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
Minutes of June 28, 2007, Commission Meeting

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

Administrative Matters

Schedule of Meetings

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

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

<table>
<thead>
<tr>
<th>Month</th>
<th>Location</th>
<th>Date</th>
<th>Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>October 2007</td>
<td>Burbank</td>
<td>Oct. 26 (Fri.)</td>
<td>9:00 am – 4:30 pm</td>
</tr>
<tr>
<td>December 2007</td>
<td>Burbank</td>
<td>Dec. 13 (Thur.)</td>
<td>10:00 am – 5:00 pm</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Dec. 14 (Fri.)</td>
<td>9:00 am – 4:30 pm</td>
</tr>
<tr>
<td>January 2008</td>
<td>Sacramento</td>
<td>Jan. 17 (Thur.)</td>
<td>1:00 pm – 5:00 pm</td>
</tr>
<tr>
<td>February 2008</td>
<td>Sacramento</td>
<td>Feb. 14 (Thur.)</td>
<td>10:00 am – 5:00 pm</td>
</tr>
</tbody>
</table>
The Commission considered Memorandum 2007-27 and its First Supplement, reporting on the Commission’s 2007 legislative program. No Commission action was required or taken.

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

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

Payment Bond on “Hybrid” Project

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

Stop Payment Notice as Exclusive Remedy

The staff will analyze proposed Public Contract Code Section 44110 in light of existing statutory provisions that may be inconsistent with Section 44110.
STUDY J-505 — CIVIL DISCOVERY: DEPOSITION IN OUT-OF-STATE LITIGATION

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

Unauthorized Practice of Law

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

Civil Case Cover Sheet

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

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

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

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

Service of Subpoena

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

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

Discovery Dispute

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

2029.600. (a) If a dispute arises relating to discovery under this article, and the deponent is involved in the dispute involves a person located in this state, any request for a protective order or to
enforce, quash, or modify a subpoena, or for other relief shall comply with the applicable rules or statutes of this state and be filed in the superior court in the county in which discovery is to be conducted. If the deponent is not involved in the dispute does not involve a person located in this state, relief may be sought either in the foreign jurisdiction or in the superior court in the county in which discovery is to be conducted.

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

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

STUDY J-1403 — TRIAL COURT RESTRUCTURING

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

Welfare and Institutions Code Section 603.5

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

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

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

(2) Jurisdiction of a standing or parking violation of the Vehicle Code classified as an infraction is governed by Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle Code.
Comment. Subdivision (a) of Section 603.5 is amended to reflect unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution.

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

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

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

Vehicle Code Section 40502

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

40502. The place specified in the notice to appear shall be any of the following:
(a) Before a magistrate within the county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense and is nearest or most accessible with reference to the place where the arrest is made.
(b) Upon demand of the person arrested, before a judge or other magistrate having jurisdiction of the offense at the county seat of the county in which the offense is alleged to have been committed. This subdivision applies only if the person arrested resides, or the person’s principal place of employment is located, closer to the county seat than to the magistrate nearest or most accessible to the place where the arrest is made.
(c) Before a person authorized to receive a deposit of bail. The clerk and deputy clerks of the superior court are persons authorized to receive bail in accordance with a schedule of bail approved by the judges of that court.
(d) Before the juvenile court, a juvenile court referee, or a juvenile hearing officer within the county in which the offense charged is alleged to have been committed, if the person arrested appears to be under the age of 18 years. The juvenile court shall by order designate the proper person before whom the appearance is to be made.

In a county that has implemented the provisions of Section 603.5 of the Welfare and Institutions Code, if the offense alleged to have been committed by a minor is classified as an infraction under this code, other than a standing or parking infraction, or is a violation of a local ordinance involving the driving, parking, or operation of a...
motor vehicle, the citation shall be issued as provided in subdivision (a), (b), or (c); provided, however, that if the citation combines an infraction and a misdemeanor, the place specified shall be as provided in subdivision (d). If the place specified in the notice to appear is within a county where a department of the superior court is to hold a night session within a period of not more than 10 days after the arrest, the notice to appear shall contain, in addition to the above, a statement notifying the person arrested that the person may appear before a night session of the court.

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

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

STUDY K-600 — MISCELLANEOUS HEARSAY EXCEPTIONS

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

STUDY L-637 — REVISION OF NO CONTEST CLAUSE STATUTE

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

Forced Elections

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

“Protected Instrument”

The proposed definition of “protected instrument” was revised to apply only to the instrument containing the clause and an instrument that is (1) expressly identified in the clause as being governed by the clause, and (2) “in existence” at the time that the instrument containing the clause is executed. The Comment to proposed Probate Code Section 21330(d) will be revised to make clear that an
instrument may incorporate, by reference, a no contest clause that is set out in another instrument.

**Declaratory Relief**

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

**Probable Cause Exception**

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

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

**Deferred Operation**

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

**STUDY M-300 — NONSUBSTANTIVE REORGANIZATION OF DEADLY WEAPON STATUTES**


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

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

LCAV also suggested that when a defined term is particularly important or unusually confusing, a provision that uses the term should cross-refer to the
definition in the statutory text, not just in the corresponding Comment. The Commission decided to assess on a case-by-case basis whether a cross-reference is needed in the statutory text, or only in the corresponding Comment.

☐ APPROVED AS SUBMITTED

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

_________________________________________ Date

_________________________________________ Chairperson

_________________________________________ Executive Secretary