A meeting of the California Law Revision Commission was held in Sacramento on February 10, 2011.

Commission:

**Present:**
Justice John Zebrowski (ret.), Chairperson
Stephen Murphy, Vice-Chairperson
Diane Boyer-Vine, Legislative Counsel
Damian D. Capozzola
Mark Dundee
Pamela L. Hemminger
Susan Duncan Lee

**Absent:**
Ellen Corbett, Senate Member
Sidney Greathouse

Staff:
Brian Hebert, Executive Director
Barbara Gaal, Chief Deputy Counsel
Steve Cohen, Staff Counsel
Errol Dauis, Extern (UC Davis School of Law)
Vishtasp Soroushian, Extern (UC Davis School of Law)

Consultants:
None

Other Persons:

Seth Bramble, California Teachers Association
Lindsey Scott-Florez, Senate Office of Research
Rand Martin, California Charter Schools Association
Kerry Mazzoni, Executive Council of Homeowners
Greg Moser, California Charter Schools Association
Marjorie Murray, Center for California Homeowner Association Law, California Alliance for Retired Americans
Nancy Peverini, Consumer Attorneys of California
Dave Walker
Lois Walker
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MINUTES OF DECEMBER 15-16, 2010, COMMISSION MEETING

The Commission approved the Minutes of the December 15-16, 2010, Commission meeting, with the following corrections:

  • On page 4, strike line 30, and insert:
    Proposed Section 4225(c) was revised to add a reference to the Secretary of State.

  • On page 9, strike lines 23 to 30, inclusive, and insert:
    5850. If an association adopts or has adopted a policy imposing any monetary penalty, including any fee, on any association member for a violation of the governing documents, including any monetary penalty relating to the activities of a guest or tenant of the member, the board shall adopt and distribute to each member, in the annual policy statement prepared pursuant to Section 5310, a schedule of the monetary penalties that may be assessed for those violations, which shall be in accordance with authorization for member discipline contained in the governing documents.

ADMINISTRATIVE MATTERS

Report of Executive Director

The Executive Director reported on the following matters:

  • Senator Tom Harman was appointed to serve as the Commission’s Senate member.
• The Governor’s proposed budget would continue the Commission’s funding at its existing level, to be paid from the general fund.
• The Executive Director hopes to fill the currently vacant staff counsel position, soon after the beginning of the next fiscal year.

Annual Report
The Commission considered Memorandum 2011-1, presenting a staff draft of the body of the Commission’s 2010-2011 Annual Report.

The Commission approved the staff draft for publication, with two changes:
• The Comment to Penal Code Section 16650 will be revised as recommended on page 2 of the memorandum.
• The number of the second footnote will be changed to “2.”

Legislative Program
The Commission considered Memorandum 2011-2, reporting on the Commission’s 2011 legislative program.

The Commission ratified the staff’s decision to omit Government Code Section 72004 from the bill draft prepared to implement the recommendation on Trial Court Restructuring: Rights and Responsibilities of the County as Compared to the Superior Court (Part 1).

Study G-200 — Charter Schools and the Government Claims Act
The Commission considered Memorandum 2011-7 and its First Supplement, considering public comment on the legal and policy implications of treating charter schools as public entities for the purposes of the Government Claims Act.

The Commission heard testimony from the following persons: Rand Martin and Greg Moser, representing the California Charter Schools Association; Nancy Peverini, representing the Consumer Attorneys of California; and Seth Bramble, representing the California Teachers Association. The Commission expressed its appreciation for the information provided in this testimony.

Topics discussed in connection with this testimony included:
• Are charter schools so similar to other public schools that they should be treated as public entities under the Government Claims Act?
• Are the court cases holding that charter schools are not public entities historical anachronisms, that have been superseded by subsequent development in charter school law?
• To what extent should the underlying purpose of charter schools be considered in determining whether to treat them as public entities?
• What are parents’ expectations with regard to charter schools? Do they expect them to be fundamentally equivalent to other public schools? Do they expect them to be subject to the same health and safety laws?
• In considering the adequacy of health and safety regulation of charter schools, should they be compared with local public entities generally, or should they be compared to traditional public schools?
• Would compliance with school health and safety laws impede pedagogical innovation in charter schools?
• Would compliance with “open government” laws (e.g., the Brown Act, California Public Records Act, and Political Reform Act of 1974) impede pedagogical innovation in charter schools?
• Was the Charter Schools Act intended to promote innovations in school governance, as well as pedagogical innovation?
• If so, would compliance with school health and safety laws and “open government” laws impede governance innovation in charter schools?
• Should public entity status be linked to compliance with school health and safety laws or “open government” laws?
• Can charter schools obtain adequate liability insurance coverage? Does the obligation of charter schools to perform public functions create types of liability that cannot readily be insured against?
• To what extent is the possible imposition of punitive damages a threat to the operation of charter schools?
• What is the relevance of the constitutional right to safe schools, expressed in Section 28(f) of Article I of the California Constitution?

The next memorandum prepared by the staff will outline a range of alternative approaches for how to frame a tentative recommendation.

STUDY H-821 — MECHANICS LIEN LAW

The Commission approved the proposal for submission to the Legislature as a final recommendation, with two corrections: in footnotes 9 and 12 of the recommendation, inadvertently transposed digits will be corrected (replacing “8153” with “8513”).

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

The Commission considered Memorandum 2011-5, presenting a staff draft recommendation on Statutory Clarification and Simplification of CID Law. The Commission approved the draft for submission to the Legislature as a final recommendation, with two changes:

• The staff will revise the preliminary part to minimize the discussion of the Corporations Code, consistent with the minimal treatment of Corporations Code issues in the recommendation.
• The staff will add a footnote to the preliminary part, explaining the conservative approach that the Commission used in deciding whether to include substantive reforms in the recommendation.

Both of the revisions described above will be provided to the Chair for review prior to releasing the recommendation.

The Commission heard testimony from Marjorie Murray, representing the California Alliance for Retired Americans and the Center for California Homeowner Association Law. Ms. Murray also provided the Commission a letter in support of her testimony. That letter was attached to the First Supplement to Memorandum 2011-5.

STUDY H-856 — COMMERCIAL AND INDUSTRIAL COMMON INTEREST DEVELOPMENTS

The Commission considered Memorandum 2011-6, presenting a staff draft tentative recommendation relating to the application of the Davis-Stirling Common Interest Development Act to exclusively commercial or industrial CIDs.

The Commission approved the draft for distribution as a tentative recommendation (with the deletion of some temporary annotations, as recommended in the memorandum).
The Commission considered Memorandum 2011-8, introducing the study of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act ("UAGPPJA"). No stakeholders or other interested persons attended the discussion. The Commission directed the staff to make efforts to obtain better participation at future meetings, and to encourage written comments as well.

The Commission approved the workplan outlined in the memorandum, which involves:

1. Preparing a memorandum that compares and contrasts California conservatorship law with the corresponding laws in other states.
2. Preparing a memorandum that discusses the terminological issues relating to adoption of UAGPPJA in California.
3. Analyzing each article of UAGPPJA (section by section) for possible adoption in California.

The Commission also requested more information on:

- The import of the Full Faith and Credit Clause in the UAGPPJA context.
- The extent of reciprocity provided under UAGPPJA. In particular, if a state adopts UAGPPJA, to what extent (if any) is the state required to accept a capacity determination, appointment of a conservator, or similar ruling made in a state that has not adopted UAGPPJA? Is the answer different if the ruling was made in a state that has adopted a modified version of UAGPPJA?
- What types of modifications have states made to UAGPPJA?
- What concerns were raised in states that considered UAGPPJA but did not adopt it?

The Commission discussed a number of ideas, including the possibility of presumptively accepting a capacity determination, appointment of a conservator, or similar ruling made in another state, but allowing judicial review of that ruling on motion of an interested person. Other suggestions were to (1) accept such rulings only from certain states, or (2) accept such rulings only if they satisfy certain safeguards or are made pursuant to specified procedures.
The Commission considered Memorandum 2011-3, discussing input relating to the tentative recommendation on Nonsubstantive Reorganization of Deadly Weapon Statutes: Clean-Up Legislation (Dec. 2010). Subject to the following revisions, the Commission approved the proposal as a final recommendation, for printing and submission to the Legislature:

Citecheck

The citecheck corrections listed on page 9 of the memorandum should be made.

References to “Sections 26700 to 26915, inclusive” (Code Civ. Proc. § 527.9; Fam. Code § 6389; Penal Code § 11106)

In Code of Civil Procedure Section 527.9, Family Code Section 6389, and Penal Code Section 11106, each reference to “Sections 26700 to 26915, inclusive” should be replaced with a reference to “Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) of Chapter 2 of Division 6 of Title 4 of Part 6.”

Gov’t Code § 6254

The proposed amendment of Government Code Section 6254 should be revised to correct a cross-reference in subdivision (z), as follows:

6254. Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(z) Records obtained pursuant to paragraph (2) of subdivision (f) of Section 2891.1 of the Public Utilities Code.

The corresponding Comment should be revised to note the cross-reference correction:

Comment. Subdivision (u) of Section 6254 is amended to reflect nonsubstantive reorganization of the statutes governing control of deadly weapons.

Subdivision (z) is amended to correct a cross-reference. Subdivision (z) was added to Section 6254 by 1998 Cal. Stat. ch. 110, § 1. Subdivision (z) has not been changed since that time, but the provision cross-referenced in it (Pub. Util. Code § 2891.1) has been repeatedly amended. The material that used to be in paragraph
(c)(2) of that provision has been relocated to paragraph (f)(2) of that provision. The cross-reference in subdivision (z) of Section 6254 is now updated to reflect that relocation.

Penal Code § 629.52

The amendment of Penal Code Section 629.52 should be revised to read:

629.52. Upon application made under Section 629.50, the judge may enter an ex parte order, as requested or modified, authorizing interception of wire or electronic communications initially intercepted within the territorial jurisdiction of the court in which the judge is sitting, if the judge determines, on the basis of the facts submitted by the applicant, all of the following:

(a) There is probably cause to believe that an individual is committing, has committed, or is about to commit, one of the following offenses:

(2) Murder, solicitation to commit murder, a violation of Section 209, or the commission of a felony involving a destructive device in violation of Section 12303, 12303.1, 12303.2, 12303.3, 12303.6, 12308, 12310, or 12312, or a violation of Section 209, 18710, 18715, 18720, 18725, 18730, 18740, 18745, 18750, or 18755.

The corresponding Comment should be revised to note the stylistic revision:

Comment. Subdivision (a) of Section 629.52 is amended to reflect nonsubstantive reorganization of the statutes governing control of deadly weapons.

Subdivision (a) is also amended to make a stylistic revision.

Penal Code § 11106

In Penal Code Section 11106, each reference to “Section 12084 as that section read prior to being repealed by the act that amended this section” should be replaced with a reference to “Section 12084 as that section read prior to being repealed on January 1, 2006.”

STUDY T–103 — TECHNICAL AND MINOR SUBSTANTIATIVE CORRECTIONS: STATUTORY CROSS-REFERENCES TO “TORT CLAIMS ACT”

The Commission considered Memorandum 2011-9, which presents a draft of a tentative recommendation on Technical and Minor Substantive Corrections: Statutory Cross-References to “Tort Claims Act.” The Commission approved the
draft as a tentative recommendation, to be posted to the Commission’s website and circulated for comment.

☐ APPROVED AS SUBMITTED

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

______________________________ Date

______________________________ Chairperson

______________________________ Executive Director