
MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
NOVEMBER 7-8, 2002
LOS ANGELES

A meeting of the California Law Revision Commission was held in Los Angeles on November 7-8, 2002.

Commission:

Present: David Huebner, Chairperson
Frank Kaplan, Vice Chairperson
Joyce G. Cook
Edmund L. Regalia
Howard Wayne, Assembly Member
William E. Weinberger

Absent: Diane F. Boyer-Vine, Legislative Counsel
Desiree Icaza Kellogg
Bill Morrow, Senate Member
Julia Sylva

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

Consultants: None

Other Persons:

Janet Grove, Administrative Office of the Courts, San Francisco (Nov. 7)
Christopher M. Moore, Executive Committee, State Bar Trusts and Estates Section,
Torrance (Nov. 8)
Lisa A. Runquist, Nonprofit Organizations Committee, State Bar Business Law
Section, Toluca Lake (Nov. 8)

1	March 2003	Sacramento
2	March 6 (Thur.)	10:00 am – 5:00 pm
3	March 7 (Fri.)	9:00 am – 4:00 pm
4	April 2003	Sacramento
5	Apr. 24 (Thur.)	10:00 am – 5:00 pm
6	May 2003	No Meeting
7	June 2003	San Diego
8	June 6 (Fri.)	10:00 am – 5:00 pm
9	July 2003	No Meeting
10	August 2003	No Meeting
11	September 2003	Los Angeles
12	Sept. 18 (Thur.)	10:00 am – 5:00 pm
13	Sept. 19 (Fri.)	9:00 am – 4:00 pm
14	October 2003	Oakland
15	Oct. 24 (Fri.)	10:00 am – 5:00 pm
16	November 2003	No Meeting
17	December 2003	Los Angeles
18	Dec. 5 (Fri.)	10:00 am – 5:00 pm

19 The meeting scheduled for January 24 will be devoted exclusively to financial
 20 privacy.

21 **New Topics and Priorities**

22 The Commission considered Memorandum 2002-38 and its First and Second
 23 Supplements, relating to new topics and priorities. The Commission decided
 24 against any change in current topics and priorities, except as described below.

25 *Special Assessments for Public Improvements.* The Commission decided to move
 26 the topic of special assessments for public improvements higher on the priority
 27 list. The staff should commence work on this topic when the opportunity
 28 presents itself.

29 *Criminal Sentencing.* With respect to the topic of criminal sentencing, see the
 30 discussion in these Minutes under Study M-200 (criminal sentencing statutes).

31 *Antideficiency Bad Faith Waste Exception.* The Commission discussed the issue
 32 raised in the memorandum concerning the bad faith waste exception to

1 antideficiency protections. The Commission decided to monitor the situation and
2 consider addressing the matter if more problems appear to be developing.

3 *Share of Omitted Spouse.* With respect to the share of an omitted spouse, the
4 staff should prepare corrective legislation to adjust the section number of the
5 relevant statute and to cure other defective statutory references that have been
6 identified in the Probate Code. In connection with that project, the staff should
7 review the question of “date of death valuation” of the proportionate shares of
8 beneficiaries in the case of an omitted spouse to determine whether a simple
9 clarifying amendment would be feasible.

10 *Uniform Statute and Rule Construction Act.* The Commission decided to request
11 authority for, and to activate on a low priority basis, a study of the Uniform
12 Statute and Rule Construction Act (1995).

13 *Financial Privacy.* The financial privacy project should receive a high priority.
14 The Commission scheduled an initial public meeting on the matter for January
15 24, 2003.

16 *Mechanic’s Liens.* The Commission will seek to reintroduce in the 2003 session
17 its recommendation on the double payment problem, in the form in which it was
18 originally proposed, and to introduce its recommendation on stay of mechanic’s
19 lien enforcement during arbitration. The Commission decided to discontinue
20 work on the general mechanic’s lien overhaul project until after we see what
21 action the Legislature takes on the two pending mechanic’s lien
22 recommendations.

23 **Use of CLRC Materials To Determine Legislative Intent**

24 The Commission considered Memorandum 2002-39, relating to use of
25 Commission materials to determine legislative intent. The Commission approved
26 the draft material for inclusion in the annual report and on the Commission’s
27 website, in the form in which it appears in the annual report draft. See
28 Memorandum 2002-50.

29 **Annual Report**

30 The Commission considered Memorandum 2002-50 and the draft 2002-2003
31 *Annual Report*. The report was approved, subject to editorial revisions and the
32 addition of a discussion regarding Bion Gregory’s *ex officio* service on the
33 Commission during his tenure as Legislative Counsel, and Diane Boyer-Vine’s
34 appointment succeeding Mr. Gregory as Legislative Counsel. In addition, the

1 transmittal letter to Governor Davis should state that the resolution
2 recommended by the Commission in 2002 was adopted by the Legislature and
3 approved by the voters. The “recommendation” on page 1036 regarding the
4 Commission’s authority to “*complete* its study of the topics previously
5 authorized” should be revised to authorize the Commission to “*continue* its study
6 of the topics previously authorized.”

7 **Report of Executive Secretary**

8 *Budget Matters*

9 The Executive Secretary reported that the Commission’s budget for 2002-03
10 has been augmented by \$75,000 for the first year of the anticipated two-year
11 study of financial privacy. This will stabilize the Commission’s staffing and cover
12 overhead, including reproduction costs and mailings, for that study.

13 The Executive Secretary has submitted a Budget Change Proposal to
14 Department of Finance for the 2003-04 fiscal year for an additional \$75,000 to
15 cover completion of the second year of the two-year financial privacy project. We
16 have not yet learned DOF’s action on the proposal.

17 The Executive Secretary has also submitted to Department of Finance a
18 request for an exemption from proposed across-the-board budget cuts of 5% for
19 2002-03 and 20% for 2003-04. The exemption request points out the relatively
20 small amounts of money that would be saved by these cuts from a budget as
21 small as the Commission’s, and explains the crippling effects such reductions
22 would have on the Commission’s operation. We have not yet learned DOF’s
23 action on the exemption request.

24 *Teleconference Meetings*

25 The Executive Secretary raised the issue of routinely conducting Commission
26 meetings by teleconference. In the past, the Commission has used teleconference
27 only to the extent necessary to establish a quorum. But a Commissioner who is
28 unable to attend a meeting in person might be better able to participate if the
29 teleconference option were available on a routine basis.

30 The Commission decided not to change its existing practice on teleconference
31 meetings. Teleconference tends to be disruptive and changes the character of the
32 discussion and deliberations.

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2002 LEGISLATIVE PROGRAM

The Commission considered Memorandum 2002-51, containing the final report on the Commission’s 2002 legislative program. The Commission approved the revised Comments to SB 1316 as set out at Exhibit pp. 2-3.

STUDY B-501 – UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT

The Commission considered Memorandum 2002-59, discussing whether the Commission should include in its study of unincorporated association law issues relating to governance of an unincorporated association. The Commission decided to proceed with preparation of a tentative recommendation that does not address such issues, but left open the possibility of studying governance issues on a separate track while work on the tentative recommendation proceeds.

Lisa Runquist, representing the Nonprofit Organizations Committee of the Business Law Section of the State Bar, will submit a letter discussing her views on the relative priority of different types of governance issues. After considering that letter, the Commission will decide what priority, if any, to assign to the study of governance issues.

STUDY H-851 – NONJUDICIAL DISPUTE RESOLUTION UNDER CID LAW

Procedural Fairness in Association Rulemaking and Decisionmaking

The Commission considered the portion of Memorandum 2002-44 discussing comments on the tentative recommendation on procedural fairness in common interest development decisionmaking and rulemaking. The Commission directed the staff to prepare a draft recommendation based on the tentative recommendation, with the following changes.

Safe Harbor

The proposed procedures were recast as “safe harbor” procedures, as discussed in the memorandum. This will be implemented in part by addition of a provision along the following lines:

- (a) A decision to approve or disapprove a proposed alteration of a member’s separate interest shall be made in good faith and in a fair and reasonable manner.

1 (b) The procedure provided in Sections 1378.050 to 1378.080,
2 inclusive, is fair and reasonable. Other procedures may also be fair
3 and reasonable under the circumstances.

4 *Notice Posting and Delivery*

5 Provisions relating to posting of notices on an association's notice board were
6 deleted. Provisions requiring posting as the exclusive method of distribution
7 were changed to require delivery. Procedural deadlines shorter than 30 days
8 were extended to 30 days, in order to facilitate delivery of notices in conjunction
9 with other monthly mailings.

10 Because notice of an application for architectural review would be delivered
11 to all association members, there is no need for the reviewing body to send
12 special notice to potentially affected members. Proposed Civil Code Section
13 1378.050(c) was deleted.

14 *Substantive Standards for Architectural Review*

15 Proposed Civil Code Section 1378.040(a), requiring that associations adopt
16 substantive standards to govern architectural review, was deleted.

17 *Period for Decision on Application*

18 Proposed Civil Code Sections 1378.050(d) was revised to provide that the
19 reviewing body shall make its decision not less than 20 days nor more than 45
20 days after delivering notice of an application for architectural review.
21 Subdivision (b) of Section 1378.050 was revised as follows:

22 Within 10 days after receipt of the application, the reviewing
23 body shall post a notice of application on the association's notice
24 board. The notice of application shall include the address of the
25 separate interest that is the subject of the application and a brief
26 description of the proposed alteration adequate to inform other
27 members of its nature.

28 *Referendum on Operating Rule Change*

29 Proposed Civil Code Sections 1380.170-1380.180 were deleted and will be
30 replaced with a provision authorizing association members to reverse a recent
31 rule change by a majority vote at a member meeting at which a quorum is
32 established. Members representing ten percent or more of separate interests
33 could call such a meeting. Voting power would be measured by the number of
34 interests owned by those casting ballots, rather than by the number of persons

1 casting ballots. Meeting and voting procedures from the Nonprofit Mutual
2 Benefit Corporation Law will be incorporated by reference.

3 The memorandum presenting the draft recommendation will include a
4 discussion of membership and voting power as those concepts apply to nonprofit
5 corporations and common interest developments.

6 *Distribution of Operating Rules*

7 Proposed Civil Code Section 1380.030(a) was deleted. The following
8 amendment of Civil Code Section 1368(a)(1) was approved:

9 1368. (a) The owner of a separate interest, other than an owner
10 subject to the requirements of Section 11018.6 of the Business and
11 Professions Code, shall, as soon as practicable before transfer of
12 title to the separate interest or execution of a real property sales
13 contract therefor, as defined in Section 2985, provide the following
14 to the prospective purchaser:

15 (1) A copy of the governing documents of the common interest
16 development, including any operating rules.

17 *Nonsubstantive Reorganization*

18 The Commission authorized the staff to make nonsubstantive changes to the
19 organization of the proposed law.

20 **Alternative Dispute Resolution**

21 The Commission considered Memorandum 2002-58, relating to alternate
22 dispute resolution in common interest developments. The Commission directed
23 the staff to prepare a draft tentative recommendation on the subject that includes
24 the following features:

25 *Section 1354(b) Procedure*

26 The existing Davis-Stirling ADR procedure prescribed in Civil Code Section
27 1354(b) should be improved along the lines set out in the Exhibit to the
28 memorandum. Proposed Section 1369.530 (request for resolution) should also be
29 revised to make clear that an ADR demand should be served on all persons
30 intended to be named as parties to the lawsuit, and that an ADR demand is not a
31 prerequisite to a small claims action. The reference in existing law to the "\$5,000"
32 monetary damages limit should be replaced with a reference to the
33 "jurisdictional limit" of a small claims action.

1 *Association Procedure*

2 The internal dispute resolution mechanism set out at pages 4-7 of the
3 memorandum should be included in the tentative recommendation draft. The
4 second sentence of subdivision (b) of proposed Section 1363.820 (fair, reasonable,
5 and expeditious dispute resolution procedure required), relating to a showing of
6 bad faith in the adoption or implementation of the dispute resolution procedure,
7 was deleted. Instead, the first sentence of that subdivision should make clear that
8 the burden of making a prima facie case that the procedure is not fair, reasonable,
9 and expeditious is on the person challenging the procedure, and if that burden is
10 met, the burden of proof is on the person defending the procedure. (The staff
11 should consider whether this can be achieved simply by classifying the
12 presumption created by the section as “rebuttable”.) The staff should also
13 consider whether the drafting of Section 1363.840(a) (default meet and confer
14 procedure) might not be simplified.

15 *Dispute Resolution Information Center*

16 The tentative recommendation should include provision for operation of a
17 dispute resolution information center by the Secretary of State, as set out at pages
18 10-11 of the memorandum. The staff should make sure the Secretary of State is
19 sent a copy of the proposal for review.

20 *Enforcement of Bylaws and Operating Rules*

21 The tentative recommendation should include the clarification of Section
22 1354(a) set out at page 15 of the memorandum — governing documents adopted
23 pursuant to CC&Rs are enforceable to the same extent as CC&Rs.

24 STUDY J-651 – AUTHORITY OF COURT COMMISSIONER

25 The Commission considered Memorandum 2002-48, relating to the authority
26 of a court commissioner to act as a temporary judge. The Commission directed
27 the staff to send two alternative approaches to Code of Civil Procedure Section
28 259 to the Los Angeles County Superior Court for its reaction. One approach
29 would strike out the language relating to a court commissioner acting as a
30 temporary judge “by written consent of an appearing party.” The other approach
31 would substitute for that language the constitutional requirement of a
32 “stipulation of the parties litigant”. The staff will bring this matter back to the
33 Commission after we have the response of the court.

1 STUDY J-1321 – JURISDICTIONAL LIMITS FOR SMALL CLAIMS
2 AND LIMITED CIVIL CASES

3 The Commission considered Memorandum 2002-53 and its First Supplement,
4 concerning the jurisdictional limits for small claims cases and limited civil cases.
5 Janet Grove from the Administrative Office of the Courts (“AOC”) participated
6 in the discussion. She reported on the progress of the Three Track Study Working
7 Group and invited Commission staff to attend the group’s next meeting. She also
8 mentioned that the AOC is exploring the possibility of presenting the topic to the
9 Judicial Council at an issues meeting in February.

10 The Commission directed the staff to prepare a draft of a tentative
11 recommendation reflecting the following preliminary decisions:

12 **Small Claims Cases**

13 The draft should propose that the jurisdictional limit for a small claims case
14 be raised to \$10,000. This proposed increase should not be subject to a sunset
15 clause, but the Department of Consumer Affairs or another organization should
16 be directed to study the effects of the increase. The draft should solicit comment
17 on whether another amount would be preferable to \$10,000.

18 The draft should explain that the Commission considered the possibility of
19 conducting pilot projects but tentatively determined that this step is not
20 necessary. The draft should set forth the Commission’s reasoning on this point.

21 The proposed filing fee for cases over \$5,000 should be more than the filing
22 fee for other small claims cases. Revenue attributable to this increased fee should
23 be allocated to the small claims advisor program. The draft should make clear
24 that the duties of a small claims advisor include providing assistance with regard
25 to collection of a small claims judgment.

26 The draft should further propose that an attorney’s fee provision in a
27 consumer contract is unenforceable with respect to a claim for \$10,000 or less.
28 The intent of this restriction would be to encourage parties to pursue such claims
29 in small claims court. The draft should make clear that the restriction would not
30 apply if a party was precluded from suing in small claims court, such as by Code
31 of Civil Procedure Section 116.231(a), which states that “no person may file more
32 than two small claims actions in which the amount demanded exceeds two
33 thousand five hundred dollars (\$2,500), anywhere in the state in any calendar
34 year.” The dollar limitation in Section 116.231(a) should be increased from \$2,500
35 to \$4,000.

1 The Commission considered whether to propose any changes with respect to
2 the following matters discussed at pages 32-33 of Memorandum 2002-53:

- 3 • Whether an interpreter is provided in a small claims case.
- 4 • Whether a party may be represented by an attorney in a small
5 claims case.
- 6 • Whether a jury trial is permitted on appeal in a small claims case.
- 7 • Whether the plaintiff in a small claims case may appeal from an
8 adverse decision.
- 9 • Whether a defendant in a small claims case may opt out of the
10 small claims court.
- 11 • Whether an assignee may sue in small claims court.

12 The Commission decided not to propose any reforms with regard to any of these
13 matters.

14 **Limited Civil Cases**

15 The draft should propose that the jurisdictional limit for a limited civil case be
16 raised to \$50,000. The draft should not propose any other changes in economic
17 litigation procedures. The proposed increase in the jurisdictional limit should not
18 be subject to a sunset clause or a requirement that data be gathered on the effects
19 of the increase.

20 **Temporary Judges**

21 The Commission decided to let the Judicial Council take the lead in exploring
22 issues relating to the use of temporary judges. The Commission might get
23 involved if it appears that legislation is needed.

24 **STUDY J-1401 – STATUTES MADE OBSOLETE BY TRIAL COURT RESTRUCTURING**

25 The Commission considered Memorandum 2002-43 and its First and Second
26 Supplements, relating to statutes made obsolete by trial court restructuring. The
27 Commission made the following decisions.

28 **Juvenile Court Referees (Welf. & Inst. Code § 247)**

29 Welfare and Institutions Code Section 247 should be repealed, with a
30 conforming change and Comment to Government Code Section 71622 along the
31 following lines:

1 **Gov't Code § 71622 (amended). Subordinate judicial officers**

2 71622. (a) Each trial court may establish and may appoint such
3 subordinate judicial officers as are deemed necessary for the
4 performance of subordinate judicial duties as are authorized by law
5 to be performed by subordinate judicial officers. However, the
6 number and type of subordinate judicial officers in a trial court
7 shall be subject to approval by the Judicial Council. Subordinate
8 judicial officers shall serve at the pleasure of the trial court.

9 (b) The appointment or termination of a subordinate judicial
10 officer shall be made by order of the presiding judge or another
11 judge or a committee to whom appointment or termination
12 authority is delegated by the court, entered in the minutes of the
13 court.

14 (c) The Judicial Council shall promulgate rules establishing the
15 minimum qualifications and training requirements for subordinate
16 judicial officers.

17 (d) The presiding judge of a superior court may cross-assign one
18 type of subordinate judicial officer to exercise all the powers and
19 perform all the duties authorized by law to be performed by
20 another type of subordinate judicial officer, but only if the person
21 cross-assigned satisfies the minimum qualifications and training
22 requirements for the new assignment established by the Judicial
23 Council pursuant to subdivision (c).

24 (e) The superior courts of two or more counties may appoint the
25 same person as court commissioner.

26 (f) As of the implementation date of this chapter, all persons
27 who were authorized to serve as subordinate judicial officers
28 pursuant to other provisions of law shall be authorized by this
29 section to serve as subordinate judicial officers at their existing
30 salary rate, which may be a percentage of the salary of a judicial
31 officer.

32 **Comment.** Section 71622 is amended to make clear that the
33 court's authority to appoint and terminate a subordinate judicial
34 includes authority to delegate the appointment or termination
35 decision. For example, the court may delegate authority to appoint
36 or terminate a juvenile court referee to the presiding judge of the
37 juvenile court. *Cf.* [former] Welf. & Inst. Code § 247 (juvenile court
38 referee).

39 The authority to delegate a subordinate judicial officer
40 appointment or termination decision is a specific instance of the
41 general authority of a trial court to manage its affairs in a manner
42 appropriate for its circumstances. *Cf.* Gov't Code § 77001; Cal. R. Ct.
43 6.601 *et seq.* (trial court management).

1 The staff should send this proposal to the Los Angeles County Superior Court for
2 review and comment.

3 **Bail (Penal Code § 1269b)**

4 Penal Code Section 1269b, relating to the amount of bail and uniform
5 countywide bail schedules, should be amended for purposes of the tentative
6 recommendation to (1) remove references to the municipal court, (2) provide for
7 one bail schedule for allailable crimes, and (3) permit superior court judges to
8 adopt a local rule of court governing the procedure for the preparation, adoption,
9 and annual revision of the bail schedule (with a default procedure in the event a
10 local rule is not adopted). However, Section 1269b should not be amended to vest
11 the authority to prepare, adopt, and revise the bail schedule in “the court” rather
12 than in a majority of the judges.

13 **Trial Court Sessions**

14 The tentative recommendation should include a brief introductory statement
15 concerning the Commission’s general approach on the treatment of sessions
16 provisions, as described in the First Supplement.

17 Government Code Section 69741, which provides for the location of sessions
18 generally and authorizes regular and special sessions, should be repealed for
19 purposes of the tentative recommendation. The reference to a “special” session in
20 Elections Code Section 16603 should be deleted in accordance with the repeal of
21 Section 69741. As amended, Section 16603 would require that the court “continue
22 in session” to hear and determine all issues arising in contested elections. The
23 staff should review the sections preceding Section 16603 to determine whether
24 the phrase “continue in session” is still useful or necessary.

25 The staff should include proposed revisions to sections pertaining to extra
26 sessions in the tentative recommendation in conformity with the provisions of
27 Government Code Section 69645.

28 **STUDY L-661 – INHERITANCE INVOLVING NONMARITAL CHILD**

29 The Commission considered Memorandum 2002-35 and its First Supplement,
30 relating to inheritance involving a nonmarital child. The Commission decided
31 that the standard of existing Probate Code Section 6452 — that a parent of a
32 nonmarital child is precluded from inheriting unless the parent both
33 acknowledged and supported or cared for the child — should not be changed to

