A meeting of the California Law Revision Commission was held in Sacramento on February 25, 2010.

**Commission:**

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

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

**Staff:**

Brian Hebert, Executive Secretary  
Barbara Gaal, Chief Deputy Counsel  
Steve Cohen, Staff Counsel  
Cindy Dole, Visiting Fellow

*Absent:* Catherine Bidart, Staff Counsel

**Consultants:** None

**Other Persons:**

Stephen M. Boreman  
Kerry Mazzoni, Executive Council of Homeowners  
Duncan R. McPherson  
Nancy Peverini, Consumer Attorneys of California  
Eric Premack, Charter Schools Development Center  
Dick Pruess, Community Associations Institute-CLAC  
Matt Traverso, Consumer Attorneys of California  
Jeff Wagner
Minutes of December 17, 2009, Commission Meeting

The Commission approved the Minutes of the December 17, 2009, Commission meeting without change.

Administrative Matters

Report of Executive Secretary

The Executive Secretary reported that the Governor’s proposed budget would change the Commission’s funding source, from the General Fund to reimbursement from the Legislature.

In addition, the Executive Secretary reported that the Governor has ordered a five percent reduction in staff costs for the 2010-2011 fiscal year. The staff has developed a plan to achieve that savings through voluntary staff time reductions.

Handbook of Practices and Procedures

The Commission considered Memorandum 2010-1, relating to the Commission’s Handbook of Practices and Procedures. Except as noted below, the revisions recommended in that memorandum are acceptable to the Commission. The staff should prepare a new draft of the Handbook for the Commission to consider, which incorporates those revisions and is consistent with the following decisions:
Rule 1.1. Officers

Rule 2.4.2. Meeting Starting Time

The principle that a Commission member may act as temporary Chair should be broadened. It should apply not only when the Chair and Vice-Chair are absent from a meeting, but also when the Chair and Vice-Chair are unavailable between meetings and action is required.

Rule 1.2. Recognition of Service

Rule 1.2 should be revised to delete the sentence that says: “Certificates are awarded to members at completion of their service on the Commission.” Although certificates will not be awarded routinely, the Commission and its staff may still exercise discretion to award a certificate on completion of a member’s service, such as when a member has not had an opportunity to serve as the Chair.

Rule 1.4.1. Photo Identification Cards

This rule should be retained. The staff will prepare photo identification cards for Commissioners and staff members who need them.

Rule 2.1.1. Meeting Dates and Locations

Rule 2.1.1 should be revised as follows:

Regular meetings ordinarily are scheduled bimonthly once every two months, or more frequently as required. A meeting is not held during the month of August. During the legislative session, meetings will be scheduled to accommodate the schedule of the Commission’s legislative members; this will usually involve meeting on Thursday in Sacramento.11

Meetings When the Commission’s budget permits, meetings are scheduled so that the Commission meets in various cities around the state;12 most meetings are in Sacramento, Los Angeles, San Francisco, and San Diego, state.12 The Commission may deviate from this practice if necessary due to budget constraints.13

Rule 2.5.1. Confidential Communication to Commission

Rule 2.5.1 should be revised as follows:

11/ Minutes (Nov. 1996); Minutes (Sept. 1995); current practice.
12/ Minutes (April 1987).
13/ See Memorandum 2009-13; Minutes (April 2009).
The Commission does not ordinarily receive communications on a confidential basis. The notice on the cover of a Commission tentative recommendation should state that any comments received will be a part of the public record and may be considered at a public meeting. The same statement should be included in the footer on the first page of each staff memorandum.

The footer on the first page of each staff memorandum should be expanded, as follows:

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting.

Rules 6.1-6.7 & Appendix E. Printing and Distribution Policies

As discussed at pages 9-10 of Memorandum 2010-1, the staff should investigate whether to discontinue the softcover blue pamphlets. After completing its investigation, the staff should report back to the Commission and make recommendations on how to revise the printing and distribution policies in the Handbook.

Appendices

It is not necessary to include in the Handbook the text of the Open Meeting Act or statutes relating to conflicts of interest and disqualification from decision-making. It is sufficient to include citations to those laws.

However, the staff should annually prepare and distribute an administrative memo that summarizes key good governance requirements applicable to the Commission, such as conflict of interest rules, public records laws, and the Open Meeting Act.

2010 Meeting Schedule

The Commission considered Memorandum 2010-2, discussing the schedule for the Commission’s remaining meetings in 2010. The Commission decided to change the date of the April meeting, from April 22, 2010, to April 15, 2010. The Commission also decided that the year’s remaining Sacramento meetings will begin at 10:00 a.m.
New Topics and Priorities

The Commission considered Memorandum 2010-4, which noted that the Legislature might refer a new study topic to the Commission later this year. The Commission authorized the staff to immediately begin work on a topic referred in this way, if the referral occurs between scheduled Commission meetings.

LEGISLATIVE PROGRAM

The Commission considered Memorandum 2010-3, reporting on the status of the legislative program for 2010. The Commission made the following decisions in connection with that topic:

Statutes Made Obsolete by Trial Court Restructuring: Part 5

Memorandum 2010-3 explained that the staff had applied to have the proposed legislation relating to Trial Court Restructuring: Part 5 (2009) included in the civil omnibus bill that will be introduced this year by the Assembly Committee on Judiciary. However, due to the likelihood of political opposition to the recommended revisions to Government Code Sections 26806 and 69894.5, the staff revised the application to withdraw those provisions from consideration. The Commission approved that approach. The Commission also approved the possibility of contacting the opponents of those proposed revisions to urge them to seek the introduction of legislation to address their concerns about the two provisions. The Commission could then evaluate whether further changes are required to implement its recommendation with respect to those provisions.

Deadly Weapons

See entry in these minutes for Study M-300.

STUDY G-200 — CHARTER SCHOOLS AND THE GOVERNMENT CLAIMS ACT

The Commission considered Memorandum 2010-6, discussing the tort liability and immunity provisions of the Government Claims Act, and Memorandum 2010-7, discussing the defense and indemnification provisions of the Government Claims Act. No decisions were required or made in connection with those materials.
STUDY H-855 — STATUTORY CLARIFICATION AND SIMPLIFICATION OF CID LAW

The Commission considered Memorandum 2010-8, presenting a staff draft of a preliminary part of a tentative recommendation on *Statutory Clarification and Simplification of CID Law*, and Memorandum 2010-9, presenting a staff draft of conforming revisions for inclusion in the tentative recommendation.

The Commission approved both drafts for inclusion in the tentative recommendation, with two changes:

1. The tentative recommendation will circulate for a public comment period of 90 to 120 days.
2. The conforming revision in Civil Code Section 1633.3 will be revised to refer to Part 4 (commencing with Section 4000) of Division 4 of the Civil Code.

With those changes, the Commission approved release of the tentative recommendation for public comment.

STUDY H-856 — COMMON INTEREST DEVELOPMENTS:

NONRESIDENTIAL ASSOCIATIONS

The Commission considered Memorandum 2010-10 and the draft legislation presented by that memorandum, concerning *Common Interest Developments: Nonresidential Associations*.

The Commission approved the draft legislation, subject to the following decisions:

**Proposed Civ. Code § 6538**

Proposed Section 6538 is deleted.

**Proposed Civ. Code § 6600**

The staff will revise proposed Section 6600, which would provide a hierarchy of supremacy for different types of governing documents, to provide an exception for a provision of a governing document that is required by law. Such a provision should not be subordinate to the terms of a superior document. The revised provision will be submitted for Commission review in a future memorandum.

**Proposed Civ. Code § 6612**

Proposed Section 6612 is revised as follows:
6612. Notwithstanding a contrary provision of the governing
documents, in the event of a conflict between a provision of a
governing document and any governing provision of law,
including, but not limited to, a statute, ordinance, regulation,
building code, or court decision, the governing provision of law
shall prevail.

Proposed Civ. Code § 6800

Proposed Section 6800 is deleted.

Proposed Civ. Code § 6870(d)
The staff will revise proposed Section 6870(d), which would continue existing
Section 1375(d), to better express the meaning of a cross reference to Section
1363.05. The revised provision will be submitted for Commission review in a
future memorandum.

STUDY J-1451 — TRIAL COURT RESTRUCTURING: RIGHTS AND RESPONSIBILITIES OF
THE COUNTY AS COMPARED TO THE SUPERIOR COURT

The Commission considered Memorandum 2009-50, its First Supplement, and
Memorandum 2010-5, discussing further work relating to the rights and
responsibilities of the county as compared to the superior court.

For purposes of drafting a tentative recommendation, the Commission made
the following preliminary decisions.

Government Code Section 72004 and Related Provisions

Collection of Fees “In All Cases”

Government Code Section 24350 should be amended as shown on page 4 of
the First Supplement to Memorandum 2009-50.

Section 68083 should be added to the Government Code, along the following
lines:

68083. Each salaried officer of a superior court shall charge,
collect, and promptly deposit the fees allowed in each case, as
provided by law. No salaried officer who collects fees pursuant to
this section shall be required to accept coin in payment of those
fees.

Comment. Section 68083 continues material formerly located in
Section 24350, with revisions to reflect (1) the unification of the
municipal and superior courts pursuant to former Section 5(e) of
Article VI of the California Constitution, and (2) the enactment of
the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Sections 77000-77655). See, e.g., Sections 77003 (“court operations” defined), 77200 (state funding of “court operations”).

**Note: Comment Requested**

Section 24350 requires an officer to pay into the county treasury “the fees allowed by law in all cases, except those or a percentage of them allowed him or her ....” (Emphasis added.) The Commission specially solicits comment on whether any court officer may continue to receive a percentage of the fees collected by the officer. Proposed Section 68083 assumes that no one is still subject to such an arrangement. The Commission seeks to confirm that assumption.

The staff should investigate whether proposed Government Code Section 68083 should include an exception under which a salaried superior court officer would not have to collect any fees that would be a charge against the state. This would be akin to the exception in Government Code Section 24350 for fees “which are a charge against the county.”

*Deposit and Withdrawal of Trust Money*

Government Code Section 24351 should be amended as shown on page 8 of Memorandum 2009-50.

*Record of Fees, Compensation, and Fines Collected*

Government Code Section 24352 should be amended as shown on page 11 of Memorandum 2009-50.

*Collection of Money Payable into the County Treasury*

Government Code Section 24353 should be amended as shown on page 12 of Memorandum 2009-50. Section 68083.5 should be added to the Government Code, as shown on page 13 of Memorandum 2009-50.

*Remaining Provisions Cross-Referenced in Government Code Section 72004*

Government Code Sections 24351.5, 24355.2, 24356, 29350, and 29351 should not be revised.

*Disposition of Government Code Section 72004 Itself*

Government Code Section 72004 should be repealed, as follows:
72004. Sections 24350 to 24356, inclusive, and Sections 29350 and 29351 apply to officers of superior courts and to the disposition of fees collected by those officers.

Comment. Section 72004 is repealed because it is no longer necessary. Before trial court restructuring, it made certain provisions (Sections 24350-24356, 29350, and 29351) applicable to superior court officers and the disposition of fees by those officers. The substance of some of those provisions is no longer, or never has been, pertinent to courts. See Sections 24351, 24351.5, 24352, 24355.2, 24356, 29350, 29351. The pertinent material from the remaining provisions has been moved, and expressly applies to a superior court officer and the disposition of fees collected by the officer. See Section 68083 & Comment (continuing court-related material formerly located in Section 24350); Section 68083.5 & Comment (continuing court-related material formerly located in Section 24353).

Harb. and Nav. Code § 664

Harbors and Navigation Code Section 664 should not be revised.

Veh. Code § 42008

Vehicle Code Section 42008 should not be revised.

Educ. Code § 56159

The staff should continue to research this provision and then report back to the Commission.

Penal Code § 1463.22

Penal Code Section 1463.22 should be revised along the following lines:

1463.22. (a) Notwithstanding Section 1463, of the moneys deposited with the county treasurer pursuant to Section 1463, seventeen dollars and fifty cents ($17.50) for each conviction of a violation of Section 16028 of the Vehicle Code shall be deposited by the county treasurer in a special account and allocated to defray costs of municipal and superior courts incurred in administering Sections 16028, and 16030, and 16031 of the Vehicle Code. Any moneys in the special account in excess of the amount required to defray those costs shall be redeposited and distributed by the county treasurer pursuant to Section 1463.

(b) Notwithstanding Section 1463, of the moneys deposited with the county treasurer pursuant to Section 1463, three dollars ($3) for each conviction for a violation of Section 16028 of the Vehicle Code shall be initially deposited by the county treasurer in a special account, and shall be transmitted once per month to the Controller for deposit in the Motor Vehicle Account in the State
Transportation Fund. These moneys shall be available, when appropriated, to defray the administrative costs incurred by the Department of Motor Vehicles pursuant to Sections 16031, 16032, 16034, and 16035 of the Vehicle Code, and the administrative costs incurred by the Department of Motor Vehicles pursuant to Section 13365 of the Vehicle Code when the underlying charge is an infraction under Article 2 (commencing with Section 16020) of Chapter 1 of Division 7 of the Vehicle Code, or a misdemeanor under the same article. It is the intent of this subdivision to provide sufficient revenues to pay for all of the department’s costs in administering those sections provisions of the Vehicle Code.

(c) Notwithstanding Section 1463, of the moneys deposited with the county treasurer pursuant to Section 1463, ten dollars ($10) upon the conviction of, or upon the forfeiture of bail from, any person arrested or notified for a violation of Section 16028 of the Vehicle Code shall be deposited by the county treasurer in a special account and shall be transmitted monthly to the Controller for deposit in the General Fund.

Comment. Section 1463.22 is amended to reflect the unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution.

The section is further amended to reflect the repeal of cross-referenced provisions in the Vehicle Code, and the enactment of similar provisions in that code. See 1996 Cal. Stat. ch. 1126, §§ 6, 8 (enacting Vehicle Code Sections 16028 and 16030); 1984 Cal. Stat. ch. 1322, §§ 9, 12, 13, 15, 16 (enacting former Vehicle Code Sections 16028, 16031, 16032, 16034 and 16035, which were later repealed by their own terms).

☞ Note: Comment Requested

The Commission specially solicits comment on whether subdivision (a) should continue to provide that funds to defray court costs are under the county treasurer’s control, given the shift of funding court operations from the county to the state. See Gov’t Code §§ 77003 and Cal. R. Ct. 810 (“court operations” defined), 77009 (Trial Court Operations Fund), 77200 (state funding of trial court operations).

If not, how should subdivision (a) be amended? Specifically, which entity should control the funds to defray court costs, and where should the funds be deposited?
STUDY M-300 — NONSUBSTANTIVE REORGANIZATION OF
DEADLY WEAPON STATUTES

The staff reported that the Commission’s proposal on Nonsubstantive
Reorganization of Deadly Weapon Statutes has been introduced as two bills. The
main proposal, which would reorganize the material now located in Penal Code
Sections 12000-12809, is SB 1080 (Committee on Public Safety). The conforming
revisions are in SB 1115 (Committee on Public Safety).

The staff further reported that in preparing SB 1080, the Office of Legislative
Counsel found an incomplete cross-reference, which stems from existing law.
Specifically, existing Penal Code Section 12070(c)(2)(I) cross-refers to “Article 1
(commencing with Section 2080) of Chapter 4 of Division 3 of the Civil Code.”
The correct cross-reference is to “Article 1 (commencing with Section 2080) of
Chapter 4 of Title 6 of Part 4 of Division 3 of the Civil Code.”

With the staff’s permission, the Office of Legislative Counsel corrected that
cross-reference in the corresponding provision in SB 1080 (proposed Penal Code
Section 16960(i)).

The staff requested permission to make similar changes in the Commission’s
report, as follows:

- Proposed Penal Code Section 16960(i) should be revised to refer to
  “Article 1 (commencing with Section 2080) of Chapter 4 of Title 6
  of Part 4 of Division 3 of the Civil Code.”
- The Comment to Section 16960(i) should be revised to mention
  that an incomplete cross-reference has been corrected.
- The correction should also be noted in Appendix A to the
  Commission’s report (“Corrected Cross-References”).

The Commission approved those changes.

☐ APPROVED AS SUBMITTED

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