A meeting of the California Law Revision Commission was held in Oakland on November 18, 2005.

Commission:

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

Absent:  Sidney Greathouse
          Pamela L. Hemminger
          Bill Morrow, Senate Member

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

Consultants:  None

Other Persons:

  Sam Abdulaziz, Construction Trade Groups, North Hollywood
  Frank Bryant, Walnut Creek
  Frank Collard, Southern California Rock Products Association, South Pasadena
  Jaime B. Huff, Office of Assemblyman DeVore, Sacramento
  Shirley Kovar, Executive Committee, State Bar Trusts and Estates Section, San Diego
  Dick Nash, Building Industry Credit Association, Los Angeles
  Mary Pat Toups, Laguna Woods
  Norm Widman, Lumber Association of California and Nevada, San Diego
Minutes of September 30, 2005, Commission Meeting

The Commission approved the Minutes of the September 30, 2005, Commission meeting as submitted by the staff.

Administrative Matters

2005-2006 Annual Report

The Commission considered Memorandum 2005-39 and its First Supplement, relating to the 2005-2006 Annual Report. The Commission approved the draft attached to the memorandum, subject to the following changes:

1. A typographical error on page 27 was corrected.
2. The list of the Commission’s staff on page 27 was revised to reflect the resignation of Korrene Bradford.
3. The following paragraph was added at the end of page 31:

Pursuant to the mandate imposed by Government Code Section 8290, the Commission recommends the repeal of the provisions referred to under “Report on Statutes Repealed by Implication or Held Unconstitutional,” supra, to the extent they have been held unconstitutional and have not been amended or repealed.
Report of Executive Secretary

Personnel

There is no action yet by the Governor on the three terms that expired on October 1, 2005. The current incumbents may hold over for up to 60 days.

There is no action yet by the Speaker of the Assembly on the vacancy in the Assembly membership of the Commission.

The Commission’s administrative assistant, Korrene Bradford, has resigned her half-time position with the Commission in order to take a full-time position with another state agency. The staff has commenced the search for a replacement.

Meeting Schedule

The Commission may not have a quorum present at its next scheduled meeting due to the possibility that the Governor may not have acted by then on the expired terms and scheduling conflicts of the remaining Commission members. The Commission tentatively decided to change the time and place of the next meeting to February 16 in Sacramento. That change is subject to the Executive Secretary’s confirmation with persons not present at the meeting that the change does not cause scheduling conflicts for them.

The staff will also present at the next meeting a proposed revision of the schedule of meetings for 2006 to address anticipated workflow adjustments.

Other Matters

The Commission has been named as a party in a pro per lawsuit. The gist of the cause of action is unclear. The Attorney General is representing the Commission. The Attorney General has taken steps to join the Commission in a motion to dismiss, along with other named state parties such as the Franchise Tax Board, the Judicial Council, and the State Bar of California.

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

The Commission considered Memorandum 2005-45 discussing the staff draft recommendation on enforcement of judgments under the Family Code. The Commission approved the draft as its final recommendation, except that proposed Family Code Section 291(e) was revised as follows:
(e) Nothing in this section supersedes the law governing enforcement of a judgment after the death of the judgment creditor or judgment debtor, including any requirement that a judgment creditor file a timely creditor's claim after the death of a judgment debtor.

The Commission decided not to study whether Family Code Section 290 requires judicial approval of the method by which a Family Code judgment is enforced.

**STUDY H-821 – MECHANICS LIEN LAW**

The Commission considered Memorandum 2005-43, together with material distributed at the meeting (attached to the First Supplement to Memorandum 2005-43), relating to public work remedies under the mechanics lien law. The Commission made the following decisions.

*Location of Statute*

The Commission deferred decision on whether to relocate the statutory material relating to a public work from the Civil Code to the Public Contract Code. For now, the staff will continue to draft the material as part of the Public Contract Code, but the material may ultimately be moved back to the Civil Code.

*Waiver and Release*

In connection with the proposed relocation, the staff should incorporate provisions relating to waiver and release in the Public Contract Code draft.

*Completion*

The staff should review the definition of completion and its use in proposed Section 44140 (time for giving notice). As drafted, the provision is internally inconsistent because the definition of completion includes recordation of a notice of completion.

The staff should research the background on the provision of existing law that a public work is deemed complete after cessation of labor for 30 days. Why does that provision differ from the law governing a private work, which deems completion to have occurred after cessation of labor for 60 days?
**Preliminary Notice**

The content of the public work preliminary notice should be revised for consistency with the private work preliminary notice. This would conform to existing practice to use the same form for both.

The provision governing disciplinary action against a subcontractor that fails to give a preliminary notice on a contract over $400 was deleted from the draft. It should be replaced by a provision parallel to the provision applicable to a private work of improvement, to the effect that disciplinary action may be imposed if the subcontractor’s failure to protect its rights results in a loss to laborers. This change should be flagged for comment.

**Stop Payment Notice**

The $2 fee required as a prerequisite to the requirement of agency notification of the stop payment enforcement period should be increased to $10.

The jury trial provision of the summary release procedure for a stop payment notice should be deleted.

**Payment Bond**

The Commission decided to investigate the possibility of applying one standard for a payment bond requirement in any public work project, whether of a state or local entity. In this connection, the Commission will gather information about what requirement, if any, applies to the Legislature, the Judiciary, and the University of California. Commissioner Boyer-Vine will check on existing practice of the Legislature; the staff will check on existing practice of the Judiciary and the University of California.

The Commission decided to rephrase the preliminary notice requirement for enforcement of payment bond remedies. The remedy under Civil Code Section 3252 for a claimant that does not give a preliminary notice renders preliminary notice no longer a prerequisite. But the preliminary notice appears to be a useful alternative and should be preserved as an option rather than as a requirement.

**Design Professionals Lien**

When the staff goes through the various mechanics lien law remedies in the effort to standardize forms and procedures, such as the content and manner of giving notices, the staff should include the design professionals lien in this process. The staff should also revisit the question whether it would make sense to try to incorporate the design professionals lien into the mechanics lien law.
STUDY J-1321 – JURISDICTIONAL LIMITS OF SMALL CLAIMS AND LIMITED CIVIL CASES

The Commission considered Memorandum 2005-41, reporting on recently enacted legislation increasing the small claims limit for a case brought by a natural person. In light of that legislation, the Commission decided to end its study of the jurisdictional limits of small claims and limited civil cases.

STUDY J-1322 – TECHNICAL AND MINOR SUBSTANTIVE STATUTORY CORRECTIONS

The Commission considered Memorandum 2005-40, discussing technical and minor substantive statutory corrections. The Commission made the following decisions.

Clause Authorizing Judge to Substitute for Clerk

Proposed deletion of surplus language from various code sections authorizing a judge to substitute for an absent clerk, as indicated in the exhibit attached to the memorandum, should be included in a future tentative recommendation.

Code of Civil ProcedureSection 904

The proposed amendment of Code of Civil Procedure Section 904 deleting obsolete cross-references to Sections 904.3 and 904.4, as set forth in the memorandum, should be included in a future tentative recommendation.

Code of Civil Procedure Section 12a

The proposed amendment of Code of Civil Procedure Section 12a, as set forth below, should be included in a future tentative recommendation.

Code Civ. Proc. § 12a (amended). Calculation of time

12a. (a) If the last day for the performance of any act provided or required by law to be performed within a specified period of time is a holiday, then that period is hereby extended to and including the next day which that is not a holiday. For purposes of this section, “holiday” means all day on Saturdays, all holidays specified in Section 135 and, to the extent provided in Section 12b, all days which by terms of Section 12b are required to be considered as holidays.

(b) This section applies also to Sections 659, 659a, 946, and 974 to 982, inclusive, and the periods of time severally therein prescribed or provided for, and to all other provisions of law, however stated or wherever expressed, to all provisions of law providing or
requiring an act to be performed on a particular day or within a specified period of time. The mention of these sections is not intended and shall not be construed to exclude the application of this section to any other provisions of law, whether the latter are expressed in this or any other code or statute, ordinance, rule, or regulation.

Comment. Subdivision (b) of Section 12a is amended to delete cross-references that were included in the statute for illustrative purposes. This is not a substantive change. Several of the deleted cross-references are not only surplusage, but are also obsolete. See 1968 Cal. Stat. ch. 385, § 1 (repealing Section 946); 1963 Cal. Stat. ch. 871, § 15 (repealing Sections 974 to 982).

Section 12a is also amended to make grammatical corrections.

STUDY J-1323 – EQUITABLE RELIEF IN LIMITED CIVIL CASE


The Commission decided to hold off making a final recommendation on this matter. Instead, the Commission directed the staff to prepare an overview of the role of the limited civil case in the unified court system. The overview should include an analysis of the number of limited civil cases filed, the cost of economic litigation procedures compared with the cost of unlimited civil case litigation, the satisfaction level of the courts with the limited civil case system, and the approach taken in other jurisdictions that have a unified court system. We may seek to have a background study prepared on these matters by a law professor, if a suitable person can be identified who is willing to perform the work for a small honorarium. The objective of the overview is to enable the Commission to determine whether the complexity in the law created by the limited civil case system is worth the effort to address problems in the system.

STUDY L-637 – REVISION OF NO CONTEST CLAUSE STATUTE

The Commission considered Memorandum 2005-47, relating to the scope of the study of no contest clauses. The Commission decided to proceed on this project in the manner suggested by the staff in the memorandum.
STUDY L-3032 – BENEFICIARY DEEDS

The Commission considered Memorandum 2005-46, together with material distributed at the meeting (attached to the First Supplement to Memorandum 2005-46), relating to the scope of the study of beneficiary deeds. The Commission decided to proceed on this project in the manner suggested by the staff in the memorandum.

☐ APPROVED AS SUBMITTED

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

________________________        Date

________________________        Chairperson

________________________        Executive Secretary