
MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
SACRAMENTO
FEBRUARY 14, 2008

A meeting of the California Law Revision Commission was held in Sacramento on February 14, 2008.

Commission:

Present: Pamela L. Hemminger, Vice 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
Sidney Greathouse, Chairperson

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

Consultants: None

Other Persons:

Frank Collard, Southern California Rock Products Association (CalCIMA)
Dick Nash, Building Industry Credit Association
Joanne Roy, California Senate Office of Research
J. David Sackman, California State Council of Laborers
Mary Pat Toups, Laguna Woods

1 ~~to Section 21305, and an action under Part 7 (commencing with~~
2 ~~Section 21700) of Division 11, would be a contest within the terms~~
3 ~~of the no contest clause and whether the no contest clause could be~~
4 ~~enforced against a particular pleading by the beneficiary, under~~
5 ~~paragraph (2) or (3) of subdivision (a) of Section 21311. The court~~
6 ~~shall not make a determination under this section if the~~
7 ~~determination would depend on the merits of the proposed~~
8 ~~pleading.~~

9 (b) A no contest clause is not enforceable against a beneficiary to
10 the extent an application under subdivision (a) is limited to the
11 procedure and purpose described in subdivision (a).

12 ~~(c) A determination under this section of whether a proposed~~
13 ~~motion, petition, or other act by the beneficiary violates a no contest~~
14 ~~clause may not be made if a determination of the merits of the~~
15 ~~motion, petition, or other act by the beneficiary is required.~~

16 ~~(d) A determination of whether Section 21306 or 21307 would~~
17 ~~apply in a particular case may not be made under this section.~~

18 STUDY H-820 — MECHANICS LIEN LAW

19 The Commission considered Memorandum 2008-9 and its First, Second and
20 Third Supplements, discussing a staff draft of proposed legislation on *Mechanics*
21 *Lien Law*. The Commission adopted the staff recommendations in those
22 materials, subject to the decisions set out below. With those changes, the
23 Commission approved the final recommendation for printing and submission to
24 the Legislature.

25 **Notice by Electronic Communication**

26 The Comments to proposed Civil Code Section 8112 and proposed Public
27 Contract Code Section 42170 were revised to include a reference to Evidence
28 Code Section 250 (“writing” defined).

29 **Content of Preliminary Notice**

30 The Comment to proposed Civil Code Section 8202(c) was revised to make
31 clear that the section is not intended to make any change to the law governing
32 privacy rights.

33 **Recordation of Notice of Completion**

34 Proposed Civil Code Section 8152(a) and proposed Public Contract Code
35 Section 42230(a) were revised as follows:

1 8152. (a) An owner may record a notice of completion on or
2 within 15 days after the date of completion of a work of
3 improvement.

4 42230. (a) A public entity may record a notice of completion on
5 or within 15 days after the date of completion of a work of
6 improvement.

7 **“Fund” and “Funds”**

8 The Comment to proposed Public Contract Code Section 44110 was revised to
9 include language along the following lines:

10 The term “fund” has a meaning distinct from the term “funds”
11 as defined in Section 41050. Consistent with former Civil Code
12 Section 3264, “fund” refers to the source for payment of
13 construction costs, not the form of payment itself.

14 STUDY K-350 — ATTORNEY-CLIENT PRIVILEGE AFTER CLIENT’S DEATH

15 The Commission considered Memorandum 2008-8, introducing the study on
16 whether the attorney-client privilege should survive the client’s death, and if so,
17 under what circumstances. The Commission made no decisions on this topic.

18 STUDY K-600 — MISCELLANEOUS HEARSAY EXCEPTIONS

19 **Forfeiture by Wrongdoing**

20 The Commission considered Memorandum 2008-7, relating to forfeiture by
21 wrongdoing as an exception to the hearsay rule. The Commission directed the
22 staff to revise the appendix in the attached draft to make clear that the
23 Commission is not currently recommending adoption of the legislation shown in
24 the appendix. Subject to that revision, the Commission approved the draft as a
25 final recommendation, for printing and submission to the Legislature.

26 **Present Sense Impressions**

27 The Commission considered Memorandum 2008-6 and its First Supplement,
28 relating to present sense impressions. The Commission directed the staff to revise
29 the preliminary part (narrative portion) of the attached draft to refer to the
30 Minnesota provision on present sense impressions (Minn. R. Evid. 801(d)(1)(D)).
31 The staff orally recommended that the preliminary part be further revised to
32 squarely address the points raised by the California Public Defenders

- 1 • The provisions disqualifying certain business associates of a
2 disqualified person should be generalized so that they apply
3 consistently, without regard for the type of disqualified person or
4 the type of business entity.

APPROVED AS SUBMITTED

Date

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

Chairperson

Executive Secretary