
MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
MAY 12, 2005
SACRAMENTO

A meeting of the California Law Revision Commission was held in Sacramento on May 12, 2005.

Commission:

Present: William E. Weinberger, Chairperson
Edmund L. Regalia, Vice Chairperson
Diane F. Boyer-Vine, Legislative Counsel
Sidney Greathouse
Pamela L. Hemminger
David Huebner
Frank Kaplan
Susan Duncan Lee

Absent: Bill Morrow, Senate Member

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

Consultants: None

Other Persons:

Sam Abdulaziz, Construction Industry Trade Associations, North Hollywood
Oliver Burford, Executive Council of Homeowners, San Jose
Karen Conlon, California Association of Community Managers, Irvine
Denise Duncan, Lumber Association of California & Nevada, Sacramento
Jan Hansen, Lumber Association of California & Nevada, Sacramento
Kerry Mazzoni, Executive Council of Homeowners, Sacramento
Marjorie Murray, California Alliance for Retired Americans, Sacramento
Dick Nash, Building Industry Credit Association, Los Angeles
Norm Widman, Lumber Association of California, San Diego

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MINUTES OF MARCH 17-18, 2005, COMMISSION MEETING

1 The Commission approved the Minutes of the March 17-18, 2005,
2 Commission meeting as submitted by the staff.

ADMINISTRATIVE MATTERS

3 **Commission Membership**

4 The Commission welcomed its newly appointed members:

5 Sidney Greathouse

6 Pam Hemminger

7 David Huebner

8 Susan Lee

9 **Meeting Schedule**

10 The Commission changed the date and location of the September 2005
11 meeting as follows:

12 **September 2005**

Burbank

13 Sept. 30 (Fri.)

 9:30 am – 5:00 pm

1 **Handbook of Commission Practices and Procedures**

2 The Commission considered Memorandum 2005-15 and the attached draft
3 updating the Commission's Handbook of Practices and Procedures. The
4 Commission approved the draft as its new Handbook, with the following
5 revisions:

6 *Rule 2.5.2. Anonymous Communication to Commission*

7 New Rule 2.5.2 should read:

8 Although the Commission encourages persons to identify
9 themselves and their affiliations, a communication to the
10 Commission may be anonymous. The Commission can take the
11 anonymity of the author into account in evaluating an anonymous
12 communication. The identity of a source is sometimes helpful in
13 assessing the merits of an idea or how much weight it should be
14 given.

15 *Rule 2.5.3. Written Communication to Chairperson or to Individual Commissioner*

16 New Rule 2.5.3 should read along the following lines:

17 If the staff receives a written communication addressed to the
18 Chairperson or to an individual Commissioner regarding a
19 Commission study, the staff will treat the communication in the
20 same manner as a communication to the Commission as a whole.
21 For example, if a communication relates to a topic under study, the
22 staff normally attaches the communication to a staff memorandum,
23 discusses the communication in the memorandum, and presents
24 the memorandum for consideration at a Commission meeting. If a
25 communication relates to other business of the Commission, the
26 staff normally responds to the communication.

27 If the Chairperson or an individual Commissioner receives a
28 written communication from an interested person regarding a
29 Commission study, it is recommended that the Chairperson or
30 individual Commissioner forward the communication to the staff.

31 *Rule 3.2. Contacting Individual Member of Legislature*

32 Rule 3.2. should be revised to read:

33 The Commission has considered whether and under what
34 procedure the Executive Secretary should contact individual
35 members of the Legislature to explain Commission bills.

36 Shortly before a legislative committee hears a bill to effectuate a
37 Commission recommendation, the staff should send (or assist the
38 Chairperson in sending) the recommendation and an explanatory

1 letter to each member of the committee. Aside from this practice
2 and communications with a legislative member of the Commission
3 or an author, coauthor, or prospective coauthor of a bill to
4 effectuate a Commission recommendation, the staff should not
5 contact a member of the Legislature about a pending Commission
6 bill unless the member has raised questions about a Commission
7 bill in committee or otherwise and it seems likely that the member
8 does not fully understand the Commission's recommendation or
9 the reasons for it. If it appears desirable, the Executive Secretary
10 may contact the member to answer questions the member may
11 have about the bill and otherwise explain it. Care must be taken not
12 to advocate or appear to be advocating legislation in violation of
13 Government Code Section 8288, which provides:

14 No employee of the Commission and no member
15 appointed by the Governor shall, with respect to any
16 proposed legislation concerning matters assigned to the
17 Commission for study pursuant to Section 8293, advocate
18 the passage or defeat of the legislation by the Legislature or
19 the approval or veto of the legislation by the Governor or
20 appear before any committee of the Legislature as to such
21 matters unless requested to do so by the committee or its
22 chairperson. In no event shall an employee or member of the
23 commission appointed by the Governor advocate the
24 passage or defeat of any legislation or the approval or veto
25 of any legislation by the Governor, in his or her official
26 capacity as an employee or member.

27 (Footnote omitted.)

28 **Report of Executive Secretary**

29 *Commission Membership*

30 The Executive Secretary noted that, with the new appointments, the
31 Commission has no gubernatorial vacancies. The Commission remains without
32 an Assembly member; that position is to be filled by appointment of the Speaker
33 of the Assembly.

34 *Staff*

35 The Executive Secretary noted that his accumulated personal leave time is a
36 substantial liability for the Commission, and he needs to start reducing the
37 balance. Otherwise, whenever he retires, the Commission's budget will be
38 substantially impacted, or the Commission will be unable to fill the position for a
39 substantial period of time. The consequences of the Executive Secretary's plan to

1 reduce his accrued leave balance include reduced staff productivity and
2 diversion of other staff to cover any urgent matters that come up during his
3 absence. However, the remainder of the staff is highly experienced and
4 competent, so this should not be a significant concern.

5 *Budget*

6 The Executive Secretary reported that the Governor's budget would fund the
7 Commission at its current level. The Assembly budget subcommittee has voted
8 to increase the Commission's budget by \$150,000 and 1.5 positions. The Senate
9 budget subcommittee has voted to increase the Commission's budget by \$40,000
10 and .5 positions. The .5 position would be a half time administrative assistant, to
11 enhance the productivity of the Commission's legal staff. As matters currently
12 stand, the Commission's budget will be a conference committee item.

13 *Studies*

14 The Executive Secretary reported that three measures are pending this session
15 to assign study topics to the Commission. SCR 15 (Morrow/Escutia/Dunn) is a
16 Commission resolution to authorize the study of oral argument in civil
17 proceedings. SCR 42 (Campbell) would authorize the study of no-contest clauses,
18 and AB 12 (DeVore) would authorize the study of TOD real property deeds.

19 The new Chair of Senate Judiciary Committee has expressed concern about
20 two Commission studies — Federal Rules of Evidence and financial privacy. The
21 Commission's Chair and the Executive Secretary have sought a meeting with the
22 Judiciary Committee Chair to discuss the concerns. Meanwhile, the Executive
23 Secretary has agreed to take the study of the Federal Rules of Evidence off
24 calendar. The financial privacy study has been concluded, and the Commission
25 can do no further work in the area, absent a legislative resolution authorizing it.

26 The Commission's resolution — SCR 15 (Morrow/Escutia/Dunn) — may be
27 made available as a vehicle to review studies on the Commission's calendar and
28 confirm legislative sanction of those studies.

LEGISLATIVE PROGRAM

29 The Commission considered Memorandum 2005-14, relating to the
30 Commission's 2005 legislative program. For Commission action on items in the
31 legislative program, see the entries in these Minutes under the following
32 headings:

- 1 • Study B-502 – Unincorporated Associations
- 2 • Study H-853 – State Assistance to Common Interest Developments
- 3 • Study H-854 – Common Interest CC&Rs and Local Regulation
- 4 • Study K-301 – Waiver of Privilege by Disclosure

5 STUDY B-502 – UNINCORPORATED ASSOCIATION GOVERNANCE

6 The Commission considered Memorandum 2005-14, which included
7 discussion of Senate Bill 702 (Ackerman). That bill would implement the
8 Commission’s recommendations on *Unincorporated Association Governance*, 33 Cal.
9 L. Revision Comm’n Reports 231 (2004) and *Nonprofit Association Tort Liability*, 33
10 Cal. L. Revision Comm’n Reports 257 (2004).

11 The Commission ratified the bill amendments and Comment revisions
12 described in the memorandum. However, the staff will explore the possibility of
13 making a technical amendment to proposed Corporations Code Section 18620(b)
14 in order to avoid use of the word “other.”

15 The staff will inform the State Bar that the Commission does not intend to
16 revisit the substantive questions underlying the amendments.

17 STUDY F-1301 – ENFORCEMENT OF MONEY JUDGMENT UNDER FAMILY CODE

18 The Commission considered Memorandum 2005-21 presenting a staff draft
19 tentative recommendation on the enforcement of a judgment arising under the
20 Family Code.

21 The Commission approved the staff draft for circulation as a tentative
22 recommendation.

STUDY H-821 – MECHANICS LIEN LAW

23 The Commission considered Memorandum 2005-19 and its First Supplement,
24 relating to the mechanics lien law. The Commission made the following decisions
25 in connection with the memorandum.

26 **§ 3082.106. Payment bond (public work)**

27 The typo in the draft statute on payment bonds should be corrected:

28 “Payment bond (public work)” means a bond given under
29 Article 2 (commencing with Section 3087.310) of Chapter 6 in a
30 public work.

1 **§ 3083.720. Bona fide purchaser or encumbrancer**

2 The procedure set out in the memorandum for cancellation of an invalid lien
3 might be augmented with language drawn from the lis pendens statute to ensure
4 that a stale claim of lien is not constructive notice of anything. The language
5 might state that, on expiration, the claim of lien “does not constitute actual or
6 constructive notice of any of the matters contained, claimed, alleged, or
7 contended in the claim of lien, or create a duty of inquiry in any person thereafter
8 dealing with the affected property.” See Code Civ. Proc. § 405.60. The staff will
9 send this language to the title insurance companies to assist in their review of the
10 proposal on cancellation of an invalid lien.

11 **§ 3087.220. Limitation of owner’s liability**

12 The draft should limit the owner’s liability on recording of a payment bond
13 “where it would be equitable to do so” rather than “in all cases”. This will
14 resolve a conflict in the statute consistent with the application of the statute in
15 practice. The staff should compile examples of the application of the “equitable”
16 standard under existing law.

17 **§ 3087.230. Bond required by lending institution**

18 The staff should further research this provision, which allows a lending
19 institution to object to a bond if the bond underwriter was licensed by the
20 Department of Insurance. The provision may be intended to refer to a surplus
21 line carrier. It is possible the section no longer serves a useful function.

22 **§ 3087.240. Provision shortening statute of limitations**

23 This section, regulating a payment bond provision seeking to shorten the
24 statute of limitations, should be eliminated in reliance on the flat 6-month
25 limitations period of proposed Section 3087.250.

26 **§ 3087.250. Statute of limitations against surety on recorded bond**

27 This section, providing a flat 6-month limitations period for an action against
28 a surety on a payment bond recorded before completion of a work of
29 improvement, should be expanded to cover an action against the principal on the
30 bond as well.

1 **§ 3087.260. Preliminary notice (private work) required**

2 The Commission decided not to add a requirement that the owner send a
3 copy of a payment bond to any person who has given the owner a preliminary
4 notice.

5 **§ 3087.310. Payment bond requirement for public work**

6 The draft should state clearly the principle that a public work of improvement
7 by a local entity over \$25,000 requires a payment bond, and a public work of
8 improvement by a state entity (other than the Legislature, Judiciary, or
9 University of California) over \$5,000 requires a payment bond.

10 The staff should look into relocating the public work remedies — payment
11 bonds and stop notices — from the mechanics lien law to an appropriate location
12 in the Public Contract Code.

13 **§ 3087.340. Action on bond**

14 The Commission discussed the discrepancy between enforcement of a
15 payment bond, for which an award of attorney’s fees is provided, and a
16 mechanics lien, for which an award of attorney’s fees is not allowed. The
17 Commission did not attempt to harmonize the two situations.

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

19 The Commission considered Memorandum 2005-17, which included
20 discussion of Assembly Bill 770 (Mullin) and Senate Bill 551 (Lowenthal) —
21 identical companion bills that would implement the Commission’s
22 recommendation on *CID Ombudsperson Pilot Project* (March 2005). A preprint
23 copy of the recommendation was attached to the memorandum for the
24 Commission’s review.

25 The Commission ratified the bill amendments and Comment revision
26 described in the memorandum, with one exception. The Commission did not
27 ratify the amendment to proposed Civil Code Section 1380.230 (certification that
28 documents have been read). The staff will revise the preprint recommendation to
29 restore that Section to the language recommended by the Commission.

1 compromise offer shown in the Exhibit attached to the memorandum, but
2 expressed concern that proposed Evidence Code Section 912(a)(2) might be
3 misinterpreted to require a court to make a written finding. If an opportunity
4 arises, the language should be revised to prevent such a misinterpretation. The
5 Commission gave the staff discretion to handle this matter as it deems
6 appropriate.

APPROVED AS SUBMITTED

Date

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

Chairperson

Executive Secretary