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MINUTES OF MEETING  
CALIFORNIA LAW REVISION COMMISSION  
AUGUST 28, 2009  
SACRAMENTO

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A meeting of the California Law Revision Commission was held in Sacramento on August 28, 2009.

**Commission:**

*Present:* Pamela L. Hemminger, Chairperson  
Diane Boyer-Vine, Legislative Counsel  
Susan Duncan Lee, Vice-Chairperson  
William E. Weinberger  
Justice John Zebrowski (ret.)

*Absent:* Ellen Corbett, Senate Member  
Noreen Evans, Assembly Member  
Sidney Greathouse  
Frank Kaplan

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

**Consultants:** None

**Other Persons:**

Kazuko K. Artus, San Francisco  
Stephen M. Boreman, Slote & Links  
Oliver Burford, Executive Council of Homeowners  
Lucinda Calvo, University of California Davis Law School student  
Cindy Dole, University of California Davis Law School graduate  
John D. Garvic, Executive Council of Homeowners  
Brent Kocal, Kocal Properties / California Association of Community Managers Stakeholders Group  
Kerry Mazzoni, Executive Council of Homeowners  
Daniel Pone, Judicial Council  
Dick Pruess, Community Associations Institute  
Craig Stevens, Marwest Real Estate / California Association of Community Managers Stakeholders Group  
Jennifer Wada, California Association of Community Managers

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MINUTES OF JUNE 10, 2009, COMMISSION MEETING

1       The Commission approved the Minutes of the June 10, 2009, Commission  
2 meeting as submitted by the staff.

ADMINISTRATIVE MATTERS

3       **Meeting Schedule**

4       The Commission considered Memorandum 2009-29, relating to the  
5 Commission’s meeting schedule.

6       The Commission changed the dates and times for the remaining 2009  
7 meetings. The revised schedule is as follows:

	<b>October 2009</b>	<b>Sacramento</b>
8	Oct. 22 (Thur.)	9:00 am – 4:00 pm
9		
10	<b>December 2009</b>	<b>Los Angeles</b>
11	Dec. 17 (Thur.)	10:00 am – 4:00 pm

12       The staff will research flight schedules for the December 2009 meeting, to  
13 determine whether the starting time for that meeting should be changed. That  
14 issue will be discussed at the October 2009 meeting.

15       The Commission approved the following meeting schedule for 2010:

	<b>February 2010</b>	<b>Sacramento</b>
16	Feb. 18 (Thur.)	9:00 am – 4:00 pm
17		
18	<b>April 2010</b>	<b>Sacramento</b>
19	April 22 (Thur.)	9:00 am – 4:00 pm

1	<b>June 2010</b>	<b>Sacramento</b>
2	June 15 (Tues.)	9:00 am – 4:00 pm
3	<b>August 2010</b>	<b>Sacramento</b>
4	Aug. 19 (Thur.)	9:00 am – 4:00 pm
5	<b>October 2010</b>	<b>Sacramento</b>
6	Oct. 21 (Thur.)	9:00 am – 4:00 pm
7	<b>December 2010</b>	<b>Burbank</b>
8	Dec. 16 (Thur.)	10:00 am – 4:00 pm

9 **Election of Officers**

10 The Commission considered Memorandum 2009-30, relating to the election of  
11 Commission officers. The Commission elected Susan Duncan Lee as Chairperson  
12 and Justice John Zebrowski (ret.) as Vice Chairperson for the term commencing  
13 September 1, 2009, and ending August 31, 2010.

14 **Report of Executive Secretary**

15 *Personnel*

16 The Executive Secretary recognized University of California Davis Law  
17 School graduate Cindy Dole, who has agreed to work for the Commission as a  
18 volunteer for a year, starting in October.

19 The Executive Secretary also recognized University of California Davis Law  
20 School student Lucinda Calvo. Ms. Calvo served as a volunteer during the  
21 summer of 2009.

22 *Budget*

23 The Executive Secretary reported that the recently enacted state budget does  
24 not make any agency-specific changes to the Commission's budget.

LEGISLATIVE PROGRAM

25 The Commission considered Memorandum 2009-31, reporting on the status  
26 of the Commission's 2009 legislative program. The staff supplemented the  
27 memorandum orally, noting that the Commission's resolution of authority  
28 (ACR 49 (Evans)) had been amended to remove language precluding the  
29 Commission from making any recommendations in connection with the  
30 proposed new study of charter schools.

1           STUDY H-855 — COMMON INTEREST DEVELOPMENT LAW: STATUTORY  
2                           CLARIFICATION AND SIMPLIFICATION OF CID LAW

3           The Commission considered Memorandum 2009-33 and its First and Second  
4 Supplements, discussing a staff draft of a proposed recodification of the Davis-  
5 Stirling Common Interest Development Act.

6           The Commission approved the draft for inclusion in a tentative  
7 recommendation, subject to the following changes:

8           **Proposed Civil Code Section 4235. Amendment of Governing Documents to**  
9                           **Correct Cross-Reference**

10          Proposed Civil Code Section 4235 will be revised along the following lines  
11 (with conforming changes to the section’s Comment and Staff Note):

12                   4235. Notwithstanding any other provision of law or provision  
13 of the governing documents, if the governing documents include a  
14 reference to a provision of the Davis Stirling Common Interest  
15 Development Act that ~~has been~~ was repealed and continued in a  
16 new provision by the act that added this section, the board may  
17 amend the governing documents, solely to correct the cross-  
18 reference, by adopting a board resolution that shows the correction.

19           **Proposed Civil Code Section 4355. Application of Rulemaking Procedure**

20          The Comment to proposed Civil Code Section 4355 will be revised to correct  
21 an error, as recommended on page 2 of the First Supplement to Memorandum  
22 2009-33.

23           **Proposed Civil Code Section 4360. Approval of Rule Change**

24          The Comment and Staff Note to proposed Civil Code Section 4360 will be  
25 revised as discussed on page 3 of the First Supplement to Memorandum 2009-33.

26           **Proposed Civil Code Section 4930. Limitation on Meeting Content**

27          Proposed Civil Code Section 4930 will be revised as recommended on page 5  
28 of the First Supplement to Memorandum 2009-33.

29           **Proposed Civil Code Section 5110. Election Inspector**

30          Proposed Civil Code Section 5110 will be revised as recommended on page 6  
31 of the First Supplement to Memorandum 2009-33.

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

3           The Commission considered Memorandum 2009-32 and its First and Second  
4 Supplements, discussing the application of the Davis-Stirling Common Interest  
5 Development Act (“Davis-Stirling Act”) to nonresidential CIDs.

6           The Commission directed the staff to prepare proposed legislation that would  
7 apply all of the provisions discussed in the memorandum to nonresidential CIDs,  
8 except for the following provisions, which would be made inapplicable to  
9 nonresidential CIDs:

- 10           • The provisions of Civil Code Section 1353 that require notice if a  
11 development is within an airport influence area or within the  
12 jurisdiction of the San Francisco Bay Conservation and  
13 Development Commission.
- 14           • Civil Code Section 1353.7, providing that an association may not  
15 prohibit the use of fire retardant roofing materials that are  
16 required by law. However, a nonresidential CID should be subject  
17 to a more general statement of the relationship between the  
18 governing documents and the law, along the lines of Civil Code  
19 Section 1378(a)(3).
- 20           • Civil Code Sections 1363(f), 1363(i), and 1365.2, relating to records  
21 access.
- 22           • Civil Code Sections 1363(d)-(e), (h), and (i), relating to board  
23 meetings.
- 24           • Civil Code Sections 1363.03, 1363.04, and 1363.09, relating to  
25 member elections.
- 26           • Civil Code Sections 1365.1, 1366(a) (last two sentences), (d)-(f), and  
27 1366.2, relating to assessment.
- 28           • Civil Code Sections 1367.1(c), (n), 1367.4, and 1367.5, relating to  
29 assessment collection.
- 30           • Civil Code Sections 1363.1 and 1363.2, relating to managing agents.
- 31           • Civil Code Sections 1350.7, 1363.07, 1365.2.5, and 1365.7, which  
32 appear, by their terms, to be inapplicable to a nonresidential CID.  
33 The staff will inquire further to determine whether Section 1365.3  
34 has any application to a nonresidential CID.

35           The Commission expressed a preference that the proposed law be drafted as a  
36 separate stand-alone body of law governing nonresidential CIDs, rather than as a  
37 set of exemptions from the provisions of the Davis-Stirling Act.

1                                   STUDY J-1404 — STATUTES MADE OBSOLETE  
2                                   BY TRIAL COURT RESTRUCTURING: PART 5

3   **Memorandum 2009-34 and Its Supplements**

4       The Commission considered Memorandum 2009-34 and its First, Second,  
5   Third, and Fourth Supplements, discussing further work relating to statutes  
6   made obsolete by trial court restructuring. The Commission also considered a  
7   letter from the California Public Defenders Association, which was distributed at  
8   the meeting. That letter is attached as an exhibit to the Fifth Supplement to  
9   Memorandum 2009-34.

10     Subject to the revisions discussed below and conforming revisions of the  
11   preliminary part, the Commission approved the draft attached to Memorandum  
12   2009-34 as a tentative recommendation, to be posted to the Commission’s website  
13   and circulated for comment.

14   *Municipal Court Marshals (Penal Code § 13510)*

15     The tentative recommendation should include the proposed revisions to  
16   Penal Code Section 13510 that are shown on pages 2-3 of the First Supplement to  
17   Memorandum 2009-34.

18   *Municipal Court Bank Accounts (Gov’t Code § 71381)*

19     The tentative recommendation should not include any amendment of  
20   Government Code Section 71381.

21   *Writ Jurisdiction (Code Civ. Proc. §§ 1068, 1085, 1103)*

22     The tentative recommendation should not include any amendment of Code of  
23   Civil Procedure Section 1068.

24     The tentative recommendation should include the following amendment of  
25   Code of Civil Procedure Section 1085:

26                   1085. (a) A writ of mandate may be issued by any court to any  
27                   inferior tribunal, corporation, board, or person, to compel the  
28                   performance of an act which the law specially enjoins, as a duty  
29                   resulting from an office, trust, or station, or to compel the  
30                   admission of a party to the use and enjoyment of a right or office to  
31                   which the party is entitled, and from which the party is unlawfully  
32                   precluded by ~~such~~ that inferior tribunal, corporation, board, or  
33                   person.

34                   (b) The appellate division of the superior court may grant a writ  
35                   of mandate directed to the superior court in a limited civil case or

1 in a misdemeanor or infraction case. Where the appellate division  
2 grants a writ of ~~review~~ mandate directed to the superior court, the  
3 superior court is an inferior tribunal for purposes of this chapter.

4 **Comment.** Subdivision (a) of Section 1085 is amended to make a  
5 stylistic revision.

6 Subdivision (b) is amended to refer to a writ of mandate instead  
7 of a writ of review.

8 The tentative recommendation should include the following amendment of  
9 Code of Civil Procedure Section 1103:

10 1103. (a) A writ of prohibition may be issued by any court to an  
11 inferior tribunal or to a corporation, board, or person, in all cases  
12 where there is not a plain, speedy, and adequate remedy in the  
13 ordinary course of law. It is issued upon the verified petition of the  
14 person beneficially interested.

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

21 **Comment.** Subdivision (b) of Section 1103 is amended to refer  
22 to a writ of prohibition instead of a writ of review.

23 As suggested by the Civil and Small Claims Advisory Committee of the  
24 Judicial Council, the Commission will do further work to develop a proposal that  
25 would make clear which tribunal has jurisdiction of extraordinary writs in small  
26 claims cases. The staff shall coordinate with the Civil and Small Claims Advisory  
27 Committee in this effort, while following normal Commission procedures.

28 *Compensation under Evidence Code Section 731*

29 The tentative recommendation should include the proposed revisions to  
30 Evidence Code Section 731 that are shown on pages 2-3 of the Third Supplement  
31 to Memorandum 2009-34.

32 The tentative recommendation should also include the proposed revisions to  
33 Evidence Code Sections 752 and 753 that are shown on page 4 of the Third  
34 Supplement to Memorandum 2009-34.

35 *Employment, Assignment, and Compensation of Interpreters and Translators (Gov't*  
36 *Code §§ 26806, 68092, 69894.5)*

37 To make clear that the Commission's intent is to remove material made  
38 obsolete by trial court restructuring, and *not* to pass judgment on existing

1 substantive law relating to the provision of interpreters and translators, the  
2 tentative recommendation should include language to that effect in the  
3 Comments and narrative part of the tentative recommendation. The staff should  
4 present this language to the Chair for approval before finalizing the tentative  
5 recommendation.

6 The tentative recommendation should include a note specially soliciting  
7 comment on whether proposed Government Code Section 69894.5 should  
8 provide that the court, rather than the interpreter, is to collect fees for  
9 interpretation.

### 10 **Memorandum 2009-35 and Its Supplement**

11 The Commission considered Memorandum 2009-35 and its First Supplement,  
12 relating to rights and responsibilities of the superior courts, as compared to the  
13 counties, with respect to trial court operations.

14 For purposes of drafting a tentative recommendation in the future, the  
15 Commission made the following preliminary decisions:

#### 16 *Fines, Bail Forfeitures, and Bail Deposits for Violation of the Alcoholic Beverage Control* 17 *Act (Bus. & Prof. Code § 25762)*

18 Business and Professions Code Section 25762 should be amended as shown  
19 on pages 8-9 of Memorandum 2009-35. The tentative recommendation should  
20 include a note soliciting comment on (1) whether the amendment needs to  
21 address civil cases as well as criminal cases, and (2) how the bail deposit aspects  
22 of Section 25762 interrelate with other provisions that govern bail deposits,  
23 particularly Government Code Sections 53647.5, 53679, and 77009, and Penal  
24 Code Section 1463.1.

#### 25 *Small Claims Advisory Services (Code Civ. Proc. § 116.940)*

26 Code of Civil Procedure Section 116.940 should be amended as shown on  
27 pages 13-14 of Memorandum 2009-35. The tentative recommendation should  
28 include a note soliciting comment on (1) the current division of responsibility for  
29 small claims advisory services, and (2) whether the proposed amendment would  
30 be an appropriate allocation of such responsibility.

#### 31 *Witness and Juror Fees (Code Civ. Proc. §§ 631.1, 631.2; Gov't Code §§ 29603, 68098)*

32 Code of Civil Procedure Section 631.1 should be repealed as shown on page  
33 21 of Memorandum 2009-35. Code of Civil Procedure Section 631.2 should be  
34 amended as shown on pages 21-22 of Memorandum 2009-35.



1 The tentative recommendation should include the proposed revisions to  
2 Government Code Section 29603 that are shown on pages 1-2 of the First  
3 Supplement to Memorandum 2009-35.

4 The tentative recommendation should include the proposed revisions to  
5 Government Code Section 68098 that are shown on page 2 of the First  
6 Supplement to Memorandum 2009-35.

7 *Reimbursement of Judges' Expenses for Attending Institutes and Seminars (Gov't Code*  
8 *§ 68551)*

9 Government Code Section 68551 should be amended as shown on page 24 of  
10 Memorandum 2009-35.

11 *Uniform Accounting System for Trial Courts (Gov't Code §§ 71380, 71381, 71382,*  
12 *71384)*

13 Government Code Section 71380 should be amended as shown on page 27 of  
14 Memorandum 2009-35.

15 Government Code Section 71381 should be amended along the following  
16 lines:

17 ~~71381. Such system may provide for bank accounts for each~~  
18 ~~municipal court, in which money received by such court may be~~  
19 ~~deposited and disbursed as provided therein, and for such~~ The  
20 accounting system under this article may provide for any records,  
21 reports, and procedures as the ~~Controller~~ Judicial Council, in  
22 consultation with Controller, may deem necessary to carry out the  
23 purposes of this article.

24 **Comment.** Section 71381 is amended to reflect unification of the  
25 municipal and superior courts pursuant to former Section 5(e) of  
26 Article VI of the California Constitution. For guidance on bank  
27 accounts for the superior courts, see Section 68084.

28 Section 71381 is also amended to reflect enactment of the Trial  
29 Court Funding Act. See Section 77206 (responsibilities of Judicial  
30 Council and Controller for fiscal affairs of trial courts).

31 Government Code Section 71382 should be amended along the following  
32 lines:

33 71382. Every judge of a superior court, or the clerk of any ~~such~~  
34 superior court, who willfully fails to keep accounts pursuant to the  
35 system or to account for the money paid into and disbursed by the  
36 court pursuant to the system established by the ~~Controller~~ Judicial  
37 Council, in consultation with the Controller, pursuant to this article  
38 is guilty of a misdemeanor.

1           **Comment.** Section 71382 is amended to reflect enactment of the  
2           Trial Court Funding Act. See Section 77206 (responsibilities of  
3           Judicial Council and Controller for fiscal affairs of trial courts).  
4           Section 71382 is also amended to make a stylistic revision.

5           Government Code Section 71384 should be amended as shown on page 27 of  
6           Memorandum 2009-35.

7                           STUDY L-623 — PRESUMPTIVELY DISQUALIFIED FIDUCIARY

8           The Commission considered Memorandum 2009-36 and its First Supplement,  
9           presenting public comment on the presumptive disqualification of a fiduciary  
10          who is a “disqualified person” under Probate Code Section 21350. The  
11          Commission decided to suspend any further work on this study until after the  
12          Legislature and the Governor have taken final action on Senate Bill 105  
13          (Harman).

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

\_\_\_\_\_ Date  
\_\_\_\_\_ Chairperson  
\_\_\_\_\_ Executive Secretary