MINUTES OF MEETING

CALIFORNIA LAW REVISION COMMISSION

APRIL 23, 2009

SACRAMENTO

A meeting of the California Law Revision Commission was held in Sacramento on April 23, 2009.

Commission:

Present: Pamela L. Hemminger, Chairperson
Diane F. Boyer-Vine, Legislative Counsel
Sidney Greathouse
Frank Kaplan
Hon. John Zebrowski

Absent: Susan Duncan Lee, Vice-Chairperson
Ellen Corbett, Senate Member
Noreen Evans, Assembly Member
William E. Weinberger

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

Consultants: None

Other Persons:

David W. Baer, Executive Committee, State Bar Trusts and Estates Section
Oliver Burford, Executive Council of Homeowners
Skip Daum, Community Associations Institute
Kerry Mazzoni, Executive Council of Homeowners, Government Strategies
Marjorie Murray, Congress of California Seniors
Elaine Roberts Musser
Dick Pruess, Community Associations Institute, California Legislative Action Committee
Sean Rashkis, Disability Rights California
Bob Sheppard, Walnut House Cooperative

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MINUTES OF FEBRUARY 19, 2009, COMMISSION MEETING

The Commission approved the Minutes of the February 19, 2009, Commission meeting as submitted by the staff.

ADMINISTRATIVE MATTERS

Meeting Schedule

The Commission considered Memorandum 2009-13, relating to the Commission's meeting schedule.

The Commission changed the location of its August 2009 and October 2009 meetings to Sacramento. The staff will attempt to obtain free meeting space for the December 2009 meeting.

The date of the June 2009 meeting was changed to a date, to be determined later, in the week of June 8-12, 2009.

Report of Executive Secretary

The Executive Secretary noted that staff counsel Steve Cohen recently married an employee of Disabilities Rights California. To avoid any appearance of a conflict of interest, Mr. Cohen will not be assigned to work on studies in which Disabilities Rights California is an active participant.

LEGISLATIVE PROGRAM

The Commission considered Memorandum 2009-16 and its First Supplement, reporting on the Commission's 2009 legislative program.

The First Supplement discussed Senate Bill 105 (Harman), which would implement the Commission's recommendation on *Donative Transfer Restrictions*, 38 Cal. L. Revision Comm'n Reports 107 (2008). The Commission decided against recommending the amendment to the definition of "care custodian" discussed at page 5 of the supplement, but would not oppose such an amendment if the Legislature chose to make it.

STUDY H-403 — MARKETABLE RECORD TITLE: UNEXERCISED OPTION

The Commission considered Memorandum 2009-21, introducing a study of the expiration of record notice of an option to purchase real property.

The Commission directed the staff to prepare a draft tentative recommendation to implement the proposal presented in the memorandum, with one issue flagged for further discussion: When should a recorded notice of an option expire, if the notice does not indicate the expiration date of the option?

STUDY H-855 — STATUTORY CLARIFICATION AND SIMPLIFICATION OF CID LAW

The Commission considered Memorandum 2009-17, which discusses the status of the effort to review and revise the proposal on statutory clarification and simplification of CID law, with input from the Real Property Law Section of the State Bar and other interested persons and groups.

In revising the proposed law, the Commission will proceed as follows:

(1) Noncontroversial substantive improvements will be retained.

(2) Changes in wording that are necessary to clarify unclear language in existing law will be retained.

(3) Improvements to the structural organization of the Davis-Stirling Common Interest Development Act will be retained.

(4) The attempt to integrate applicable elements of the Corporations Code into the Davis-Stirling Common Interest Development Act will be abandoned. Where appropriate, cross-references to relevant provisions of the Corporations Code may be added to the proposed law, in statutory or Comment language.

(5) The general attempt to make the language of existing law simpler and easier to understand will be abandoned. But see (2) above.

The staff will meet with the Real Property Law Section Working Group to explain those decisions and to discuss how the Working Group can offer

assistance. As the staff completes the revision of discrete portions of the proposed law, those portions will be presented to the Commission and the public for review and comment.

STUDY H-856 — COMMON INTEREST DEVELOPMENT LAW: NONRESIDENTIAL ASSOCIATIONS

The Commission considered Memorandum 2009-18 and its First Supplement, discussing nonresidential common interest developments. The Commission adopted the staff recommendations made in those materials.

STUDY H-857 — COMMON INTEREST DEVELOPMENT LAW: SMALL ASSOCIATIONS

The Commission considered Memorandum 2009-19 and its First, Second, Third, and Fourth Supplements, discussing a staff draft of a tentative recommendation on member elections in small associations.

The Commission decided to table the study. That decision will be revisited in connection with the Commission's next memorandum on New Topics and Priorities.

STUDIES J-1404 & J-1450 — STATUTES MADE OBSOLETE BY TRIAL COURT RESTRUCTURING: PART 5

The Commission considered Memorandum 2009-20, discussing further work relating to statutes made obsolete by trial court restructuring. For purposes of preparing a tentative recommendation later this year, the Commission made the following decisions:

Definitions for Purposes of TCEPGA (Gov't Code § 71601)

The Commission approved technical revisions to Government Code Section 71601, as shown on page 5 of Memorandum 2009-20.

Existing Statutes Governing Writ Jurisdiction (Code Civ. Proc. §§ 1068, 1085, 1103)

Code of Civil Procedure Section 1068 should be amended as follows:

Code Civ. Proc. § 1068 (amended). Courts authorized to grant writ of review

1068. (a) A writ of review may be granted by any court when an inferior tribunal, board, or officer, exercising judicial functions, has exceeded the jurisdiction of ~~such~~ that tribunal, board, or officer, and there is no appeal, nor, in the judgment of the court, any plain, speedy, and adequate remedy.

(b) The appellate division of the superior court may grant a writ of review directed to the superior court in a limited civil case subject to the appellate jurisdiction of the appellate division, or in a misdemeanor or infraction case subject to the appellate jurisdiction of the appellate division. Where the appellate division grants a writ of review directed to the superior court, the superior court is an inferior tribunal for purposes of this chapter.

Comment. Subdivision (b) of Section 1068 is amended to more closely track the language of Article VI, Section 10, of the California Constitution. This is not a substantive change.

The amendment helps clarify the treatment of a small claims case. An appeal from a judgment in a small claims case is not within the jurisdiction of the appellate division. Rather, such an appeal consists of a new hearing before a judicial officer other than the judicial officer who heard the action in the small claims division. See Section 116.770(a). Because the appellate division lacks jurisdiction of a small claims appeal, the appellate division also lacks authority to review a judgment or a prejudgment ruling in a small claims case by way of extraordinary writ. See Cal. Const. art. VI, § 10.

Section 1068 is also amended to make a stylistic revision.

Code of Civil Procedure Section 1085 should be amended as follows:

Code Civ. Proc. § 1085 (amended). Courts authorized to grant writ of mandate

1085. (a) A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by ~~such~~ that inferior tribunal, corporation, board, or person.

(b) The appellate division of the superior court may grant a writ of mandate directed to the superior court in a limited civil case subject to the appellate jurisdiction of the appellate division, or in a misdemeanor or infraction case subject to the appellate jurisdiction of the appellate division. Where the appellate division grants a writ of ~~review~~ mandate directed to the superior court, the superior court is an inferior tribunal for purposes of this chapter.

Comment. The first sentence of subdivision (b) of Section 1085 is amended to more closely track the language of Article VI, Section 10, of the California Constitution. This is not a substantive change.

The amendment helps clarify the treatment of a small claims case. An appeal from a judgment in a small claims case is not within the jurisdiction of the appellate division. Rather, such an appeal consists of a new hearing before a judicial officer other than the judicial officer who heard the action in the small claims division. See Section 116.770(a). Because the appellate division lacks jurisdiction of a small claims appeal, the appellate division also lacks authority to review a judgment or a prejudgment ruling in a small claims case by way of extraordinary writ. See Cal. Const. art. VI, § 10.

The second sentence of subdivision (b) is amended to refer to a writ of mandate instead of a writ of review.

Section 1085 is also amended to make a stylistic revision.

Code of Civil Procedure Section 1103 should be amended as follows:

Code Civ. Proc. § 1103 (amended). Courts authorized to grant writ of prohibition

1103. (a) A writ of prohibition may be issued by any court to an inferior tribunal or to a corporation, board, or person, in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. It is issued upon the verified petition of the person beneficially interested.

(b) The appellate division of the superior court may grant a writ of prohibition directed to the superior court in a limited civil case subject to the appellate jurisdiction of the appellate division, or in a misdemeanor or infraction case subject to the appellate jurisdiction of the appellate division. Where the appellate division grants a writ of ~~review~~ prohibition directed to the superior court, the superior court is an inferior tribunal for purposes of this chapter.

Comment. The first sentence of subdivision (b) of Section 1103 is amended to more closely track the language of Article VI, Section 10, of the California Constitution. This is not a substantive change.

The amendment helps clarify the treatment of a small claims case. An appeal from a judgment in a small claims case is not within the jurisdiction of the appellate division. Rather, such an appeal consists of a new hearing before a judicial officer other than the judicial officer who heard the action in the small claims division. See Section 116.770(a). Because the appellate division lacks jurisdiction of a small claims appeal, the appellate division also lacks authority to review a judgment or a prejudgment ruling in a small claims case by way of extraordinary writ. See Cal. Const. art. VI, § 10.

The second sentence of subdivision (b) is amended to refer to a writ of prohibition instead of a writ of review.

New Provisions Relating to Writ Jurisdiction in a Small Claims Case

The Commission considered whether to propose new provisions relating to writ jurisdiction in a small claims case, as discussed on pages 10-13 of Memorandum 2009-20. The Commission decided not to make any such proposal at this time. The staff should alert the Commission if it becomes appropriate to revisit this matter.

Appellate Jurisdiction of Bail Forfeiture

The Commission decided to postpone further work to clarify appellate jurisdiction of bail forfeiture until the Judicial Council has explored internal options on the matter.

Bank Accounts (Gov't Code §§ 53679, 71381)

The Commission approved the amendment of Government Code Section 53679 shown on pages 16-17 of Memorandum 2009-20.

The Commission also approved the amendment of Government Code Section 71381 shown on page 18 of the memorandum, but the staff should revise the leadline such that it will be appropriate after the amendment is made.

Municipal Court Marshals (Penal Code § 13510)

The Commission approved the amendment of Penal Code Section 13510 shown on pages 18-20 of Memorandum 2009-20.

STUDY L-623 — PRESUMPTIVELY DISQUALIFIED BENEFICIARIES

The Commission considered Memorandum 2009-22 and its First and Second Supplements, introducing a study of presumptively disqualified beneficiaries.

The Commission will wait to receive input from the Executive Committee of the Trusts and Estates Section of the State Bar, and other interested persons and groups, before taking further action on this study.

☐ APPROVED AS SUBMITTED

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

_____
Date

_____
Chairperson

_____
Executive Secretary