A meeting of the California Law Revision Commission was held in Sacramento on June 28, 2007.

Commission:

**Present:** Sidney Greathouse, Vice Chairperson
Pamela L. Hemminger
Frank Kaplan
Susan Duncan Lee
Edmund L. Regalia
William E. Weinberger

**Absent:** Diane F. Boyer-Vine, Legislative Counsel
Ellen Corbett, Senate Member
Noreen Evans, Assembly Member
David Huebner, Chairperson

Staff:

**Present:** Barbara Gaal, Chief Deputy Counsel
Catherine Bidart, Staff Counsel
Steve Cohen, Staff Counsel

**Absent:** Brian Hebert, Executive Secretary

Other Persons:

Bill Cody, CDWR
Frank Collard, Southern California Rock Products Association (CalCIMA)
Jason Davis, Trutanich & Michel, LLP
Samuel Hoover, Legal Community Against Violence
Joe Klinger, Government Strategies, Inc. (on behalf of Executive Council of Homeowners)
Dick Nash, Building Industry Credit Association
Bruce Rudman, Abdulaziz, Grossbart & Rudman
J. David Sackman, California State Council of Laborers
Mary Pat Toups, Laguna Woods
Amanda Wilcox, California Brady Campaign Chapters, Brady Campaign
Nick Wilcox, Brady Campaign to Prevent Gun Violence
The Commission approved the Minutes of the April 26, 2007, Commission meeting as submitted by the staff.

**Administrative Matters**

**Election of Officers**

The Commission considered Memorandum 2007-12, relating to the election of Commission officers. The Commission elected Sidney Greathouse as Chairperson and Pamela Hemminger as Vice Chairperson for the term commencing September 1, 2007, and ending August 31, 2008.

The Commission also approved the following practice, which will be memorialized in the Commission’s Handbook of Practices and Procedures:

If both the Chairperson and Vice Chairperson are absent at any point in a meeting, a Commission member may act as temporary Chairperson until an officer returns.

**Legislative Program**

The Commission considered Memorandum 2007-13, relating to the Commission’s 2007 legislative program. The Commission made the following decisions:

**AB 250 (DeVore) — Revocable Transfer on Death Deed**

The Commission ratified the amendments to AB 250 described in the memorandum.
AB 310 (Silva) — Technical and Minor Substantive Corrections

The Commission ratified the amendment to AB 310 described in the memorandum.

SB 649 (Committee on Judiciary) — Trial Court Restructuring: Part 3

The Commission ratified the amendment to SB 649 described in the memorandum.

STUDY H-821 — MECHANICS LIEN LAW

The Commission considered Memorandum 2007-25, concerning the tentative recommendation on Mechanics Lien Law (June 2006). The Commission approved the staff’s recommendations, subject to the following decisions:

Notice to Public Entity

The staff will analyze whether it would be practical to revise proposed Public Contract Code Section 42106 to provide additional opportunities for a public entity to designate a location for service of notice to the entity.

Proof of Notice

Proposed Public Contract Code Section 42114 will be revised to make clear that proof of mailing by certified or registered mail is sufficient to prove that notice was given. Proof of completed delivery would not be required.

Preliminary Notice Provisions

The Commission revised proposed Public Contract Code Section 43010 along the following lines:

43010. (a) Except as otherwise provided by statute, preliminary notice is a necessary prerequisite to the validity of a stop payment notice or a claim against a payment bond under this part before giving a stop payment notice or asserting a claim against a payment bond, a claimant shall give preliminary notice to the following persons:

(1) The public entity.

(2) The direct contractor to whom the claimant provides work.

(b) Compliance with this section is a necessary prerequisite to the validity of a stop payment notice under this part.

(c) Compliance with this section or with Section 45070 is a necessary prerequisite to the validity of a claim against a payment bond under this part.
(d) Notwithstanding the foregoing:
   (1) A laborer or a laborers compensation fund is not required to
give preliminary notice.
   (e) (2) A claimant that has a direct contractual relationship with
a direct contractor is not required to give preliminary notice.

Comment. Subdivision (a) of Section 43010 restates part of the
introductory clause and subdivisions (a) and (c) of former Civil
Code Section 3098. Repetitive detail is omitted, in reliance on
defined terms and other substantive provisions. For a statutory
exception to the preliminary notice requirement, see Section 45070
(notice to principal and surety of claim against payment bond).
Subdivision (b) restates former Civil Code Section 3098(c).
Subdivision (c) restates a portion of former Civil Code Section
3098(a).

The transitional provision of former Civil Code Section 3098(e)
is not continued due to lapse of time.

See also Sections 41020 (“claimant” defined), 41040 (“direct
contractor” defined), 41080 (“laborers compensation fund”
defined), 41090 (“payment bond” defined), 41110 (“preliminary
notice” defined), 41120 (“public entity” defined), 41150 (“stop
payment notice” defined), 41160 (“subcontractor” defined).

The Commission made a parallel revision to proposed Civil Code Section

7200:

7200. (a) Except as otherwise provided by statute, before
recording a lien claim, giving a stop payment notice, or asserting a
claim against a payment bond, a claimant shall give preliminary
notice to the following persons:
   (1) The owner or reputed owner.
   (2) The direct contractor or reputed direct contractor to whom
the claimant provides work, either directly or through one or more
subcontractors.
   (3) The construction lender or reputed construction lender, if
any.

(b) The notice shall comply with the requirements of Article 4
(commencing with Section 7100).

(c) Notwithstanding subdivision (a):
   (1) A laborer is not required to give preliminary notice.
   (2) A claimant with a direct contractual relationship with an
owner or reputed owner is required to give preliminary notice only
to the construction lender or reputed construction lender, if any.
Compliance with this section is a necessary prerequisite to the
validity of a lien claim or stop payment notice under this part.
   (d) Compliance with this section or with Section 7612 is a
necessary prerequisite to the validity of a claim against a payment
bond under this part.
   (e) Notwithstanding the foregoing subdivisions:
      (1) A laborer is not required to give preliminary notice.
(2) A claimant with a direct contractual relationship with an owner or reputed owner is required to give preliminary notice only to the construction lender or reputed construction lender, if any.

Rights of a Material Supplier on a Public Work

The staff will research whether Civil Code Section 3181 was intended by the Legislature to apply to a person who acts as a material supplier to a material supplier.

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

The Commission considered Memorandum 2007-24 and its First and Second Supplements, presenting a staff draft tentative recommendation.

The Commission approved the draft for circulation as a tentative recommendation, with one change: the first line of the preliminary part will be annotated to acknowledge that some common interest developments are nonresidential.

Public comments that the Commission has received on parts of the proposed law that were not specifically discussed in Memorandum 2007-24 will be held and considered after the close of the public comment period for the tentative recommendation.

STUDY J-1403 — TRIAL COURT RESTRUCTURING: MISCELLANEOUS ISSUES

The Commission considered Memorandum 2007-23, relating to trial court restructuring. The Commission directed the staff to prepare a draft of a tentative recommendation to implement the following decisions:

Municipal Court Action Specifying Number, Qualifications, or Compensation of Municipal Court Officers or Employees

Government Code Section 71617 should be repealed:

71617. To the extent this chapter applies to a municipal court, any action by the municipal court specifying the number, qualification, or compensation of officers or employees of the municipal court which differs from that prescribed by the Legislature pursuant to Section 5 of Article VI of the California Constitution shall remain in effect for a period of no more than two years unless prescribed by the Legislature within that period.

Comment. Section 71617 is repealed to reflect unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution.
Transfer of Case Based on Lack of Subject Matter Jurisdiction

Code of Civil Procedure Section 396 should be repealed:

396. (a) If an action or proceeding is commenced in a court that lacks jurisdiction of the subject matter thereof, as determined by the complaint or petition, if there is a court of this state that has subject matter jurisdiction, the action or proceeding shall not be dismissed (except as provided in Section 399, and paragraph (1) of subdivision (b) of Section 581) but shall, on the application of either party, or on the court’s own motion, be transferred to a court having jurisdiction of the subject matter that may be agreed upon by the parties, or, if they do not agree, to a court having subject matter jurisdiction that is designated by law as a proper court for the trial or determination thereof, and it shall thereupon be entered and prosecuted in the court to which it is transferred as if it had been commenced therein, all prior proceedings being saved. In that case, if summons is served prior to the filing of the action or proceeding in the court to which it is transferred, as to any defendant, so served, who has not appeared in the action or proceeding, the time to answer or otherwise plead shall date from service upon that defendant of written notice of filing of the action or proceeding in the court to which it is transferred.

(b) If an action or proceeding is commenced in or transferred to a court that has jurisdiction of the subject matter thereof as determined by the complaint or petition, and it thereafter appears from the verified pleadings, or at the trial, or hearing, that the determination of the action or proceeding, or of a cross-complaint, will necessarily involve the determination of questions not within the jurisdiction of the court, in which the action or proceeding is pending, the court, whenever that lack of jurisdiction appears, must suspend all further proceedings therein and transfer the action or proceeding and certify the pleadings (or if the pleadings be oral, a transcript of the same), and all papers and proceedings therein to a court having jurisdiction thereof that may be agreed upon by the parties, or, if they do not agree, to a court having subject matter jurisdiction that is designated by law as a proper court for the trial or determination thereof.

(c) An action or proceeding that is transferred under the provisions of this section shall be deemed to have been commenced at the time the complaint or petition was filed in the court from which it was originally transferred.

(d) This section may not be construed to preclude or affect the right to amend the pleadings as provided in this code.

(e) Upon the making of an order for transfer, proceedings shall be had as provided in Section 399, the costs and fees thereof, and of filing the case in the court to which transferred, to be paid by the party filing the pleading in which the question outside the jurisdiction of the court appears unless the court ordering the transfer shall otherwise direct.
Comment. Section 396 is repealed due to trial court unification. The provision directed a court not to dismiss but to transfer a cause if the court lacked subject matter jurisdiction and another state court would have such jurisdiction. The provision was often invoked when a municipal court transferred a case outside its jurisdiction to the superior court, or vice versa. See, e.g., Walker v. Super. Ct., 53 Cal. 3d 257, 807 P.2d 418, 279 Cal. Rptr. 576 (1991); Cal. Employment Stabilization Comm’n v. Mun. Ct., 62 Cal. App. 2d 781, 145 P.2d 361 (1944). After unification of the municipal and superior courts, it no longer served that purpose.

There was a split of authority regarding whether the provision authorized a superior court lacking jurisdiction to transfer a case to a court of appeal or the state Supreme Court. Compare Trafficschoolonline, Inc. v. Super. Ct., 89 Cal. App. 4th 222, 225, 107 Cal. Rptr. 2d 412 (2001) (“the superior court is not vested with the authority by Code of Civil Procedure Section 396 to transfer a case to the Court of Appeal or the Supreme Court”), with Padilla v. Dep’t of Alcoholic Beverage Control, 43 Cal. App. 4th 1151, 1154, 51 Cal. Rptr. 2d 133 (1996) (transfer requirement of Section 396 applies “in the case of proceedings filed in the superior court which, by statute, may be filed only in the Supreme Court or the Court of Appeal”); see also Pajaro Valley Water Mgmt. Agency v. McGrath, 128 Cal. App. 4th 1093, 1104 n. 4, 27 Cal. Rptr. 3d 741 (2005) (“It is possible, though a point of disagreement, that [Section 396] retains vitality as empowering the superior court to transfer cases within the exclusive original jurisdiction of the appellate courts.” (emphasis in original)).

Consistent with the key policy of deciding cases on their merits, new Section 396 makes clear that if a superior court lacks jurisdiction of a matter and a state appellate court would have jurisdiction, the superior court must transfer the matter instead of dismissing it.

A new Code of Civil Procedure Section 396 should be added, along the following lines:

396. No appeal or petition filed in the superior court shall be dismissed solely because the appeal or petition was not filed in the proper state court. If the superior court lacks jurisdiction of an appeal or petition, and the court of appeal or Supreme Court would have jurisdiction, the appeal or petition shall be transferred to the court having jurisdiction upon terms as to costs or otherwise as may be just, and proceeded with as if regularly filed therein.

Comment. Section 396 requires a superior court to transfer an appeal or petition over which the superior court lacks jurisdiction to an appellate court that has jurisdiction. The provision continues a policy that requires transfer and prohibits dismissal of a cause simply because it was filed in the wrong court. See, e.g., former Code Civ. Proc. § 396; Gov’t Code § 68915; see Friends of Mammoth
Trial Court Funding Act of 1985

Government Code Sections 16265.3, 16265.6, and 68618 should be repealed as shown at pages 12-13 and page 19 of Memorandum 2007-23. Government Code Sections 16265.1, 16265.2, 16265.4, and 16265.5 should be amended as shown at pages 14-19 of Memorandum 2007-23.

STUDY J-1450 — TRIAL COURT RESTRUCTURING:
APPELLATE JURISDICTION OF BAIL FORFEITURE

The Commission considered Memorandum 2007-22, discussing appellate jurisdiction of bail forfeiture and presenting a staff draft tentative recommendation. The Commission approved the draft for circulation as a tentative recommendation, with one change. Proposed Penal Code Section 1305.5 was revised as follows:

1305.5. Notwithstanding Sections 85, 580, 904.1, and 904.2 of the Code of Civil Procedure, if the people, a surety, or other person appeals from an order of the superior court on a motion to vacate a bail forfeiture declared under Section 1305, the following rules apply:
(a) If the bail forfeiture was in a felony case, or in a case in which both a felony and a misdemeanor were charged, and the forfeiture occurred at the judgment sentencing hearing or after the indictment or the legal commitment by a magistrate, the appeal is to the court of appeal and it shall be treated as an unlimited civil case, regardless of the amount of bail.

STUDY L-622 — DONATIVE TRANSFER RESTRICTIONS

The Commission considered Memorandum 2007-18, introducing the study of Probate Code Sections 21350-21356. The Commission approved the general approach described in the memorandum.
Study M-300 — Nonsubstantive Reorganization
Of Deadly Weapon Statutes

Note. The staff’s recording of the June 28 discussion of this topic is
inaudible. These Minutes reflect the staff’s best recollection of the decisions made
during that discussion. If your recollection is different, please bring that to the
Commission’s attention.

The Commission considered Memorandum 2007-19, Memorandum 2007-20
and its First Supplement, and Memorandum 2007-21, relating to nonsubstantive
reorganization of the statutes governing deadly weapons.

Revised Tentative Outline

The Commission directed the staff to make the following changes in the
revised tentative outline attached to Memorandum 2007-19:

Definitions

For purposes of preparing a tentative recommendation, all definitions now
found in Title 2 of Part 4 of the Penal Code should be placed in alphabetical order
in “Division 1. Definitions” of “Title 1. Preliminary Provisions” of new Part 6 of
the Penal Code. The proposed definition of “generally prohibited weapon” (see
Memorandum 2007-21, Attachment pp. 3-4) should also be placed in “Division 1.
The tentative recommendation should solicit comment on whether consolidating
the definitions in this manner is helpful.

“Division 6. Sale, Lease, or Transfer of Firearms” of “Title 4. Firearms and Similar
Weapons”

The staff should take another look at how to organize the material within
“Division 6. Sale, Lease, or Transfer of Firearms” of “Title 4. Firearms and Similar
Weapons.” Interested persons are encouraged to submit input on this point. The
staff should report back to the Commission regarding this matter.

Camouflaging Firearm Container, Cane Gun, and Wallet Gun

The provisions relating to a camouflaging firearm container, cane gun, and
wallet gun should be relocated to “Division 3. Disguised or Misleading
Appearance” of “Title 4. Firearms and Similar Weapons.”
Knives

“Division 4. Knives” of “Title 3. Weapons Other Than Firearms” should be relabeled as “Division 4. Knives and Similar Weapons.” In that division, there should be a chapter entitled “Disguised or Misleading Appearance.” That chapter should include the provisions relating to an air gauge knife, a belt buckle knife, a cane sword, a lipstick case knife, a shobi-zue, an undetectable knife, and a writing pen knife.

Penal Code Section 12028(b). Firearm Constituting Nuisance

Penal Code Section 12028(b) should be relocated to “Division 9. Miscellaneous Rules Relating to Firearms Generally” of “Title 4. Firearms and Similar Weapons.”

Penal Code Section 12028(e). Application of Provision on Firearm Constituting Nuisance

Penal Code Section 12028(e) should be relocated to two places in the outline: (1) “Division 9. Miscellaneous Rules Relating to Firearms Generally” of “Title 4. Firearms and Similar Weapons” and (2) “Chapter 2. Carrying Concealed Firearm” of “Division 5. Carrying Firearms” of “Title 4. Firearms and Similar Weapons.”

Numbering

In “Title 4. Firearms and Similar Weapons,” Division 8 should be relabeled as Division 7. Subsequent divisions should be relabeled accordingly.

Title 1. Preliminary Provisions

The Commission made the following decisions regarding the draft of “Title 1. Preliminary Provisions” attached to Memorandum 2007-20:

“Basic Firearms Safety Certificate” and “Handgun Safety Certificate”

Penal Code Section 12001 defines these terms for purposes of the entire Penal Code, not just for purposes of Title 2 of Part 4. The staff should check whether the terms are used outside of Title 2. After the Commission has that information, it will consider (1) whether the definitions of “basic firearms safety certificate” and “handgun safety certificate” should be placed at the beginning of the Penal Code or in new Part 6 of the Penal Code, and (2) whether those terms should be defined for purposes of the entire Penal Code or only for purposes of new Part 6.
Proposed Penal Code Section 16013. “Domestic Violence”

The introductory clause of proposed Penal Code Section 16013 should be revised as follows:

16013. “Domestic violence” means abuse perpetrated against any of the following persons:

Additional Revisions

The draft of “Title 1. Preliminary Provisions” should also be revised to reflect the Commission’s decisions regarding the revised tentative outline.

Title 2. Weapons Generally

The Commission made the following decisions regarding the draft of “Title 2. Weapons Generally” attached to Memorandum 2007-21:

List of Minor Clean-Up Issues for Possible Future Legislative Attention

As the Commission works on this study, the staff should maintain a list of minor clean-up issues for possible future legislative attention. Examples of such issues are found in the Staff Notes to proposed Penal Code Sections 17305, 17310, and 17405 in the draft attached to Memorandum 2007-21. As the list of minor clean-up issues develops, the staff should periodically provide the current version of the list to the Commission and interested persons for review. The final version of the list should be included in the report that the Commission submits to the Legislature.

Revisions

The draft of “Title 2. Weapons Generally” should be revised to reflect the Commission’s decisions regarding the revised tentative outline.

☐ APPROVED AS SUBMITTED

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