
MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
MAY 16-17, 2002
SACRAMENTO

A meeting of the California Law Revision Commission was held in Sacramento on May 16-17, 2002.

Commission:

Present: Joyce G. Cook, Chairperson
Howard Wayne, Assembly Member, Vice Chairperson
David Huebner (May 16)
Frank M. Kaplan
Desiree I. Kellogg
Edmund L. Regalia
Julia Sylva
William E. Weinberger

Absent: Bill Morrow, Senate Member

Staff: Nathaniel Sterling, Executive Secretary
Stan Ulrich, Assistant Executive Secretary (May 16)
Barbara S. Gaal, Staff Counsel
Brian P. Hebert, Staff Counsel
Lynne I. Urman, Staff Counsel

Consultants: Gregory W. Weber, Civil Discovery (May 17)

Other Persons:

Saul Bercovitch, State Bar of California, San Francisco (May 17)
Sandra Bonato, Executive Council of Homeowners Associations, San Jose (May 17)
Oliver Burford, Executive Council of Homeowners Association, San Jose (May 17)
John M. Daley, Law Offices of John M. Daley, San Francisco (May 17)
Pamela Fisk, San Mateo County California Official Court Reporters Association,
Redwood City (May 16)
Daphne L. Macklin, Legal Services of West California, Sacramento (May 17)
Terence Nunan, State Bar Estate Planning, Trust and Probate Law Section, Los
Angeles (May 16)
Sam Perrotti, Department of Real Estate, Sacramento (May 17)
Tom Pringle, California Court Reporters Association, Redding (May 16)
S. Guy Puccio, Executive Council of Homeowners Associations, Wallace & Puccio,
Sacramento (May 17)

1 **Legislative Intent and CLRC Recommendations**

2 The Commission considered Memorandum 2002-19 and its First Supplement,
3 relating to use of Commission reports and recommendations as evidence of
4 legislative intent.

5 The Commission decided to add the following note to its Annual Report:

6 [FN] The Commission does not concur with the suggestion of
7 the court in *Conservatorship of Wendland*, 26 Cal. 4th 519, 28 P.3d 151,
8 110 Cal. Rptr. 2d 412 (2001), that a Commission Comment might be
9 entitled to less weight because the Legislature may have not have
10 been aware of every word in the Commission's report. 26 Cal. 4th
11 at 542. The Commission's Comments are provided to legislative
12 committee members and staff who are charged with in depth study
13 of the legislation, and are relied upon by them in making
14 recommendations to the Legislature concerning the legislation. See,
15 e.g., "The Committee System" in *California's Legislature* at 126-27
16 (Office of the Chief Clerk, California State Assembly 2000).

17 In addition, the Commission decided to augment the Note accompanying its
18 recommendations that describes the effect of Commission Comments to include
19 language relating to use of Comments in statutory construction. The staff should
20 propose draft language for Commission review at a future meeting.

21 The Commission directed the staff to bring back to the Commission the
22 possibility of a study of the Uniform Statute and Rule Construction Act (1995)
23 when the Commission reviews new topics and priorities this fall.

24 Meanwhile, the staff will seek to inspire student or other research on use of
25 Commission Comments for statutory construction. Our objective is make a
26 compendium showing proper usage of Commission Comments in statutory
27 construction as an aid to attorneys, courts, and others who may have occasion to
28 construe a statute enacted on Commission recommendation.

29 **Report of Executive Secretary**

30 The Executive Secretary reported on the following matters.

31 *Commission Membership*

32 The Commission now has its full complement of gubernatorial appointees
33 and legislative appointees. There remains a vacancy in the office of Legislative
34 Counsel, who is a member of the Commission, ex officio. It is not clear when the
35 Legislature will act to fill that vacancy.

1 *Election of Officers*

2 The staff should prepare a memorandum concerning election of Commission
3 officers for consideration at the July 2002 meeting. The memorandum should set
4 out the current Commission practices and procedures on election of officers, and
5 should also agendize for Commission review at that meeting the question
6 whether the election and terms of officers should be changed.

7 *Commissioner Identification*

8 The staff will prepare photo ID cards for Commission and staff members. The
9 cards should be useful in obtaining state contract rates on accommodations for
10 Commission meetings. The Commission decided to suspend the practice of
11 issuing business cards for Commission members; these have been found to have
12 little utility.

13 *Commission Budget*

14 The Governor's budget for 2002-2003 would impose a 15% reduction in
15 funding on the Commission. This will require the Commission to reduce its staff
16 by 1.5 positions. We have laid off our administrative assistant, and will leave an
17 attorney position unfilled when Stan Ulrich retires in September.

18 The budget subcommittees of both houses have approved that aspect of the
19 Governor's budget, although the Assembly Subcommittee would give the
20 Commission a \$75,000 augmentation for a proposed project on protection of
21 personal information in financial transactions.

22 It does not appear that the May Revise will further impact the Commission's
23 budget. However, given the size of the budget deficit, this is a work in progress.

24 *Privacy Policy*

25 The Commission has received a request for a copy of its mailing list on a
26 particular study topic. The Executive Secretary has declined to release the
27 mailing list because it contains personal information (names and addresses of
28 members of the public) that is protected from disclosure by state law.

29 The Executive Secretary noted that this is a problem area in the law, involving
30 a balancing of public policies favoring disclosure of public documents but
31 protecting privacy rights of those who deal with public agencies. The
32 Commission decided to seek an Attorney General opinion on the matter.

1 *Relations with NCCUSL*

2 The Commission generally tries to maintain close working relations with the
3 National Conference of Commissioners on Uniform State Laws, and in fact it is a
4 statutory duty of the Law Revision Commission to receive and consider changes
5 in the law proposed by NCCUSL. Nonetheless, the Executive Secretary plans not
6 to attend the NCCUSL annual meeting this summer, due to budget constraints
7 and travel restrictions.

8 *Posthumously Conceived Child*

9 The Executive Secretary has agreed to give Assembly Member Harman some
10 ideas to help him organize a project to develop a legislative proposal dealing
11 with the issue of inheritance rights of a posthumously conceived child. It has
12 been made clear to the Assembly Member that this is not a Law Revision
13 Commission project, but that the Executive Secretary has simply agreed to help
14 organize the project as an accommodation to him.

15 *Commission's 50th Anniversary*

16 The Commission's 50th anniversary is one to two years off. The law creating
17 the Commission took effect in September 1953, and the first meeting of the
18 Commission was in February 1954. The staff has given some thought to an
19 appropriate commemoration, but lack of time and resources to organize an event
20 is a problem. Ideas for a commemoration include a reception and display in the
21 capitol rotunda, a glossy report on the Commission's history and achievements,
22 or a special edition of the Commission's annual report.

23 It may be possible to make use of student interns to help compile current
24 contact information for former Commission and staff members. It may also be
25 possible to obtain seed money from a law foundation to help. If Commission
26 members come up with other ideas for resources to organize a commemoration,
27 they should pass them along to the staff.

28 *Student Interns*

29 The Commission will have two student interns working for it this summer.
30 Ellen Nudelman, a Stanford Law School student, will be working in our Palo
31 Alto office under the auspices of the work study program and the Stanford
32 Public Interest Law Foundation. Nick Gonzalez, a UC Berkeley undergraduate,
33 will be working in our Sacramento office under the auspices of the Cal in the
34 Capital program.

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LEGISLATIVE PROGRAM

The Commission considered Memorandum 2002-20, relating to the Commission's 2002 legislative program. The staff orally updated the chart attached to the memorandum with the information that AB 568 (Dutra) is set for hearing June 4, AB 1784 (Harman) and ACR 123 (Wayne) have been approved by the Assembly, and SB 1316 (Senate Judiciary Committee) and SB 2061 (Morrow) are on the Senate floor.

With respect to SCR 81 (Machado), which is not part of the Commission's legislative program but which would assign the Uniform Money Services Act for study by the Commission, the staff reported that the measure has been approved by the Senate Judiciary Committee after amendments by the author to extend the deadline for the study by a year, to add consumer protections to the study, and to state legislative intent not to defer action on needed legislation while the study progresses.

The Commission also took action with respect to the following matters discussed in the memorandum.

AB 568 (Dutra) — Double Liability in Home Improvement Contracts

The Commission reviewed and accepted the amendments to AB 568 that are intended to implement the substance of the Commission's recommendation to protect a certain minimum level of good-faith payments made by homeowners under home improvement contracts. The Commission also approved the revised Comment as set out in the memorandum, with the caveat that further review may be called for after the bill clears the Senate.

AB 1784 (Harman) — Rules of Construction for Trusts and Other Instruments

The Commission ratified the amendments and Comment revisions to AB 1784 (Harman) set out in the Exhibit to the memorandum.

STUDY B-501 – UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT

The Commission began consideration of Memorandum 2002-25 and its First Supplement, relating to the law governing unincorporated associations. The Commission covered the first two pages of the memorandum and the entire supplement, and made the following decisions:

1 **Definition of “Unincorporated Association”**

2 A note should be added following proposed Corporations Code Sections
3 18025 and 18200 reconciling the definition of “unincorporated association” stated
4 in *Barr v. United Methodist Church*, 90 Cal. App. 3d 259, 266-67 (1979), with the
5 slightly different definition provided in proposed Section 18025. The note would
6 request comment on whether that difference is problematic.

7 **Scope of Proposed Law**

8 Proposed Section 18055 should be recast as a nonexclusive list of exempt
9 entities and should include a joint venture. The Comment to that section should
10 make clear that “partnership” includes a limited partnership and limited liability
11 partnership.

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

13 The Commission considered Memorandum 2002-24 and its First Supplement,
14 presenting a draft tentative recommendation relating to procedural fairness in
15 common interest development rulemaking and architectural review. The
16 Commission approved the staff draft for circulation as a tentative
17 recommendation, with the following changes:

18 **Preliminary Part**

19 In the preliminary part of the tentative recommendation, the sentence
20 beginning on line three of page seven was deleted. In addition, the word
21 “member” on line 10 of page three was replaced with “members.”

22 **Notice Board**

23 A provision should be added requiring that every common interest
24 development maintain a notice board in its common area, for posting of official
25 documents.

26 **Civ. Code § 1350.7. Document delivery**

27 The following changes should be made to proposed Civil Code Section
28 1350.7:

- 29 (1) Delete the phrase “notice or other” throughout.
30 (2) Recast the second sentence of subdivision (b)(3) to more directly
31 state that a provision of the governing documents providing for

1 electronic delivery of documents should not be considered
2 member agreement to that method of delivery.

3 (3) Delete the words “If feasible” from subdivision (d).

4 In addition, the staff should review the proposed law to determine whether
5 procedural events triggered by receipt of a document are improperly inconsistent
6 with subdivision (e).

7 The staff should also review whether subdivision (e) should be revised to
8 provide that documents delivered by mail are deemed delivered some number of
9 days after mailing, rather than on the date mailed. The law governing service of
10 process by mail may provide an analogous rule.

11 **Civ. Code § 1378.030. Review standards**

12 Proposed Section 1378.030(a) was revised as follows:

13 1378.030. (a) An association shall adopt substantive standards of
14 general application to govern its review of a proposed alteration of
15 a separate interest.

16 **Civ. Code § 1378.040. Architectural review procedure**

17 The following changes should be made to proposed Civil Code Section
18 1378.040:

19 (1) Delete the words “If feasible” from subdivision (a).

20 (2) Add a 10-day deadline for posting and delivery of notices under
21 subdivisions (b) and (c).

22 Also, a note should be added after proposed Section 1378.040, asking for
23 input on (1) whether posting of notice of an application would unduly intrude on
24 the privacy of the applicant, and (2) whether a proposed alteration should be
25 deemed approved if it violates express provisions of the governing documents or
26 involves specific types of alterations that could clearly affect the applicant’s
27 neighbors (e.g., changing the slope, grade, or drainage pattern of a lot).

28 **Civ. Code § 1378.050. Period for appeal**

29 Proposed Section 1378.050 should be revised to provide that, if no member
30 objects to a proposed alteration of a separate interest, the applicant need not wait
31 for the appeal period to run before commencing work on the alteration.

1 **Civ. Code § 1378.060. Appeal process**

2 The final subdivision of proposed Section 1378.060 should be designated
3 subdivision (d).

4 **Civ. Code § 1378.070. Judicial review**

5 Proposed Section 1378.070 should be revised to provide that judicial review of
6 a decision regarding a proposed alteration of a separate interest may not be
7 obtained unless the decision has been appealed to the board of directors of the
8 association. Judicial review of a decision of the board of directors should be
9 governed by Code of Civil Procedure Section 1094.5 (administrative mandate
10 procedure).

11 **Civ. Code § 1378.080. Delivery of document**

12 Proposed Section 1378.080 should be relocated to follow proposed Section
13 1378.020 and revised to provide that documents relating to review of a proposed
14 alteration of a separate interest shall not be posted on an association's Internet
15 Web site.

16 **Civ. Code § 1378.090. Application of article**

17 Proposed Section 1378.090 should be revised to replace the term "proposed"
18 with more specific language.

19 **Civ. Code § 1380.040. Availability of rules**

20 Subdivision (b) of proposed Section 1380.040 was deleted.

21 **STUDY J-111 – STATUTE OF LIMITATIONS FOR LEGAL MALPRACTICE**

22 The Commission considered Memorandum 2002-13, concerning the statute of
23 limitations for legal malpractice. The discussion focused on the concerns raised
24 by the State Bar Estate Planning, Trust and Probate Law Section ("EPTPL
25 Section"). Chairperson Cook recused herself.

26 The Commission directed the staff to conduct further research and analysis
27 relating to the concerns of the EPTPL Section. The staff should explore areas such
28 as the following:

- 29 • Malpractice insurance rates and availability, particularly for post-
30 retirement coverage
- 31 • Use of statutes of repose in California

- 1 • Limitations periods and statutes of repose for legal malpractice in
- 2 other jurisdictions
- 3 • Whether and to what extent an estate planning attorney owes a
- 4 duty to clients to inform them of changes in the law that might
- 5 affect their estate plans
- 6 • Contexts in which the period of exposure to a malpractice claim is
- 7 comparable to the exposure to estate planning malpractice
- 8 • Practical implications of trying a malpractice case long after the
- 9 alleged malpractice occurred
- 10 • Alternatives to the approach proposed by the EPTPL Section
- 11 • Constitutional constraints

12 On behalf of the EPTPL Section, Terence Nunan agreed to assist by providing
13 information regarding malpractice insurance rates, availability of insurance, and
14 incidence of litigation .

15 STUDY J-503 – DISCOVERY IMPROVEMENTS FROM OTHER JURISDICTIONS

16 The Commission considered Memorandum 2002-21 and its First Supplement,
17 concerning comments on Professor Gregory Weber’s background study on
18 *Potential Innovations in Civil Discovery: Lessons for California from the State and*
19 *Federal Courts*. The Commission decided to further explore the following areas:

- 20 • Pretrial disclosure
- 21 • Discovery planning and judicial control over discovery
- 22 • Presuit discovery
- 23 • Work product privilege
- 24 • Deadlines for motions to compel
- 25 • One-deposition rule in a limited civil case (Code Civ. Proc. § 91(c))
- 26 • Presumptive limits on the length of depositions
- 27 • Deposition scheduling
- 28 • Presumptive limits on the number of interrogatories
- 29 • Duty to automatically supplement information in initial response
- 30 to interrogatory
- 31 • Use of supplemental interrogatory after continuance of trial date
- 32 • Duty to automatically supplement initial response to document
- 33 request
- 34 • Nonsubstantive reform as discussed at pages 28-29 of
- 35 Memorandum 2002-21.

1 The Commission also directed the staff to attempt to obtain more information
2 regarding the concerns of the Consumer Attorneys of California relating to
3 medical examinations.

4 STUDY J-1310 – APPELLATE AND WRIT REVIEW UNDER TRIAL COURT UNIFICATION

5 The Commission considered Memorandum 2002-22, analyzing comments on
6 the Tentative Recommendation on *Appellate and Writ Review Under Trial Court*
7 *Unification* (November 2001). After discussion, the Commission decided to
8 continue work on this matter in an effort to move it forward.

9 The Commission decided that, before it addresses issues raised concerning
10 the tentative recommendation, it will first explore another alternative it has not
11 previously considered. Under this approach matters of a type determined by a
12 court commissioner would be reviewable in the superior court appellate division,
13 and matters of a type determined by a judge would be reviewable in the court of
14 appeal. The staff should prepare material analyzing this alternative, including
15 court of appeal workload estimates.

16 If this alternative proves not to be feasible or is otherwise rejected by the
17 Commission, the staff should prepare for a future meeting a revised version of
18 the tentative recommendation that seeks to address the issues that have been
19 raised concerning it.

20 The Commission also expressed interest in the results of the Administrative
21 Office of the Courts planned survey of perceptions of impropriety in the current
22 system of peer review of judicial actions in limited civil cases and in
23 misdemeanor and infraction cases. It is anticipated that the results of the survey
24 will be available during the time the Commission is working on this matter, and
25 that the survey results will inform the Commission's ultimate decision.

26 STUDY J-1401 – STATUTES MADE OBSOLETE BY
27 TRIAL COURT RESTRUCTURING: PART 2

28 The Commission considered Memorandum 2002-23, relating to statutes made
29 obsolete by trial court restructuring. The Commission approved the staff
30 recommendations made in the memorandum, and took action on the following
31 matters:

1 **Compensation of Official Reporter**

2 The staff reported that efforts to schedule another working group session
3 relating to official reporter compensation were unsuccessful. The Commission
4 decided to defer further action on official reporter compensation provisions that
5 were removed from SB 1316 pending completion of (1) the study and
6 recommendations of the Reporting of the Record Task Force, and (2) negotiations
7 among interested parties. The Commission directed the staff to monitor the
8 progress of the task force and to send the task force a list of general official
9 reporter compensation statutes for consideration.

10 **Penal Code § 903. Preparation of prospective grand jurors list by jury**
11 **commissioner**

12 The staff draft of proposed revisions to jury commissioner provisions (to be
13 circulated to interested parties for review) should include both the proposed
14 repeal of Penal Code Section 903 and the proposed amendment of that section, as
15 drafted in Memorandum 2002-23, pp. 14-15. A staff note should be included
16 soliciting comments on the alternative treatments.

APPROVED AS SUBMITTED

Date

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

Chairperson

Executive Secretary