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MINUTES OF MEETING  
CALIFORNIA LAW REVISION COMMISSION  
JUNE 15, 2010  
SACRAMENTO

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A meeting of the California Law Revision Commission was held in Sacramento on June 15, 2010.

**Commission:**

*Present:* Susan Duncan Lee, Chairperson  
Diane Boyer-Vine, Legislative Counsel  
Ali Jahangiri

*Absent:* Ellen Corbett, Senate Member  
Noreen Evans, Assembly Member  
Sidney Greathouse  
Pamela L. Hemminger  
Justice John Zebrowski (ret.), Vice-Chairperson

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

**Consultants:** None

**Other Persons:**

David W. Baer, Executive Committee, State Bar Trusts and Estates Section  
Megan Glanville  
Patrick Maloney  
Daniel Pone, Judicial Council of California  
Eric Premack, Charter Schools Development Center

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OPERATION AS SUBCOMMITTEE

1       The Commission did not have sufficient members present at the June 15,  
2 2010, meeting to establish a quorum. Instead, those members who were present  
3 operated as a subcommittee. **Consequently, the decisions described in these**  
4 **minutes are provisional only.** The Commission will need to decide, at a future  
5 meeting, whether to ratify those decisions.

MINUTES OF APRIL 15, 2010, COMMISSION MEETING

6       The Commission approved the Minutes of the April 15, 2010, Commission  
7 meeting as submitted by the staff.

ADMINISTRATIVE MATTERS

8       **Recognition of Service**

9       The Commission recognized Professor J. Clark Kelso and Dean Elizabeth  
10 Rindskopf Parker of the McGeorge School of Law for the many years of service  
11 and support they have provided to the Commission. The Commission approved  
12 a staff proposal to print a statement of recognition in the Commission’s next  
13 Annual Report, and to present the statement to Professor Kelso and Dean  
14 Rindskopf Parker in person.

15       **Report of Executive Secretary**

16       The Executive Secretary reported that the budget proposal that is currently  
17 before the Legislature would provide for funding of the Commission’s

1 operations, for a single year, out of the budget of the Legislative Counsel, rather  
2 than from the general fund directly.

3 The Executive Secretary also reported that the Governor's Executive Order S-  
4 01-10 requires that the Commission participate in the statewide effort to cap the  
5 workforce by achieving and maintaining an additional five percent salary  
6 savings above and beyond current salary savings levels. That savings will be  
7 achieved through a combination of voluntary staff time-base reductions and  
8 layoffs, with the precise mix of those remedies to be determined in September  
9 2010.

#### LEGISLATIVE PROGRAM

10 The Commission considered Memorandum 2010-21, reporting generally on  
11 the Commission's 2010 legislative program. No Commission decisions were  
12 required or made in connection with that memorandum.

13 The Commission also considered Memorandum 2010-22, reporting on the  
14 status of Senate Bill 105 (Harman), relating to *Donative Transfer Restrictions*, 38  
15 Cal. L. Revision Comm'n Reports 107 (2008). No Commission decisions were  
16 required or made in connection with that memorandum.

17 Finally, the Commission considered Memorandum 2010-23, reporting on the  
18 status of Senate Bill 189 (Lowenthal), relating to *Mechanics Lien Law*, 37 Cal. L.  
19 Revision Comm'n Reports 527 (2007). The memorandum described recent  
20 amendments to the bill and presented a draft supplemental report setting out  
21 proposed revisions to Commission Comments. After considering those materials,  
22 the Commission made the following decisions:

23 The Commission assented to the recent amendments to the bill as being  
24 compatible with the Commission's recommendation.

25 The Commission approved the draft supplemental report, with the following  
26 additions:

#### 27 § 8416. Contents of claim of lien

28 **Comment.** Paragraphs (1)-(5), (7), and (8) of subdivision (a) of  
29 Section 8416 restate former Section 3084(a) without substantive  
30 change. ~~Paragraphs (7)-(8) of subdivision (a) and subdivisions (c)~~  
31 ~~through (e) are new. They implement provisions of 2009 Cal.Stat.~~  
32 ~~ch. 109 (AB 457 (Monning)).~~

33 Subdivision (b) restates former Section 3084(b) without  
34 substantive change.

1 Subdivision (a)(6) is new. It implements other provisions that  
2 invoke a claimant's address. Cf. Sections 8424 (release bond), 8486  
3 (time of hearing).

4 Subdivision (c) restates former Section 3084(c)(1) without  
5 substantive change.

6 Subdivision (d) restates former Section 3084(c)(2) without  
7 substantive change.

8 Subdivision (e) restates former Section 3084(d) without  
9 substantive change.

10 The claim of lien may be executed by the claimant's authorized  
11 agent. See Section 8066 (agency).

12 See also Sections 1170 (recordation); 8058 (filing and recordation  
13 of papers); Gov't Code §§ 27280, 27287 (recordation of documents).

14 See also Sections 8004 ("claimant"), 8006 ("construction  
15 lender"), 8032 ("person"), 8040 ("site"), 8048 ("work").

### 16 **§ 8432. Lien limited to work included in contract or modification**

17 **Comment.** Section 8432 restates former Section 3124 without  
18 substantive change.

19 In subdivision (a), "direct contractor" is substituted for the  
20 undefined "contractor." The concept of "authorized" is substituted  
21 for "employed." See Section 8404 (who may authorize work). ~~The~~  
22 ~~reference to a modification of the contract is omitted in reliance of~~  
23 ~~the definition of "direct contract," which includes a contract~~  
24 ~~change. See Section 8016 ("direct contract").~~

25 See also Sections 1170 (recordation), 8060 (filing and recordation  
26 of papers).

27 See also Sections 8004 ("claimant"), 8008 ("contract"), 8016  
28 ("direct contract"), 8018 ("direct contractor"), 8026 ("lien"), 8032  
29 ("person"), 8046 ("subcontractor"), 8048 ("work"), 8050 ("work of  
30 improvement").

### 31 **§ 8461. Recordation of lis pendens**

32 **Comment.** Section 8461 restates former Section 3146, ~~but makes~~  
33 ~~the recordation of a lis pendens mandatory on or before 20 days~~  
34 ~~after the commencement of an action to enforce a lien claim~~  
35 without substantive change.

36 The reference to the lis pendens statute in former Section 3146 is  
37 corrected to reflect the repeal of Code of Civil Procedure Section  
38 409. See 1992 Cal. Stat. ch. 883, § 1.

39 See also Sections 1170 (recordation), 8058 (calculation of time),  
40 8060 (filing and recordation of papers).

41 See also Section 8026 ("lien").

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

2           The Commission considered Memorandum 2010-26, discussing the Charter  
3 Schools Act. No Commission decisions were required or made in connection  
4 with that memorandum.

5           In connection with this item, the Commission recognized Megan Glanville  
6 and Patrick Maloney, both UC Davis School of Law students who are providing  
7 research assistance on the question of whether governmental immunities have  
8 been extended to charter schools in other jurisdictions.

9                           STUDY J-1451 — RIGHTS AND RESPONSIBILITIES OF THE COUNTY  
10   AS COMPARED TO THE SUPERIOR COURT

11           The Commission considered Memorandum 2010-24, discussing the rights and  
12 responsibilities of the county as compared to the superior court. The Commission  
13 approved the revisions recommended by the staff for inclusion in a tentative  
14 recommendation, except that the Commission postponed making a decision on  
15 how to revise references to a “judicial district” in Government Code Sections  
16 1090, 1091, 1195, 1223, 1224, 1505, 6100, 6108, 6109, and 12763.

17                           STUDY J-1452 — TRIAL COURT RESTRUCTURING: WRIT JURISDICTION  
18   IN A SMALL CLAIMS CASE

19           The Commission considered Memorandum 2010-25, relating to writ  
20 jurisdiction in a small claims case after trial court unification. The Commissioners  
21 expressed the following preliminary views:

22           **Writ Petition Relating to a Trial De Novo**

23           Based on the research and analysis presented so far, a decision in a small  
24 claims trial de novo does not seem to be a “cause subject to ... appellate  
25 jurisdiction” within the meaning of the constitutional provision on writ  
26 jurisdiction (Cal. Const. art. VI, § 10). Consequently, the appellate division of the  
27 superior court does not appear to have jurisdiction of a writ petition challenging  
28 such a decision.

29           That could perhaps be changed by enacting a statute permitting an appeal  
30 from a judgment in, or other aspects of, a small claims trial de novo. But it would  
31 be inappropriate for the Commission to explore such an approach, because the

1 Commission does not have authority to study the appealability of a small claims  
2 case.

### 3 **Writ Petition Relating to a Hearing in the Small Claims Division**

4 It is not entirely clear how the constitutional provision on writ jurisdiction  
5 would apply to a decision made by the small claims division. There are  
6 reasonable arguments that the appellate division would have jurisdiction of a  
7 writ petition challenging such a decision.

### 8 **Evaluation of Options**

9 The Commission decided that three of the options presented at the end of the  
10 memorandum are not worth considering further:

- 11 • Amend the California Constitution to squarely address small  
12 claims writ jurisdiction (p. 38).
- 13 • Propose a statute under which a writ petition relating to a small  
14 claims case could be heard by any judge of the superior court,  
15 other than the one whose conduct is the subject of the petition (p.  
16 39).
- 17 • Statutorily require that all writs relating to small claims cases be  
18 heard by the courts of appeal or by the California Supreme Court  
19 (pp. 40-41).

20 The Commissioners expressed tentative interest in these options:

- 21 • Propose a statute under which a writ petition relating to a small  
22 claims case could be heard by a single judge of the appellate  
23 division (pp. 39-40).
- 24 • Statutorily clarify that the appellate division may hear certain writ  
25 petitions relating to small claims cases (pp. 41-44).

26 The Commissioners would like to avoid taking a position on the extent to which  
27 a small claims plaintiff can seek writ relief. Depending on how things develop,  
28 the Commissioners might want to revisit the option of taking no action (pp. 37-  
29 38).

### 30 **Further Research**

31 The staff should not do any further research on this topic until the  
32 Commission receives new input from the Civil and Small Claims Advisory  
33 Committee and perhaps others.

1                   STUDY L-4100 — NONPROBATE TRANSFERS: CREDITOR CLAIMS  
2   AND FAMILY PROTECTIONS

3           The Commission considered Memorandum 2010-27, presenting a background  
4 study on the liability of assets transferred outside of probate for creditor claims  
5 and statutory family protections. The Commission approved the circulation of  
6 the background study for 120 days of public review and comment, before taking  
7 further action on this topic.

APPROVED AS SUBMITTED

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Executive Secretary