A meeting of the California Law Revision Commission was held in Sacramento on July 14, 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

**Absent:** Bill Morrow, Senate Member
Susan Duncan Lee

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

Consultants: None

Other Persons:
Sam Abdulaziz, Various Construction Trade Groups, North Hollywood
Frank Bryant, Walnut Creek
Oliver Burford, Executive Council of Homeowners, San Jose
Denise Duncan, Lumber Association of California & Nevada, Sacramento
Steven Ingram, Consumer Attorneys of California, Sacramento
Joe Klinger, Executive Council of Homeowners, Sacramento
Dan E. Kocal, California Association of Community Managers, Folsom
Lakiesha McGhee, Sacramento Bee, Sacramento
Dick Nash, Building Industry Credit Association, Los Angeles
Craig C. Page, California Land Title Association, Sacramento
Janet Shaban, Sacramento
Mary Pat Toups, Laguna Woods
Norm Widman, Lumber Association of California and Nevada, San Diego
Minutes of May 12, 2005, Commission Meeting

The Commission approved the Minutes of the May 12, 2005, Commission meeting as submitted by the staff, subject to the following corrections:

1. On page 6, line 8, the number “33” should be “34”.
2. On page 6, line 9, the number “33” should be “34”.

Administrative Matters

Election of Officers

The Commission considered Memorandum 2005-22, relating to the election of Commission officers. The Commission elected Edmund L. Regalia as Chairperson and David Huebner as Vice Chairperson for the term commencing September 1, 2005 and ending August 31, 2006.

Report of Executive Secretary

Personnel

The Executive Secretary introduced Ariana Gallisá, a Stanford Law School student who is working for the Commission this summer as a law clerk.

The Executive Secretary reported that the 2005 Budget authorizes an additional attorney position and a half-time administrative assistant position for the Commission. See discussion of the Budget, below. We hope to be able to fill those positions quickly with outstanding people.

Budget

The 2005 Budget includes an augmentation for the Commission in the amount of $150,000 — approximately a 25% increase. This will fund an
additional 1.5 positions, including salary, benefits, and overhead. The purpose of
the augmentation is to increase the Commission’s productivity and start to make
progress on its backlog of legislative assignments.

**LEGISLATIVE PROGRAM**

The Commission considered Memorandum 2005-23, relating to the
Commission’s 2005 legislative program. The staff orally updated the chart
attached to the memorandum with the information that the Senate has concurred
in the Assembly amendments to SB 702 (Ackerman), that SB 853 (Kehoe) has
been signed by the Governor and is Chapter 37 of the Statutes of 2005, and that
SCR 15 (Morrow/Dunn/Esutia) has been approved by the Senate
Appropriations Committee. The Commission ratified the amendments to SB 702
(Ackerman) described in the memorandum.

**STUDY H-821 – MECHANICS LIEN LAW**

The Commission considered Memorandum 2005-24 and its First Supplement,
together with material distributed at the meeting (attached to the Second
Supplement to Memorandum 2005-24), relating to mechanics lien law. The
Commission made the following decisions.

**Notice of Claim of Lien**

The draft provision requiring a lien claimant to notify the owner of the
recording of a claim of lien — proposed Section 3083.355 — should be revised so
that only the owner, and not the direct contractor or construction lender, is
notified. The notice should take the form of a copy of the claim of lien and a
statement of the intended county and date of recordation. The staff should
research whether proof of mailing should be made by affidavit, certificate, or
declaration, for consistency with other statutes.

**Judicial Relief**

Draft Section 3083.810 should be revised to allow a petition for an expedited
lien release order only in four circumstances — where 90 days has elapsed
without an enforcement action, where the claim of lien is invalid under Section
3083.360 (forfeiture of lien for false claim), where the amount shown on the claim
has been paid in full, and where no work has been done on the property. The
staff should bring this draft back for further Commission review.
BFP Protection

The title insurance industry will see whether additional language would be helpful to enable them to write around a stale claim of lien. The staff should look into the possibility of clarifying whether the owner must sign an extension of credit in order to enable an extension of the lien enforcement period.

Other Remedies

Proposed Section 3083.360 (forfeiture of lien for false claim) should be revised so that damages are conditioned on the lien claimant’s failure to release the lien in response to the owner’s request, and to make clear that the remedies are available for a claim of lien made with intent to defraud or disparage title, and that the owner has the burden of proof of these matters. The staff should further research the common law elements of the cause of action for “disparagement of title”, as well as the meaning of the existing provision that a filed claim of lien does not bind a bona fide purchaser or encumbrancer if the language was so deficient as to not put the party on further inquiry in any manner.

Limitation of Owner’s Liability

The Commission approved the revision of proposed Section 3087.220 set out in the memorandum to the effect that the court must limit the lien liability of the owner if a payment bond is given by sufficient sureties in the amount of 50% of the contract price. The staff should prepare additional material concerning the effect of contract changes in determining the contract price.

The Commission discussed, but did not adopt, the suggestion that an admitted surety insurer should be required on all bonds given under the mechanics lien law.

Bond Underwriter Licensed by Department of Insurance

The Commission approved the proposed revision to Section 3085.230 that a construction lender that requires a payment bond as a condition of making a loan may not thereafter object to the bond if given by an admitted surety insurer. This change should be circulated to construction lenders for review.

Prompt Payment

The Commission tentatively approved the progress payment, retention, and stop work notice redrafts. The staff should bring this material back for further
review at the end of the legislative session in light of pending legislation that would revise these provisions.

Security for Large Project

The staff will further reorganize the draft of these provisions in a more logical manner. It should be made clear that the reorganization is nonsubstantive.

STUDY H-855 – STATUTORY CLARIFICATION AND SIMPLIFICATION OF CID LAW

The Commission considered Memorandum 2005-25 and its First and Second Supplements, discussing the first installment of a staff draft tentative recommendation on the clarification and simplification of CID law.

The Commission approved the staff draft, except that proposed Civil Code Section 6040 was revised along the following lines:

6040. (a) A declaration may be amended at any time, notwithstanding any contrary provision of the declaration.

(b) Any provision of a declaration may be amended, unless the declaration expressly prohibits amendment of that provision.

(a) Unless a declaration expressly provides otherwise, any provision of the declaration may be amended.

(b) If a provision of a declaration can be amended, it may be amended at any time.

(c) The Legislature finds that there are common interest developments that have been created with deed restrictions that do not provide a means for the property owners to extend the term of the declaration. The Legislature further finds that covenants and restrictions, contained in the declaration, are an appropriate method for protecting the common plan of developments and to provide for a mechanism for financial support for the upkeep of common areas including, but not limited to, roofs, roads, heating systems, and recreational facilities. If declarations terminate prematurely, common interest developments may deteriorate and the housing supply of affordable housing units could be impacted adversely. The Legislature further finds and declares that it is in the public interest to provide a vehicle for extending the term of the declaration if owners having more than 50 percent of the votes in the association choose to do so.

(d) A declaration may be amended to extend the termination date of the declaration, notwithstanding any contrary provision of the declaration. No single extension of the term of the declaration made pursuant to this subdivision shall exceed the initial term of the declaration or 20 years, whichever is less. However, more than one extension may be made pursuant to this subdivision.
STUDY J-505 – CIVIL DISCOVERY

Calendar Preference for Writ Review of a Discovery Ruling on an Issue
Common to Consolidated Cases

The Commission considered Memorandum 2005-27, concerning whether to create a calendar preference for writ review of a discovery ruling on an issue common to consolidated cases.

As framed, this issue is within the scope of the Commission’s ongoing study of civil discovery. The Commission decided to focus on this narrow issue, rather than seek authority to study calendar preferences generally.

As an initial approach to the issue, the Commission decided to explore the possibility of creating a calendar preference that

(1) Applies when a writ petition challenges a ruling on an issue that is common to several consolidated cases (as opposed to a ruling on an issue that is unique to one of several consolidated cases);
(2) Applies regardless of whether the ruling challenged in the writ petition is a discovery ruling or another type of pretrial ruling;
(3) Is mandatory rather than discretionary; and
(4) Directs the reviewing court to give the matter preference over “all other civil actions.”

This new calendar preference could perhaps be drafted along the following lines:

Code Civ. Proc. § 1048.1 (added). Calendar preference for writ review of pretrial ruling on issue common to consolidated cases

1048.1. When several cases are consolidated for some but not all purposes pursuant to Section 1048, a party to one of those cases petitions for an extraordinary writ on an issue common to all of the cases, and the reviewing court issues an alternative writ or an order to show cause, the reviewing court, in setting the case for hearing and hearing the matter, shall give the writ petition precedence over all other civil actions.

The Commission discussed whether the proposed new calendar preference should only apply when the issue under review is common to a certain number of consolidated cases. The Chair suggested that the Commission solicit comment on whether to set such a threshold and, if so, what the threshold number of cases should be.

The staff should take steps to prepare a draft of a tentative recommendation implementing these ideas. The staff should also continue its efforts to obtain
information about how the appellate courts currently handle writ petitions and calendar preferences.

As a low priority matter, the staff should further investigate whether the following provisions contain obsolete material that should be eliminated: Educ. Code § 43060, Fish & Game Code § 8610.7, Gov’t Code § 7910.

Miscellaneous Issues

The Commission considered Memorandum 2005-26, concerning miscellaneous issues relating to civil discovery. For purposes of preparing a draft of a tentative recommendation, the Commission made the following decisions:

Service of Response to Interrogatories (Code Civ. Proc. § 2030.260)

Code of Civil Procedure Section 2030.260 should be amended along the following lines:

2030.260. (a) Within 30 days after service of interrogatories, or in unlawful detainer actions within five days after service of interrogatories the party to whom the interrogatories are propounded shall serve the original of the response to them on the propounding party, unless on motion of the propounding party the court has shortened the time for response, or unless on motion of the responding party the court has extended the time for response.

In unlawful detainer actions,

(b) Notwithstanding subdivision (a), in an unlawful detainer action the party to whom the interrogatories are propounded shall have five days from the date of service to respond, unless on motion of the propounding party the court has shortened the time for response.

(b) (c) The party to whom the interrogatories are propounded shall also serve a copy of the response on all other parties who have appeared in the action. On motion, with or without notice, the court may relieve the party from this requirement on its determination that service on all other parties would be unduly expensive or burdensome.

Comment. Section 2030.260 is amended to improve clarity. This is not a substantive change.

Service of Response to Inspection Demand (Code Civ. Proc. § 2031.260)

Code of Civil Procedure Section 2031.260 should be amended along the following lines:

2031.260. (a) Within 30 days after service of an inspection demand, or in unlawful detainer actions within five days of an inspection demand, the party to whom the demand is directed shall
serve the original of the response to it on the party making the
demand, and a copy of the response on all other parties who have
appeared in the action, unless on motion of the party making the
demand, the court has shortened the time for response, or unless on
motion of the party to whom the demand has been directed, the
court has extended the time for response. In unlawful detainer
actions,
(b) Notwithstanding subdivision (a), in an unlawful detainer
action the party to whom an inspection demand is directed shall
have at least five days from the date of service of the demand
to respond, unless on motion of the party making the demand, the
court has shortened the time for the response.

Comment. Section 2031.260 is amended to improve clarity. This
is not a substantive change.

Deposition in California for Purposes of a Proceeding Pending Outside California (Code
Civ. Proc. § 2029.010)

Section 2029.010 should be amended to apply to the oral or written deposition
of any person in California, not just a natural person.

The statute should specify two alternative means for a litigant to obtain a
subpoena to take a deposition of a witness in California for purposes of a
proceeding pending elsewhere:

(1) The litigant may file an application in the superior court of the
county in which the deposition is to be taken. The application
should be on a form to be prepared by the Judicial Council. The fee
for filing the application should be the same as the fee for
obtaining a commission to take a deposition outside California. If a
litigant seeks multiple subpoenas, the litigant should be required
to pay a separate fee for each subpoena. Upon filing of the
application and payment of the required fee, the court clerk should
issue the subpoena on a form to be prepared by the Judicial
Council. Details of the filing procedure (e.g., what caption to use
and what type of court file to create) should be uniform from
county to county and should be specified in a rule to be
promulgated by the Judicial Council.

(2) If the litigant retains an attorney who is an active member of the
California Bar, that attorney may issue the subpoena on a form to
be prepared by the Judicial Council.

The statute should also make clear that if a dispute arises regarding discovery
conducted pursuant to it, a litigant or the deponent may file a petition for
appropriate relief in the superior court of the county in which the deposition is to
be taken. The statute should require the petitioner to pay a first appearance fee.
The statute should also require any person responding to the petition to pay a first appearance fee.

The staff should do further research on whether to require a litigant in an out-of-state proceeding (other than a pro per litigant) to retain local counsel or have out-of-state counsel admitted pro hac vice before deposing a witness in California. The staff should also do further research on whether and how Section 2029.010 should apply when a litigant in an out-of-state proceeding seeks to depose a witness in California by notice or agreement.