
MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
FEBRUARY 25, 2010
SACRAMENTO

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

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MINUTES OF DECEMBER 17, 2009, COMMISSION MEETING

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

ADMINISTRATIVE MATTERS

3 **Report of Executive Secretary**

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

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

10 **Handbook of Practices and Procedures**

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

1 *Rule 1.1. Officers*

2 *Rule 2.4.2. Meeting Starting Time*

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

7 *Rule 1.2. Recognition of Service*

8 Rule 1.2 should be revised to delete the sentence that says: "Certificates are
9 awarded to members at completion of their service on the Commission."

10 Although certificates will not be awarded routinely, the Commission and its
11 staff may still exercise discretion to award a certificate on completion of a
12 member's service, such as when a member has not had an opportunity to serve
13 as the Chair.

14 *Rule 1.4.1. Photo Identification Cards*

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

17 *Rule 2.1.1. Meeting Dates and Locations*

18 Rule 2.1.1 should be revised as follows:

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

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

30

31 ^{11/} Minutes (Nov. 1996); Minutes (Sept. 1995); current practice.

32 ^{12/} Minutes (April 1987).

33 ^{13/} See Memorandum 2009-13; Minutes (April 2009).

34 *Rule 2.5.1. Confidential Communication to Commission*

35 Rule 2.5.1 should be revised as follows:

1 The Commission does not ordinarily receive communications
2 on a confidential basis. The notice on the cover of a Commission
3 tentative recommendation should state that any comments received
4 will be a part of the public record and may be considered at a
5 public meeting. The same statement should be included in the
6 footer on the first page of each staff memorandum.

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

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

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

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

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

23 *Appendices*

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

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

31 **2010 Meeting Schedule**

32 The Commission considered Memorandum 2010-2, discussing the schedule
33 for the Commission's remaining meetings in 2010. The Commission decided to
34 change the date of the April meeting, from April 22, 2010, to April 15, 2010. The
35 Commission also decided that the year's remaining Sacramento meetings will
36 begin at 10:00 a.m.

1 **New Topics and Priorities**

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

LEGISLATIVE PROGRAM

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

9 **Statutes Made Obsolete by Trial Court Restructuring: Part 5**

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

21 **Deadly Weapons**

22 See entry in these minutes for Study M-300.

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

24 The Commission considered Memorandum 2010-6, discussing the tort
25 liability and immunity provisions of the Government Claims Act, and
26 Memorandum 2010-7, discussing the defense and indemnification provisions of
27 the Government Claims Act. No decisions were required or made in connection
28 with those materials.

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

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

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

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

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

15 STUDY H-856 — COMMON INTEREST DEVELOPMENTS:
16 NONRESIDENTIAL ASSOCIATIONS

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

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

22 **Proposed Civ. Code § 6538**

23 Proposed Section 6538 is deleted.

24 **Proposed Civ. Code § 6600**

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

31 **Proposed Civ. Code § 6612**

32 Proposed Section 6612 is revised as follows:

1 6612. Notwithstanding a contrary provision of the governing
2 documents, in the event of a conflict between a provision of a
3 ~~governing~~ document and any governing provision of law,
4 including, but not limited to, a statute, ordinance, regulation,
5 building code, or court decision, the ~~governing~~ provision of law
6 shall prevail.

7 **Proposed Civ. Code § 6800**

8 Proposed Section 6800 is deleted.

9 **Proposed Civ. Code § 6870(d)**

10 The staff will revise proposed Section 6870(d), which would continue existing
11 Section 1375(d), to better express the meaning of a cross reference to Section
12 1363.05. The revised provision will be submitted for Commission review in a
13 future memorandum.

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

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

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

21 **Government Code Section 72004 and Related Provisions**

22 *Collection of Fees "In All Cases"*

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

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

27
28 68083. Each salaried officer of a superior court shall charge,
29 collect, and promptly deposit the fees allowed in each case, as
30 provided by law. No salaried officer who collects fees pursuant to
31 this section shall be required to accept coin in payment of those
32 fees.

33 **Comment.** Section 68083 continues material formerly located in
34 Section 24350, with revisions to reflect (1) the unification of the
35 municipal and superior courts pursuant to former Section 5(e) of
36 Article VI of the California Constitution, and (2) the enactment of

1 the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch.
2 850 (see generally Sections 77000-77655). See, e.g., Sections 77003
3 (“court operations” defined), 77200 (state funding of “court
4 operations”).

5 **Note: Comment Requested**

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

14 The staff should investigate whether proposed Government Code Section
15 68083 should include an exception under which a salaried superior court officer
16 would not have to collect any fees that would be a charge against the state. This
17 would be akin to the exception in Government Code Section 24350 for fees
18 “which are a charge against the county.”

19 *Deposit and Withdrawal of Trust Money*

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

22 *Record of Fees, Compensation, and Fines Collected*

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

25 *Collection of Money Payable into the County Treasury*

26 Government Code Section 24353 should be amended as shown on page 12 of
27 Memorandum 2009-50.

28 Section 68083.5 should be added to the Government Code, as shown on page
29 13 of Memorandum 2009-50.

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

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

33 *Disposition of Government Code Section 72004 Itself*

34 Government Code Section 72004 should be repealed, as follows:
35

1 72004. Sections 24350 to 24356, inclusive, and Sections 29350 and
2 29351 apply to officers of superior courts and to the disposition of
3 fees collected by those officers.

4 **Comment.** Section 72004 is repealed because it is no longer
5 necessary. Before trial court restructuring, it made certain
6 provisions (Sections 24350-24356, 29350, and 29351) applicable to
7 superior court officers and the disposition of fees by those officers.
8 The substance of some of those provisions is no longer, or never
9 has been, pertinent to courts. See Sections 24351, 24351.5, 24352,
10 24355.2, 24356, 29350, 29351. The pertinent material from the
11 remaining provisions has been moved, and expressly applies to a
12 superior court officer and the disposition of fees collected by the
13 officer. See Section 68083 & Comment (continuing court-related
14 material formerly located in Section 24350); Section 68083.5 &
15 Comment (continuing court-related material formerly located in
16 Section 24353).

17 **Harb. and Nav. Code § 664**

18 Harbors and Navigation Code Section 664 should not be revised.

19 **Veh. Code § 42008**

20 Vehicle Code Section 42008 should not be revised.

21 **Educ. Code § 56159**

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

24 **Penal Code § 1463.22**

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

26
27 1463.22. (a) Notwithstanding Section 1463, of the moneys
28 deposited with the county treasurer pursuant to Section 1463,
29 seventeen dollars and fifty cents (\$17.50) for each conviction of a
30 violation of Section 16028 of the Vehicle Code shall be deposited by
31 the county treasurer in a special account and allocated to defray
32 costs of ~~municipal and~~ superior courts incurred in administering
33 Sections 16028, and 16030, ~~and 16031~~ of the Vehicle Code. Any
34 moneys in the special account in excess of the amount required to
35 defray those costs shall be redeposited and distributed by the
36 county treasurer pursuant to Section 1463.

37 (b) Notwithstanding Section 1463, of the moneys deposited with
38 the county treasurer pursuant to Section 1463, three dollars (\$3) for
39 each conviction for a violation of Section 16028 of the Vehicle Code
40 shall be initially deposited by the county treasurer in a special
41 account, and shall be transmitted once per month to the Controller
42 for deposit in the Motor Vehicle Account in the State

1 Transportation Fund. These moneys shall be available, when
2 appropriated, to defray the administrative costs incurred by the
3 Department of Motor Vehicles pursuant to ~~Sections 16031, 16032,~~
4 ~~16034, and 16035~~ Section 16030 of the Vehicle Code, and the
5 administrative costs incurred by the Department of Motor Vehicles
6 pursuant to Section 13365 of the Vehicle Code when the underlying
7 charge is an infraction under Article 2 (commencing with Section
8 16020) of Chapter 1 of Division 7 of the Vehicle Code, or a
9 misdemeanor under the same article. It is the intent of this
10 subdivision to provide sufficient revenues to pay for all of the
11 department's costs in administering those ~~sections~~ provisions of the
12 Vehicle Code.

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

20 **Comment.** Section 1463.22 is amended to reflect the unification
21 of the municipal and superior courts pursuant to former Section
22 5(e) of Article VI of the California Constitution.

23 The section is further amended to reflect the repeal of cross-
24 referenced provisions in the Vehicle Code, and the enactment of
25 similar provisions in that code. See 1996 Cal. Stat. ch. 1126, §§ 6, 8
26 (enacting Vehicle Code Sections 16028 and 16030); 1984 Cal. Stat.
27 ch. 1322, §§ 9, 12, 13, 15, 16 (enacting former Vehicle Code Sections
28 16028, 16031, 16032, 16034 and 16035, which were later repealed by
29 their own terms).

30 **Note: Comment Requested**

31 The Commission specially solicits comment on whether
32 subdivision (a) should continue to provide that funds to defray
33 court costs are under the county treasurer's control, given the shift
34 of funding court operations from the county to the state. See Gov't
35 Code §§ 77003 and Cal. R. Ct. 810 ("court operations" defined),
36 77009 (Trial Court Operations Fund), 77200 (state funding of trial
37 court operations).

38 If not, how should subdivision (a) be amended? Specifically,
39 which entity should control the funds to defray court costs, and
40 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)

Date

Chairperson

Executive Secretary