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MINUTES OF MEETING  
CALIFORNIA LAW REVISION COMMISSION  
AUGUST 24, 2007  
BURBANK

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A meeting of the California Law Revision Commission was held in Burbank on August 24, 2007.

**Commission:**

*Present:* Sidney Greathouse, Vice Chairperson  
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  
Pamela L. Hemminger  
David Huebner, Chairperson

**Staff:** Brian Hebert, Executive Secretary  
Barbara S. Gaal, Chief Deputy Counsel  
Catherine Bidart, Staff Counsel  
Steve Cohen, Staff Counsel

**Consultants:** None

**Other Persons:**

Sam Abdulaziz, Abdulaziz, Grossbart & Rudman  
Frank Collard, Southern California Rock Products Association (CalCIMA)  
Jason Davis, Trutanich & Michel, LLP  
Ken Grossbart, Abdulaziz, Grossbart & Rudman  
Neil I. Horton, State Bar of California  
Tony Klein, Process Server Institute, San Francisco  
Shirley Kovar, Executive Committee, State Bar Trusts and Estates Section  
Dick Nash, Building Industry Credit Association  
Lindsay Nichols, Legal Community Against Violence  
Charles Philipps, Ass'n of California Surety Companies  
J. David Sackman, California State Council of Laborers  
Mary Pat Toups, Laguna Woods

**CONTENTS**

Minutes of June 28, 2007, Commission Meeting..... 2  
 Administrative Matters..... 2  
 Legislative Program..... 3  
 Study H-821 — Mechanics Lien Law..... 3  
 Study J-505 — Civil Discovery: Deposition in Out-of-State Litigation..... 4  
 Study J-1403 — Trial Court Restructuring..... 5  
 Study K-600 — Miscellaneous Hearsay Exceptions ..... 7  
 Study L-637 — Revision of No Contest Clause Statute ..... 7  
 Study M-300 — Nonsubstantive Reorganization of Deadly Weapon Statutes..... 8

1   **MINUTES OF JUNE 28, 2007, COMMISSION MEETING**

2             The Commission approved the Minutes of the June 28, 2007, Commission  
 3 meeting as submitted by the staff.

4   **ADMINISTRATIVE MATTERS**

5             **Schedule of Meetings**

6             The Commission considered Memorandum 2007-26, relating to the  
 7 Commission’s schedule of future meetings. The Commission approved the  
 8 proposed schedule, with the following changes: (1) The October 2007 meeting  
 9 was shortened to one day (October 26, 2007). (2) A meeting was added on  
 10 January 17, 2008, to be held in Sacramento from 1:00 to 4:30 p.m. (3) The  
 11 proposed February 2008 meeting was changed to February 14, 2008. (4) The  
 12 proposed June 2008 meeting was changed to June 5, 2008.

13             As so revised, the Commission adopted the following schedule of future  
 14 meetings:

|    |                      |                    |
|----|----------------------|--------------------|
| 15 | <b>October 2007</b>  | <b>Burbank</b>     |
| 16 | Oct. 26 (Fri.)       | 9:00 am – 4:30 pm  |
| 17 | <b>December 2007</b> | <b>Burbank</b>     |
| 18 | Dec. 13 (Thur.)      | 10:00 am – 5:00 pm |
| 19 | Dec. 14 (Fri.)       | 9:00 am – 4:30 pm  |
| 20 | <b>January 2008</b>  | <b>Sacramento</b>  |
| 21 | Jan. 17 (Thur.)      | 1:00 pm – 5:00 pm  |
| 22 | <b>February 2008</b> | <b>Sacramento</b>  |
| 23 | Feb. 14 (Thur.)      | 10:00 am – 5:00 pm |

|    |                      |                    |
|----|----------------------|--------------------|
| 1  | <b>April 2008</b>    | <b>Sacramento</b>  |
| 2  | April 10 (Thur.)     | 10:00 am – 5:00 pm |
| 3  | <b>June 2008</b>     | <b>Sacramento</b>  |
| 4  | June 5 (Thur.)       | 10:00 am – 5:00 pm |
| 5  | <b>August 2008</b>   | <b>Burbank</b>     |
| 6  | Aug. 22 (Fri.)       | 9:00 am – 4:30 pm  |
| 7  | <b>October 2008</b>  | <b>Burbank</b>     |
| 8  | Oct. 23 (Thur.)      | 10:00 am – 5:00 pm |
| 9  | Oct. 24 (Fri.)       | 9:00 am – 4:30 pm  |
| 10 | <b>December 2008</b> | <b>Burbank</b>     |
| 11 | Dec. 11 (Thur.)      | 10:00 am – 5:00 pm |
| 12 | Dec. 12 (Fri.)       | 9:00 am – 4:30 pm  |

13 LEGISLATIVE PROGRAM

14 The Commission considered Memorandum 2007-27 and its First Supplement,  
15 reporting on the Commission’s 2007 legislative program. No Commission action  
16 was required or taken.

17 Mary Pat Toups provided the Commission with an article on the revocable  
18 transfer on death deed. See M. Kirtland and C. Seal, *The Significance of the*  
19 *Transfer-on Death Deed*, Probate & Prop., July / August 2007, at 42.

20 STUDY H-821 — MECHANICS LIEN LAW

21 The Commission considered CLRC Memorandum 2007-34 and its First  
22 Supplement, concerning the tentative recommendation on *Mechanics Lien Law*  
23 (June 2006). The Commission adopted the staff recommendations made in those  
24 materials, subject to the following decisions:

25 **Payment Bond on “Hybrid” Project**

26 The staff will prepare language to require a payment bond when a private  
27 developer contracts for the improvement of land that is owned by a public entity.  
28 The Commission will consider the new language at a future meeting.

29 **Stop Payment Notice as Exclusive Remedy**

30 The staff will analyze proposed Public Contract Code Section 44110 in light of  
31 existing statutory provisions that may be inconsistent with Section 44110.

1       STUDY J-505 — CIVIL DISCOVERY: DEPOSITION IN OUT-OF-STATE LITIGATION

2       The Commission considered Memorandum 2007-35, relating to the procedure  
3 for taking discovery in California for purposes of out-of-state litigation. Subject  
4 to the following revisions, the Commission approved the attached draft as a  
5 revised tentative recommendation to be circulated for comment:

6       **Unauthorized Practice of Law**

7       Proposed Code of Civil Procedure Section 2029.300(a) should be left as is, but  
8 the note that draws attention to and specifically requests comment on the second  
9 sentence should be deleted. A similar change should be made in the preliminary  
10 part.

11       **Civil Case Cover Sheet**

12       Proposed Code of Civil Procedure Section 2029.300(b) should be revised as  
13 shown below:

14               (b) In addition to submitting a foreign subpoena under  
15 subdivision (a), a party seeking discovery shall do both of the  
16 following:

17               (1) Submit an application requesting that the superior court  
18 issue a subpoena with the same terms as the foreign subpoena. The  
19 application shall be on a form prescribed by the Judicial Council  
20 pursuant to Section 2029.390. No civil case cover sheet is required.

21               (2) Pay the fee specified in Section 70626 of the Government  
22 Code.

23       **Service of Subpoena**

24       Proposed Code of Civil Procedure Section 2029.400 should be revised as  
25 shown below:

26               2029.400. A subpoena issued under this article shall be  
27 personally served in compliance with the law of this state,  
28 including, without limitation, ~~Chapter 4 (commencing with Section~~  
29 ~~413.10) of Title 5 of Part 2 Section 1985.~~

30       **Discovery Dispute**

31       Proposed Code of Civil Procedure Section 2029.600 should be revised as  
32 shown below:

33               2029.600. (a) If a dispute arises relating to discovery under this  
34 article, and ~~the deponent is involved in~~ the dispute involves a  
35 person located in this state, any request for a protective order or to

1 enforce, quash, or modify a subpoena, or for other relief shall  
2 comply with the applicable rules or statutes of this state and be  
3 filed in the superior court in the county in which discovery is to be  
4 conducted. If ~~the deponent is not involved in the dispute~~ does not  
5 involve a person located in this state, relief may be sought either in  
6 the foreign jurisdiction or in the superior court in the county in  
7 which discovery is to be conducted.

8 (b) A request for relief pursuant to this section shall be referred  
9 to as a petition notwithstanding any statute under which a request  
10 for the same relief would be referred to as a motion or by another  
11 term if it was brought in a proceeding pending in this state.

12 A note in the revised tentative recommendation should solicit comment on the  
13 best means of wording this provision. The note should explain that the objective  
14 is to protect the interests of persons located in California and the policy interests  
15 of the state.

#### 16 STUDY J-1403 — TRIAL COURT RESTRUCTURING

17 The Commission considered Memorandum 2007-31 and its First Supplement,  
18 relating to trial court restructuring. Subject to the following revisions, the  
19 Commission approved the staff draft as a tentative recommendation to be  
20 circulated for comment:

#### 21 **Welfare and Institutions Code Section 603.5**

22 The tentative recommendation will include the following revision of Welfare  
23 and Institutions Code Section 603.5:

24 603.5. (a) Notwithstanding any other provision of law, in  
25 ~~counties which adopt a county that adopts~~ the provisions of this  
26 section, ~~jurisdiction over the case of if~~ a minor is alleged to have  
27 committed only a violation of the Vehicle Code classified as an  
28 infraction or a violation of a local ordinance involving the driving,  
29 ~~parking,~~ or operation of a motor vehicle, jurisdiction over the case  
30 is with the municipal court or the superior court, in a county in  
31 which there is no municipal court, except that the subject to the  
32 following:

33 (1) The court may refer to the juvenile court for adjudication,  
34 eases a case involving a minor who has been adjudicated a ward of  
35 the juvenile court, or who has other matters pending in the juvenile  
36 court.

37 (2) Jurisdiction of a standing or parking violation of the Vehicle  
38 Code classified as an infraction is governed by Article 3  
39 (commencing with Section 40200) of Chapter 1 of Division 17 of the  
40 Vehicle Code.

1           ....

2           **Comment.** Subdivision (a) of Section 603.5 is amended to reflect  
3 unification of the municipal and superior courts pursuant to former  
4 Section 5(e) of Article VI of the California Constitution.

5           Subdivision (a) is also amended to reflect the enactment of  
6 Vehicle Code Sections 40200-40230. Those provisions prescribe civil  
7 administrative procedures and civil penalties for any standing or  
8 parking violation that is not a misdemeanor. See Veh. Code  
9 §§ 40200(a), 40215.

10          Subdivision (a) is further amended to make stylistic revisions.

11 Discussion of that proposed revision will be added to the preliminary part of the  
12 tentative recommendation. The tentative recommendation will include a note  
13 soliciting comment on use of the term “infraction.”

14 **Vehicle Code Section 40502**

15          The tentative recommendation will include the following revision of Vehicle  
16 Code Section 40502:

17           40502. The place specified in the notice to appear shall be any of  
18 the following:

19           (a) Before a magistrate within the county in which the offense  
20 charged is alleged to have been committed and who has  
21 jurisdiction of the offense and is nearest or most accessible with  
22 reference to the place where the arrest is made.

23           (b) Upon demand of the person arrested, before a judge or other  
24 magistrate having jurisdiction of the offense at the county seat of  
25 the county in which the offense is alleged to have been committed.  
26 This subdivision applies only if the person arrested resides, or the  
27 person’s principal place of employment is located, closer to the  
28 county seat than to the magistrate nearest or most accessible to the  
29 place where the arrest is made.

30           (c) Before a person authorized to receive a deposit of bail. The  
31 clerk and deputy clerks of the superior court are persons  
32 authorized to receive bail in accordance with a schedule of bail  
33 approved by the judges of that court.

34           (d) Before the juvenile court, a juvenile court referee, or a  
35 juvenile hearing officer within the county in which the offense  
36 charged is alleged to have been committed, if the person arrested  
37 appears to be under the age of 18 years. The juvenile court shall by  
38 order designate the proper person before whom the appearance is  
39 to be made.

40          In a county that has implemented the provisions of Section 603.5  
41 of the Welfare and Institutions Code, if the offense alleged to have  
42 been committed by a minor is classified as an infraction under this  
43 code, other than a standing or parking infraction, or is a violation of  
44 a local ordinance involving the driving, ~~parking~~, or operation of a

1 motor vehicle, the citation shall be issued as provided in  
2 subdivision (a), (b), or (c); provided, however, that if the citation  
3 combines an infraction and a misdemeanor, the place specified  
4 shall be as provided in subdivision (d). If the place specified in the  
5 notice to appear is within a county where a department of the  
6 superior court is to hold a night session within a period of not more  
7 than 10 days after the arrest, the notice to appear shall contain, in  
8 addition to the above, a statement notifying the person arrested  
9 that the person may appear before a night session of the court.

10 **Comment.** Subdivision (d) of Section 40502 is amended to  
11 reflect an amendment to Welfare and Institutions Code Section  
12 603.5. That provision no longer applies to a standing or parking  
13 violation that is not a misdemeanor. Instead, such a violation is  
14 now governed by Sections 40200-40230. See Veh. Code § 40200(a);  
15 Welf. & Inst. Code § 603.5 & Comment.

16 Discussion of that proposed revision will be added to the preliminary part of the  
17 tentative recommendation.

18 STUDY K-600 — MISCELLANEOUS HEARSAY EXCEPTIONS

19 The Commission considered Memorandum 2007-28. No Commission action  
20 was required or taken.

21 STUDY L-637 — REVISION OF NO CONTEST CLAUSE STATUTE

22 The Commission considered Memorandum 2007-29 and its First Supplement,  
23 discussing public comment on the tentative recommendation on *Revision of No*  
24 *Contest Clause Statute* (April 2007). The Commission made the following  
25 decisions, which will be implemented in a staff draft recommendation presented  
26 at a future meeting:

27 **Forced Elections**

28 The proposed law will permit the enforcement of a no contest clause in  
29 response to a creditor claim or property characterization dispute.

30 **“Protected Instrument”**

31 The proposed definition of “protected instrument” was revised to apply only  
32 to the instrument containing the clause and an instrument that is (1) expressly  
33 identified in the clause as being governed by the clause, and (2) “in existence” at  
34 the time that the instrument containing the clause is executed. The Comment to  
35 proposed Probate Code Section 21330(d) will be revised to make clear that an

1 instrument may incorporate, by reference, a no contest clause that is set out in  
2 another instrument.

3 **Declaratory Relief**

4 The proposed law will eliminate declaratory relief to interpret the scope of  
5 application of a no contest clause.

6 **Probable Cause Exception**

7 The staff will draft a definition of “probable cause” that is based on the  
8 definition of “reasonable cause” provided in Probate Code Section 21306, for  
9 review at a future meeting. The Comment to the definition will make clear that  
10 the standard is intended to be stricter than the existing standard for malicious  
11 prosecution.

12 The probable cause exception will not apply to a creditor claim or property  
13 characterization dispute.

14 **Deferred Operation**

15 The proposed law will include a one-year deferred operation provision. The  
16 application of the proposed law to instruments created before its operative date  
17 will be governed by the general law provided in Probate Code Section 3.

18 STUDY M-300 — NONSUBSTANTIVE REORGANIZATION OF  
19 DEADLY WEAPON STATUTES

20 The Commission considered Memorandum 2007-32, Memorandum 2007-33,  
21 and the First Supplement to Memorandum 2007-33, relating to nonsubstantive  
22 reorganization of the statutes governing deadly weapons.

23 At the request of the Legal Community Against Violence (“LCAV”), the  
24 Commission revisited its decision to consolidate all definitions at the beginning  
25 of new Part 6 of the Penal Code, instead of placing some definitions in closer  
26 proximity to the pertinent substantive material. The Commission decided to  
27 continue with its current approach for purposes of a tentative recommendation.

28 LCAV expressed concern about inclusion of substantive material in certain  
29 definitions in the draft attached to Memorandum 2007-33. The Commission  
30 decided to leave those definitions as currently drafted.

31 LCAV also suggested that when a defined term is particularly important or  
32 unusually confusing, a provision that uses the term should cross-refer to the



- 1 definition in the statutory text, not just in the corresponding Comment. The
- 2 Commission decided to assess on a case-by-case basis whether a cross-reference
- 3 is needed in the statutory text, or only in the corresponding Comment.

APPROVED AS SUBMITTED

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Executive Secretary