
MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
OCTOBER 29, 2008
BURBANK

A meeting of the California Law Revision Commission was held in Burbank on October 29, 2008.

Commission:

Present: Pamela L. Hemminger, Chairperson
Diane Boyer-Vine, Legislative Counsel
Sidney Greathouse
Frank Kaplan
Susan Duncan Lee, Vice-Chairperson
William E. Weinberger

Absent: Ellen Corbett, Senate Member
Noreen Evans, Assembly Member

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

Consultants: None

Other Persons:

David Baer, Executive Committee, State Bar Trusts and Estates Section
Kevin Bayley, Disability Rights of California
Jason Davis, Trutanich & Michel LLP
Neil I. Horton, Executive Committee, State Bar Trusts and Estates Section
Lindsay Nichols, Legal Community Against Violence
John Quirk, Glendale
Bob Sheppard, Walnut House Cooperative, Berkeley

CONTENTS

Minutes of September 3, 2008, Commission Meeting	2
Ratification of Actions Taken at September 3, 2008, Meeting	2
Administrative Matters.....	2
Meeting Schedule.....	2
New Topics and Priorities	2
Report of Executive Secretary	3
Legislative Program.....	4
Study K-350 — Attorney-Client Privilege After Client’s Death.....	4
Study L-622 – Donative Transfer Restrictions.....	5
Study M-300 – Nonsubstantive Reorganization of Deadly Weapon Statutes.....	5

1 MINUTES OF SEPTEMBER 3, 2008, COMMISSION MEETING

2 The Commission approved the Minutes of the September 3, 2008,
3 Commission meeting as submitted by the staff.

 RATIFICATION OF ACTIONS TAKEN AT SEPTEMBER 3, 2008, MEETING

4 The Commission ratified the actions taken by the Commission, acting as a
5 subcommittee, at the September 3, 2008, meeting.

 ADMINISTRATIVE MATTERS

6 **Meeting Schedule**

7 The Commission considered Memorandum 2008-37, relating to the
8 Commission’s meeting schedule.

9 The Commission shortened the December 2008 meeting to a single day. The
10 meeting will be held on December 11, 2008, in Burbank.

11 The Commission also changed the date of the June 2009 meeting. The meeting
12 will be held on June 17, 2008, in Sacramento.

13 **New Topics and Priorities**

14 The Commission considered Memorandum 2008-40 and its First Supplement,
15 relating to new topics and priorities. Consistent with its traditional priorities, the
16 Commission made the following decisions regarding work in the remainder of
17 2008 and 2009:

18 The highest priority will be placed on completing work on legislative
19 assignments with deadlines: donative transfer restrictions, deadly weapons, and

1 the attorney-client privilege after the client's death. In addition, the Commission
2 will continue its work on a legislative assignment without a stated deadline, trial
3 court restructuring, as staff resources permit.

4 The Commission decided to continue its work on common interest
5 development law, a currently active topic. In addition to its ongoing work on
6 statutory clarification and simplification of CID law, the Commission authorized
7 three new CID law topics: (1) simplified governance procedures in small
8 associations, (2) the application of the Davis-Stirling Common Interest
9 Development Act to entirely nonresidential associations, and (3) other
10 miscellaneous issues relating to the application of the Davis-Stirling Act
11 (including the application of the Davis-Stirling Act to stock cooperatives).

12 The Commission also authorized work on a new study, the removal of an
13 executor on the ground that the executor is a "disqualified person" under
14 Probate Code Section 21350.

15 Finally, the Commission directed the staff to make inquiries regarding other
16 possible study topics and report back to the Commission at its December
17 meeting. The staff will inquire about: (1) the extent to which there may be legal
18 impediments to the electronic submission of information to state agencies, (2)
19 whether the application of the Marketable Title Act to unrecorded options is
20 causing significant problems, and (3) whether there are any new legislative
21 priorities for the Commission's work.

22 In the next resolution regarding the Commission's Calendar of Topics, one
23 topic should be dropped: offers of compromise.

24 **Report of Executive Secretary**

25 The Executive Secretary reported that Commissioner Edmund Regalia had
26 resigned his position on the Commission. The staff will prepare a statement
27 recognizing Commissioner Regalia for his service to the State of California. The
28 statement will be published in the Commission's next annual report. A draft of
29 the statement will be submitted for Commission approval as part of the draft
30 annual report.

31 The Executive Secretary also reported that the Governor has appointed
32 retired Justice John Zebrowski to fill a vacant position on the Commission.

33 Finally, the Executive Secretary reported that the Commission's office space
34 in Palo Alto has been successfully consolidated, resulting in significant budget

1 savings. A possible change to the Commission's Sacramento office space is being
2 contemplated.

LEGISLATIVE PROGRAM

3 The Commission considered Memorandum 2008-44, reporting on the
4 Commission's 2008 legislative program. With respect to the possible 2009
5 legislative program, the Commission made the following decisions:

- 6 • If possible, legislation implementing the Commission's
7 recommendation on *Technical and Minor Substantive Statutory*
8 *Corrections: References to Recording Technology*, 37 Cal. L. Revision
9 Comm'n Reports 211 (2007), should be introduced in 2009.
- 10 • The staff will make inquiries to determine whether there would be
11 any objection to the 2009 introduction of legislation to implement
12 the Commission's recommendation on *Mechanics Lien Law* (Feb.
13 2008). The legislation would be based on the enrolled version of SB
14 1691 (Lowenthal), with the operative date changed to January 1,
15 2011.
- 16 • The Commission will not seek the reenactment of the no contest
17 clause provisions repealed by SB 1264 (Harman), 2008 Cal. Stat. ch.
18 174.

19 STUDY K-350 — ATTORNEY-CLIENT PRIVILEGE AFTER CLIENT'S DEATH

20 The Commission considered Memoranda 2008-45 and 2008-46, discussing
21 how to clarify recent amendments to Probate Code Section 12252, and the
22 duration of a deceased client's privilege held by a personal representative. The
23 Commission also considered a draft tentative recommendation, attached to
24 Memorandum 2008-46.

25 The Commission approved the draft tentative recommendation for
26 circulation, with two changes: (1) The Comment to Evidence Code Section 953
27 should be revised to make clear that the privilege survives during a cause of
28 action commenced, continued, or defended by a personal representative. (2) The
29 discussion of *Moeller v. Superior Court* (16 Cal. 4th 1124, 947 P.2d 279, 69 Cal. Rptr.
30 2d 317 (1997)) should be reviewed to make sure that it does not overstate the
31 practical effect of that case.

1 **Comment.** Section 26520 continues former Section 12070(b)(4)
2 without substantive change.
3 See Section 16520 (“firearm”).

4 **Leadline for Proposed Penal Code § 26815**

5 The leadline for proposed Penal Code Section 26815 should be revised to
6 read: “Waiting period and other delivery restrictions.”

7 **Proposed Penal Code § 26850. Safe handling demonstration with handgun**

8 Subdivision (b)(3) of proposed Penal Code Section 26850 should be revised to
9 refer to Section 26859, instead of Section 26869.

10 **Leadline for Proposed Penal Code § 27540**

11 The leadline for proposed Penal Code Section 27540 should be revised to
12 read: “Waiting period and other delivery restrictions.”

13 **Proposed Penal Code § 27860. Exception for sale, delivery, loan, or transfer by**
14 **person other than law enforcement representative to nonprofit historical**
15 **society, museum, or institutional collection**

16 Proposed Penal Code Section 27860 should be revised as follows:

17 27860. Section 27545 does not apply to the sale, delivery, loan, or
18 transfer of a firearm made by any person other than a
19 representative of an authorized law enforcement agency to any
20 public or private nonprofit historical society, museum, or
21 institutional collection, if all of the following conditions are met:

22 (a) The entity receiving the firearm is open to the public.

23 (b) The firearm is deactivated or rendered inoperable prior to
24 delivery.

25 (c) The firearm is not of a type prohibited from being sold,
26 delivered, or transferred to the public.

27 (d) Prior to delivery, the entity receiving the firearm submits a
28 written statement to the person selling, loaning, or transferring the
29 firearm stating that the firearm will not be restored to operating
30 condition, and will either remain with that entity, or if
31 subsequently disposed of, will be transferred in accordance with
32 the applicable provisions listed in Section 16575 and, if applicable,
33 with [Section 12801].

34 (e) If title to a handgun is being transferred to the public or
35 private nonprofit historical society, museum, or institutional
36 collection, then the designated representative of that entity shall,
37 within 30 days of taking possession of that handgun, forward by
38 prepaid mail or deliver in person to the Department of Justice, a
39 single report signed by both parties to the transaction, which
40 includes all of the following information:

1 (1) Information identifying the person representing the public or
2 private historical society, museum, or institutional collection.

3 (2) Information on how title was obtained and from whom.

4 (3) A description of the firearm in question.

5 (4) A copy of the written statement referred to in subdivision
6 (d).

7 ~~(e)~~ (f) The report forms that are to be completed pursuant to this
8 section shall be provided by the Department of Justice.

9 (g) In the event of a change in the status of the designated
10 representative, the entity shall notify the department of a new
11 representative within 30 days.

12 **Comment.** Section 27860 continues former Section 12078(a)(8)
13 without substantive change, as that provision applied to former
14 Section 12072(d).

15 See Sections 16520 ("firearm"), 16640 ("handgun").

16 **Proposed Penal Code § 27900. Exception for infrequent sale or transfer of**
17 **firearm, other than handgun, at auction or similar event conducted by**
18 **nonprofit mutual or public benefit corporation**

19 Proposed Penal Code Section 27900 should be revised along the following
20 lines:

21 27900. (a) Section 27545 does not apply to the infrequent sale or
22 transfer, ~~as defined in Section 16730,~~ of a firearm other than a
23 handgun at an auction or similar event conducted by a nonprofit
24 mutual or public benefit corporation organized pursuant to the
25 Corporations Code.

26 (b) As used in this section, "infrequent" has the meaning
27 provided in Section 16730.

28 **Comment.** Section 27900 continues the first paragraph of former
29 Section 12078(g)(1) without substantive change.

30 See Sections 16520 ("firearm"), 16640 ("handgun").

31 **Proposed Penal Code § 28200. "Purchase," "purchaser," "sale," and "seller"**

32 Proposed Penal Code Section 28200 should be revised to state the definitions
33 of "purchase," "purchaser," and "sale," instead of incorporating those definitions
34 by reference:

35 28200. As used in this article,

36 ~~(a) "Purchase," "purchaser," and "sale" have the same~~
37 ~~meanings as in Section 28150~~ "Purchase" means the purchase, loan,
38 or transfer of a firearm.

39 (b) "Purchaser" means the purchaser or transferee of a firearm
40 or the person being loaned a firearm.

41 (c) "Sale" means the sale, loan, or transfer of a firearm.

1 (d) “Seller” means, if the transaction is being conducted
2 pursuant to Chapter 5 (commencing with Section 28050), the person
3 selling, loaning, or transferring the firearm.

4 **Comment.** Section 28200 continues former Section 12076(l)
5 without substantive change.

6 **Proposed Penal Code § 28225. Fee to be charged by dealer**

7 Penal Code Section 12076(e), which would be continued in proposed Penal
8 Code Section 28225, contains erroneous cross-references to Family Code Section
9 6385. See Memorandum 2008-49, Attachment pp. 113-14. Lindsay Nichols of the
10 Legal Community Against Violence reported that the erroneous cross-references
11 should be replaced with cross-references to Family Code Section 6380. She
12 explained that the cross-references to Family Code Section 6385 used to be
13 correct, but became incorrect due to the enactment of Senate Bill 1627 in 2002
14 (2002 Cal. Stat. ch. 265).

15 The staff should check into this situation. If it is clear that Family Code
16 Section 6385 is the correct cross-reference, then proposed Penal Code Section
17 28225 should be revised to make that correction and the situation should be
18 noted in the preliminary part of the Commission’s report. If there is any question
19 about the correct cross-reference, the issue should be included on the
20 Commission’s list of “Minor Clean-up Issues for Possible Future Legislative
21 Attention.”

APPROVED AS SUBMITTED

_____ Date

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

_____ Chairperson

_____ Executive Secretary