A meeting of the California Law Revision Commission was held in Sacramento on January 17, 2008.

Commission:

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

Absent: Ellen Corbett, Senate Member
        Noreen Evans, Assembly Member
        Pamela L. Hemminger, Vice Chairperson

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

Consultants: Miguel A. Méndez

Other Persons:
    Neil I. Horton, State Bar Trusts & Estates Section
    Richard Markuson, WECA
    David Nelson, Loeb & Loeb
    Jeff Rubin, California District Attorneys Ass’n, Alameda County District Attorney’s Office
    J. David Sackman, California State Council of Laborers
    Mary Pat Toups, Laguna Woods
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1 MINUTES OF DECEMBER 13-14, 2007, COMMISSION MEETING

2 The Commission approved the Minutes of the December 13-14, 2007, Commission meeting as submitted by the staff.

4 ADMINISTRATIVE MATTERS

5 Report of Executive Secretary

6 The Executive Secretary reported that the Governor’s proposed budget for Fiscal Year 2008-09 would reduce the Commission’s budget by 10%.

8 STUDY H-821 — MECHANICS LIEN LAW

9 The Commission considered CLRC Memorandum 2008-4 and its First Supplement, presenting a staff draft of the narrative “preliminary part” of the final recommendation on Mechanics Lien Law. The Commission adopted the staff recommendations made in those materials, and provisionally approved the staff draft, subject to the following decisions:

14 Lien Priority

15 The staff will revise the discussion entitled “Priority of Lien,” beginning on page 7 of the staff draft, to discuss the special case when there is a site improvement that is conducted pursuant to a contract that is separate from the contract for the work of improvement.

19 Completion of Private Work of Improvement

20 The staff will revise the discussion in the final recommendation entitled “Commencement and Completion,” beginning on page 24 of the recommendation, to discuss completion of a private work that is subject to acceptance by a public entity.
STUDY K-600 – MISCELLANEOUS HEARSAY EXCEPTIONS

Present Sense Impressions

The Commission considered Memorandum 2008-1 and the attached draft recommendation, relating to present sense impressions. The draft properly reflects the Commission’s views at this stage of its study.

The Commission continues to welcome comments on this topic. At the next meeting, the Commission will consider any additional comments and approve a final recommendation.

Forfeiture by Wrongdoing

The Commission considered Memorandum 2008-2, relating to forfeiture by wrongdoing. The Commission also considered a document prepared by Prof. Miguel Méndez, which is attached to the First Supplement to Memorandum 2008-2.

For the next meeting, the Commission directed the staff to prepare a draft recommendation along the following lines:

- The previously proposed revisions of Evidence Code Section 240 relating to a refusal to testify should be included in the draft.
- The previously proposed revisions of Evidence Code Section 240 relating to memory loss should not be included in the draft. The Commission might study that issue further when time permits.
- The draft should point out that People v. Giles is pending in the United States Supreme Court (No. 07-6053) and a decision is expected by late June. The draft should advise the Legislature to wait for that decision before determining the best long-term approach to forfeiture by wrongdoing as an exception to the hearsay rule.
- The draft should describe the four options discussed in the tentative recommendation (Options #1-#4), issues relating to those options, and points for the Legislature to consider in determining how to proceed.
- The draft should mention the possibility of referring the matter back to the Commission for further study after Giles is decided. The draft should neither advocate nor discourage this approach.

Because the Commission’s report is due by March 1, 2008, the Commission plans to approve a final recommendation at the next meeting.
STUDY L-637 — REVISION OF NO CONTEST CLAUSE STATUTE

The Commission considered Memorandum 2008-3 and its First and Second Supplements, relating to no contest clauses. The Commission also considered an email from James S. Graham, which is attached to the Third Supplement to Memorandum 2008-3.

The Commission approved the staff draft recommendation as its final recommendation, with changes to reflect the following decisions:

**Creditor Claim**

The proposed law should not add any new substantive limitation on the enforcement of a no contest clause in response to a creditor claim.

**Property Ownership Dispute**

The proposed law should not add any new substantive limitation on the enforcement of a no contest clause in response to a property ownership dispute.

**Retroactivity of Proposed Law**

The proposed law should not apply to an instrument that became irrevocable before January 1, 2001. The proposed law should apply to any instrument, whenever executed, that becomes irrevocable on or after January 1, 2001, except as otherwise provided in Probate Code Section 3.