
MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
SEPTEMBER 17, 2004
OAKLAND

A meeting of the California Law Revision Commission was held in Oakland on September 17, 2004.

Commission:

Present: William E. Weinberger, Chairperson
Edmund L. Regalia, Vice Chairperson
Diane F. Boyer-Vine, Legislative Counsel
Frank Kaplan

Absent: Ellen Corbett, Assembly Member
Bill Morrow, Senate Member

Staff: Nathaniel Sterling, Executive Secretary
Brian P. Hebert, Assistant Executive Secretary
Barbara S. Gaal, Staff Counsel

Consultants: None

Other Persons:

Saul Bercovitch, State Bar of California, San Francisco
Hugh Bower, Assembly Committee on Housing and Community Development,
Sacramento
Jack Quinn Dennis, ProSolutions, Pittsburg
Janet Quinn Dennis, ProSolutions, Pittsburg
Lisa Engel, Assembly Committee on Housing and Community Development,
Sacramento
Carole Hochstatter, Bakersfield
John W. Jervis, Community Accounting and Management Services, Pleasanton
Mike Luery, Perry Communications Group, Sacramento
Julian Mack, Buchalter, Nemer, Fields & Younger, San Francisco
Lakiesha McGhee, Sacramento Bee, Sacramento
Gretel McLane, Lincoln
Patrick L. McLane, Lincoln
Timothy W. Moppin, State Bar Committee on Administration of Justice, San
Francisco
Marjorie Murray, California Alliance for Retired Americans, Sacramento
Chris Neri, Department of Real Estate, Sacramento
Michelle Oakes, Marvell Semiconductor, Inc., Sunnyvale

Larry Robinson, Springfield Homeowners Association, Rocklin
R. Mike Stevens, Stone Harbour Homeowners Association, Pittsburg
Norma J. Walker, Bakersfield
Cynthia Wall, Community Accounting and Management Services, Pleasanton

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MINUTES OF SEPTEMBER 17, 2004, COMMISSION MEETING

1 The Commission approved the Minutes of the September 17, 2004,
2 Commission meeting as submitted by the staff, subject to the following
3 correction:

4 On page 12, line 5, "Section 1260" should be "Section 2778".

ADMINISTRATIVE MATTERS

5 **Recognition of Service**

6 The Chairperson presented a plaque to Commission Member Frank Kaplan in
7 appreciation of his diligent service as chair of the Commission for the 2003-2004
8 term.

1 **Meeting Schedule**

2 The Commission considered Memorandum 2004-33 relating to the
3 Commission meeting schedule for 2005. The Commission adopted the following
4 tentative schedule for 2005, subject to possible adjustment later:

5	January 2005	Sacramento
6	Jan. 21 (Fri.)	9:00 am – 5:00 pm
7	March 2005	Burbank
8	Mar. 18 (Fri.)	9:30 am – 4:00 pm
9	May 2005	Sacramento
10	May 12 (Thur.)	10:00 am – 4:00 pm
11	July 2005	Sacramento
12	July 14 (Thur.)	10:00 am – 4:00 pm
13	September 2005	San Diego
14	Sept. 23 (Fri.)	9:00 am – 5:00 pm
15	November 2005	San Francisco
16	Nov. 18 (Fri.)	9:00 am – 5:00 pm

17 **New Topics and Priorities**

18 The Commission considered Memorandum 2004-34, relating to new topics
19 and priorities. The Commission decided to undertake two of the suggested new
20 projects:

- 21 (1) The study requested by the Chair and the Vice-Chair of the Senate
22 Judiciary Committee, clarifying the availability of oral argument in
23 hearings under the Code of Civil Procedure. The Commission
24 decided to commence work on this study forthwith, because the
25 study appears to be within the Commission's authority to correct
26 technical and minor substantive statutory defects pursuant to
27 Government Code Section 8298. To eliminate any doubt about the
28 Commission's authority, the Commission also directed that the
29 study be listed in the next resolution concerning the Commission's
30 Calendar of Topics.
- 31 (2) The narrow issue of clarifying the rules governing enforcement
32 and renewal of a money judgment, other than a support judgment,
33 made pursuant to the Family Code. This study is within the
34 Commission's existing authority to study creditors' remedies and
35 family law.

1 The Commission decided to seek introduction of a resolution next year
2 concerning the Commission's Calendar of Topics. The resolution should add the
3 study of oral argument in hearings under the Code of Civil Procedure and delete
4 the criminal sentencing study, and should list the 20 other topics previously
5 authorized.

6 The Commission further decided that apart from undertaking the two new
7 projects, it would adhere to the traditional scheme of Commission priorities, as
8 detailed in Memorandum 2004-34 and refined by the staff recommendations in
9 that memorandum. Those priorities are: (1) matters to be completed for the next
10 legislative session, (2) matters directed by the Legislature, (3) matters for which
11 the Commission has engaged an expert consultant, and (4) other matters that
12 have been previously activated but not completed.

13 **Report of Executive Secretary**

14 *Bion M. Gregory*

15 The Executive Secretary reported to the Commission the passing of former
16 member Bion M. Gregory. Commissioner Gregory was Legislative Counsel of
17 California for 25 years, and is the longest tenured member in the history of the
18 Law Revision Commission. See also "Adjournment in Memory of Bion M.
19 Gregory" below in these Minutes.

20 *Budget*

21 The Executive Secretary reported that the Governor signed the 2004-2005
22 state budget after reducing the \$150,000 augmentation that the Legislature had
23 provided for operations of the Law Revision Commission. This leaves the
24 Commission's budget appropriation at the same level as for the 2003-2004 fiscal
25 year.

26 *California Performance Review*

27 The Executive Secretary reported that the California Performance Review's
28 proposed restructuring of state government would not alter the organization or
29 function of the Commission.

1 *Appointments*

2 The Executive Secretary reported that contacts with the Governor's
3 appointments office indicate that there is activity to fill vacancies on the
4 Commission.

LEGISLATIVE PROGRAM

5 The Commission considered Memorandum 2004-35, relating to the
6 Commission's 2004 legislative program. The Commission approved the
7 Comment revisions for AB 1836 (alternative dispute resolution in common
8 interest developments) and AB 3081 (civil discovery: nonsubstantive reform) as
9 set out in the memorandum.

STUDY B-400 – FINANCIAL PRIVACY

10 The Commission considered Memorandum 2004-37, relating to comments on
11 the tentative recommendation on financial privacy. The Commission approved
12 the tentative recommendation as a final recommendation for submission to the
13 Governor and Legislature, with the following revisions:

14 (1) The text of the recommendation should be updated as indicated in the
15 memorandum to reflect events that have occurred since issuance of the tentative
16 recommendation.

17 (2) Continued study by the Commission should not be made contingent on a
18 special appropriation for that purpose, but should be authorized subject to
19 available resources. The recommendation should make clear that the
20 Commission would not continue its study of the matter for a period of two years,
21 or such other time that litigation over the extent of federal preemption has been
22 adequately resolved.

23 STUDY B-501 – UNINCORPORATED ASSOCIATIONS

24 The Commission considered the First Supplement to Memorandum 2004-41,
25 presenting a staff draft tentative recommendation on the tort liability of a
26 member, director, officer, or agent of an unincorporated association. The
27 Commission approved the draft for circulation as a tentative recommendation.
28 The staff will correct a typographical error in the Comment to proposed
29 Corporations Code Section 18620.

1 STUDY B-502 – UNINCORPORATED ASSOCIATION GOVERNANCE

2 The Commission considered Memorandum 2004-41 and its Second
3 Supplement, discussing comments on the tentative recommendation on
4 *Unincorporated Association Governance* (November 2003). The Commission
5 approved the tentative recommendation as its final recommendation, subject to
6 the following decisions:

7 **Default Voting Procedure**

8 The introductory clause of proposed Corporations Code Section 18730 was
9 revised to read as follows:

10 Except as otherwise provided by law or by an unincorporated
11 association's governing principles, the following rules govern a
12 member vote conducted pursuant to this chapter:

13 **Director Duties**

14 The Commission affirmed that proposed Corporations Code Section 18700,
15 providing a standard of care for a director of an unincorporated association, is an
16 important element of the proposed law.

17 **Definition of "Other Business Entity"**

18 The definition of "other business entity" will not be revised. The Commission
19 may study whether a revision is required as a separate inquiry.

20 STUDY H-853 – STATE ASSISTANCE TO COMMON INTEREST DEVELOPMENTS

21 The Commission considered Memorandum 2004-39 and its First and Second
22 Supplements, presenting a staff draft tentative recommendation relating to state
23 assistance to common interest developments. The Commission approved the
24 draft for circulation as a tentative recommendation, subject to the following
25 decisions:

26 **Advisory Committee**

27 The proposed Common Interest Development Bureau would be authorized to
28 appoint an advisory committee. In doing so, the bureau would be required to
29 ensure a fair representation of different points of view.

1 **Director and Manager Education**

2 An association director or property manager would be required to certify to
3 the bureau that he or she has read the association's declaration and bylaws and
4 the Davis Stirling Common Interest Development Act.

5 **Exhaustion of Internal Remedies**

6 A note will request public comment on whether a homeowner should be
7 required to exhaust an association's internal dispute resolution process before
8 seeking dispute resolution assistance from the bureau.

9 **Mediation Attempt Required Before Enforcement**

10 The proposed bureau must attempt to resolve an alleged violation informally,
11 before commencing enforcement action.

12 **Persons Subject to Citation**

13 The proposed bureau would have authority to issue a citation to a
14 homeowners association, a director or officer of an association, or an agent of an
15 association acting as a property manager.

16 **Administrative Hearing Officer**

17 The presiding officer in an administrative appeal of an enforcement citation
18 must be an administrative law judge and may not be an employee of the bureau.

19 **Enforcement Jurisdiction**

20 A note will request public comment on whether the bureau should have
21 authority to enforce an association's governing documents and whether such
22 authority would violate constitutional separation of powers requirements. The
23 staff will contact constitutional scholars to solicit their views on the matter.

24 **Imposition of Fine**

25 The criteria for imposition of a fine will be clarified as recommended by the
26 staff.

27 **Violations Arising Before Creation of Bureau**

28 The bureau would have authority over a violation of law that arises before
29 the bureau's creation, but could not impose an administrative fine in such cases.

1 **Remedies that Conflict with Governing Documents**

2 Comment language will make clear that the bureau's enforcement authority
3 is not limited by any provision of an association's governing documents.

4 **Funding**

5 A separate fund will be established for deposit of revenue derived from fines.

6 STUDY H-854 – ARCHITECTURAL DECISIONS AND LAND USE LAW IN COMMON
7 INTEREST DEVELOPMENTS

8 The Commission considered Memorandum 2004-38, recommending the
9 circulation of a tentative recommendation to make clear that an architectural
10 review decision must be consistent with governing land use law. The
11 Commission approved circulation of a tentative recommendation consistent with
12 the staff's recommendation, subject to the following decisions:

13 **Conflict with Governing Documents**

14 Language was added to make clear that an architectural review decision must
15 be consistent with governing law "notwithstanding any conflicting provision of
16 the association's governing documents."

17 **Public Safety**

18 Laws governing "public safety" were added to the nonexclusive list of laws
19 that govern an association's architectural review decision.

20 **Broader Study**

21 At some point in the course of its study of common interest development law,
22 the Commission will study the extent to which state and local law preempts an
23 association's governing documents.

24 STUDY J-504 – CIVIL DISCOVERY: CORRECTION OF OBSOLETE
25 CROSS-REFERENCES

26 The Commission considered Memorandum 2004-36, concerning the tentative
27 recommendation on *Civil Discovery: Correction of Obsolete Cross-References* (April
28 2004). The Commission approved the draft attached to the memorandum as a
29 final recommendation, for printing and submission to the Legislature.

1 **Selective Disclosure Proposal**

2 The Commission decided not to proceed with the selective disclosure
3 proposal. Legislation on this issue might be premature and further research and
4 investigation might be needed.

5 **Failure to Timely Object to a Question in a Written Deposition (Proposed**
6 **Amendment of Code Civ. Proc. § 2028)**

7 The Commission decided to proceed with the proposed amendment, with
8 adjustments to reflect the enactment of legislation implementing the
9 Commission's nonsubstantive reorganization of the civil discovery provisions,
10 including Code of Civil Procedure Section 2028. See 2004 Cal. Stat. ch. 182.

11 **Discussion of the Court of Appeal Ruling on the Crime or Fraud Exception in**
12 ***Jasmine***

13 In preparing the new draft, the staff should take into account the concerns
14 raised by Marvell Semiconductor, Inc., regarding the description of the court of
15 appeal ruling on the crime or fraud exception in *Jasmine Networks, Inc. v. Marvell*
16 *Semiconductor, Inc.*

ADJOURNMENT IN MEMORY OF BION M. GREGORY

17 The Commission adjourned the meeting in memory of former Commission
18 member Bion M. Gregory.

APPROVED AS SUBMITTED

Date

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

Chairperson

Executive Secretary