preference in appointment shall be given to persons serving a session of the

1 superior court located within the boundaries of the proposed county
2 immediately before its creation.

3 **Gov't Code § 26638.2. Consolidation of marshal and sheriff departments**

4 The last paragraph of this provision should be deleted as obsolete.

5 **Gov't Code § 26638.10. Independent review team**

6 In the last sentence of the first paragraph of Government Code Section
7 26638.10, "disinterested public member" should be replaced with "disinterested
8 member of the public."

9 **Gov't Code § 29603. Payments to jurors and witnesses**

10 Government Code Section 29603 should be amended as follows:

11 29603. The sums required by law to be paid to the grand and
12 trial jurors and witnesses in criminal cases tried in a superior or
13 municipal court are county charges.

14 **Gov't Code § 31554. Participation in county retirement plan by superior court**
15 **employees**

16 The tentative recommendation should set forth the text of Government Code
17 Section 31554 and indicate that the Commission is not proposing to amend or
18 repeal the provision at this time. There should be a Note soliciting comment on
19 whether it is appropriate to retain the provision for transitional purposes.

20 **Gov't Code §§ 68112-68114.9. Trial court coordination**

21 As requested by the AOC, the provisions relating to trial court coordination
22 (Gov't Code §§ 68112, 68112.5, 68114, 68114.5, 68114.6, 68114.7, 68114.9) should
23 be left in place pending consideration of the possibility of amending these
24 provisions to require coordination among superior courts in different counties.
25 Cross-references to these provisions should be treated accordingly. The proposed
26 repeal of Government Code Section 68114.8 should remain in the draft, because
27 that provision does not seem to pertain to trial court coordination.

28 **Gov't Code § 68152. Retention of court records**

29 Government Code Section 68152(j)(12) should be amended along the
30 following lines:

1 (12) Judgments within the jurisdiction of the superior court
2 other than in a limited civil case, misdemeanor case, or infraction
3 case: retain permanently.

4 **Gov't Code § 68202. Annual salary of judges**

5 The draft proposes the following amendment of Government Code Section
6 68202:

7 68202. Effective January 1, 1985, the annual salary of each of the
8 following judges is the amount indicated opposite the name of the
9 office:

10 (a) Judge of the superior court, seventy-two thousand seven
11 hundred sixty-three dollars (\$72,763).

12 (b) ~~Judge of a municipal court, sixty-six thousand four hundred~~
13 ~~forty-nine dollars (\$66,449).~~

14 The staff should consider updating this provision and deleting the “(a).”

15 **Gov't Code § 70219. Judicial Council and Law Revision Commission studies**
16 **and recommendations**

17 A provision along the following lines should be added to the draft tentative
18 recommendation:

19 70219. (a) The Judicial Council and the California Law Revision
20 Commission shall jointly study and make recommendations to the
21 Governor and Legislature reexamining the three-track civil
22 procedure system of unlimited civil cases, limited civil cases, and
23 small claims cases and the underlying policies of the system in light
24 of unification of the trial courts.

25 (b) The California Law Revision Commission shall study and
26 make recommendations to the Governor and Legislature
27 reexamining criminal procedures, and in particular procedures that
28 require motions or other preliminary proceedings before a
29 magistrate or superior court judge and an opportunity for review
30 by another superior court judge, in light of unification of the trial
31 courts.

32 (c) This section does not limit any authority of the Judicial
33 Council or the California Law Revision Commission to conduct
34 studies and make recommendations authorized or directed by law.

35 **Comment.** Section 70219 replaces former Section 70219 with
36 more specific direction as to major studies mandated by the former
37 provision.

1 **Gov't Code § 71043. Determination of population of judicial district**

2 As discussed in the First Supplement to Memorandum 2001-88, Government
3 Code Section 71043 should be repealed and reenacted. Corresponding revisions
4 should be made in the Note on Government Code Section 69744.5.

5 **Gov't Code § 71180.5. Notice to Judges' Retirement System or Judges'
6 Retirement System II**

7 The staff should check whether there is a superior court provision comparable
8 to Government Code Section 71180.5, and revise the draft accordingly.

9 **Penal Code § 1269b. Bail**

10 The tentative recommendation should solicit comment on how courts actually
11 adopt bail schedules and whether the statutory procedure should be modified.

12 **Welf. & Inst. Code §§ 247, 255. Hiring by presiding judge**

13 Welfare and Institutions Code Sections 247 and 255 should be treated
14 consistently with respect to appointment of referees and appointment of juvenile
15 hearing officers.

16 **STUDY L-605 – RULES OF CONSTRUCTION FOR TRUSTS**

17 The Commission considered Memorandum 2001-85 and its First Supplement,
18 relating to the draft recommendation on *Rules of Construction for Trusts and Other
19 Instruments*. The Commission approved the recommendation for printing and
20 submission to the Legislature with the changes set out in the memorandum,
21 subject to the following exceptions.

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

23 The Commission agreed with the concept that it should be made clear the
24 present recommendation does not deal with the question of reformation of
25 instruments. The Commission's enthusiasm for undertaking a separate study of
26 reformation was restrained.

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

28 The Commission decided to omit the draft language at the middle of page 4
29 relating to treatment by the courts of flexible multi-generation class designations.

1 **Prob. Code § 21110. Anti-lapse**

2 The Commission revised its recommendation concerning subdivision (b) of
3 Section 21110 to read:

4 (b) The issue of a deceased transferee do not take in the
5 transferee's place if the instrument expresses a contrary intention or
6 a substitute disposition. A requirement that the initial transferee
7 survive ~~for a specified period of time after the death of the~~
8 transferor constitutes a contrary intention. A requirement that the
9 initial transferee survive until a future time that is related to the
10 probate of the transferor's will or administration of the estate of the
11 transferor constitutes a contrary intention.

12 The Comment should be adjusted accordingly.

13 **Prob. Code § 230. Petition for purpose of determining survival**

14 The staff should research the reference in subdivision (e) to cases governed by
15 statutes repealed by Chapter 842 of the Statutes of 1983, and should include in
16 the text of the final recommendation a proposed repeal of that reference, if
17 appropriate.

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

19 The Commission considered Memorandum 2001-91 and its First Supplement,
20 which discuss the need for reform of criminal sentencing law. The Commission
21 directed the staff to draft resolution language to expand the Commission's
22 authority to study substantive problems in criminal sentencing law. Once a
23 resolution expanding the Commission's authority is enacted, the staff will
24 prepare a detailed analysis of the reforms proposed by the California District
25 Attorneys Association and will conduct additional research into problems
26 relating to sentence enhancement provisions.

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

28 See the entry in these Minutes under Study J-1306.

29 **STUDY N-307 – ADMINISTRATIVE RULEMAKING: DEFERRED ISSUES**

30 The Commission considered Memorandum 2001-95 and its First Supplement,
31 discussing possible minor reforms of the rulemaking provisions of the
32 Administrative Procedure Act. The Commission approved the revisions

1 proposed in the memorandum and its supplement for circulation as a tentative
2 recommendation, with the following exceptions.

3 **Gov't Code § 11340.85. Internet publication of rulemaking documents**

4 Proposed paragraph (10) of Government Code Section 11340.85(c) should be
5 revised to read:

6 (10) The text of a proposed emergency adoption, amendment, or
7 repeal of a regulation pursuant to Section 11346.1 and the date it
8 was submitted to the office for review and filing.

9 **Gov't Code § 11343. Certification of rulemaking action**

10 The proposed revision will be redrafted to avoid use of the word "its."

11 **Gov't Code § 11346.3. Applicability of reporting requirement to business**

12 The tentative recommendation will not include a provision specifying the
13 location of the finding required by Government Code Section 11346.3(c).

14 **Gov't Code § 11347. Notice of decision not to proceed with rulemaking**

15 The tentative recommendation will not include a repeal of the duplicate
16 Government Code Section 11347. Instead, the staff will request that the duplicate
17 provision be repealed in the Legislative Counsel's "Maintenance of the Codes"
18 bill. The staff will specifically request that the version of Government Code
19 Section 11347 added by Chapter 1060 of the Statutes of 2000 be preserved, to
20 avoid any question about the continuing applicability of the Commission's
21 Comment regarding that section.

APPROVED AS SUBMITTED

Date

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

Chairperson

Executive Secretary