
MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
APRIL 14, 2011
SACRAMENTO

A meeting of the California Law Revision Commission was held in Sacramento on April 14, 2011.

Commission:

Present: Justice John Zebrowski (ret.), Chairperson
Stephen Murphy, Vice-Chairperson
Roger Dickinson, Assembly Member
Diane Boyer-Vine, Legislative Counsel
Sidney Greathouse
Pamela L. Hemminger
Susan Duncan Lee

Absent: Tom Harman, Senate Member
Damian D. Capozzola
Mark Dundee

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

Consultants: None

Other Persons:

Lindsey Scott-Florez, Senate Office of Research
Greg Moser, California Charter Schools Association
Daniel Pone, Judicial Council

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MINUTES OF FEBRUARY 10, 2011, COMMISSION MEETING

1 The Commission approved the Minutes of the February 10, 2011, Commission
2 meeting as submitted by the staff.

ADMINISTRATIVE MATTERS

3 **Report of Executive Secretary**

4 The Executive Secretary reported on the following matters:

- 5 (1) Assembly Member Roger Dickinson has been appointed to serve
6 as the Commission’s Assembly member.
- 7 (2) The Commission has started employing law student fellows,
8 utilizing funds donated by former Executive Director Nathaniel
9 Sterling, in cooperation with the UC Davis School of Law. The
10 Commission will send letters of appreciation to Mr. Sterling and
11 the UC Davis School of Law.
- 12 (3) In a change from prior practice, the staff will be retaining digital
13 meeting recordings for longer than 30 days. The Commission
14 approved this change in practice.

15 **Open Government Laws**

16 The Commission considered Memorandum 2011-11 and its First Supplement,
17 summarizing “open government” statutes applicable to the Commission. No
18 Commission decisions were required or made in connection with that matter.

LEGISLATIVE PROGRAM

1 The Commission considered Memorandum 2011-12 reporting generally on
2 the Commission's 2011 legislative program. No Commission decisions were
3 required or made in connection with that matter.

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

5 The Commission considered Memorandum 2011-17 and its First and Second
6 Supplements, discussing the legal and policy implications of treating charter
7 schools as public entities for the purposes of the Government Claims Act.

8 The Commission directed the staff to prepare a draft tentative
9 recommendation on the topic for consideration at a future meeting, with the
10 following content:

- 11 (1) The tentative recommendation will set out a range of options,
12 rather than a single recommended option. The policy advantages
13 and disadvantages of each option will be discussed.
- 14 (2) The range of options will include those set out in the
15 memorandum. In addition, the tentative recommendation will
16 include the option of treating a charter school as a public entity for
17 the purposes of the Government Claims Act for a specific type of
18 claim — one that is grounded in a constitutional or statutory cause
19 of action.
- 20 (3) The tentative recommendation will specifically solicit comments
21 on the merits of drawing a distinction between an "independent"
22 charter school (i.e., one that is formed as a legal entity separate
23 from its chartering entity) and a "dependent" charter school (i.e.,
24 one that is not legally separate from its chartering entity), with the
25 latter treated as a public entity for the purposes of the Government
26 Claims Act. The tentative recommendation will also invite
27 comment on how best to express such a distinction, so as to avoid
28 any ambiguity or gaps in the law.

29 STUDY J-1450 — APPELLATE JURISDICTION OF BAIL FORFEITURE

30 The Commission considered Memorandum 2011-16, discussing comments on
31 the tentative recommendation on *Trial Court Restructuring: Appellate Jurisdiction of*
32 *Bail Forfeiture* (Oct. 2010). Subject to the technical revisions noted in the
33 bulletpoints on pages 3-4 of the memorandum, the Commission approved the
34 proposal as a final recommendation, for printing and submission to the
35 Legislature.

1 STUDY J-1452 — WRIT JURISDICTION IN A SMALL CLAIMS CASE

2 The Commission considered Memorandum 2011-10 and its First Supplement,
3 discussing comments on the tentative recommendation on *Trial Court*
4 *Restructuring: Writ Jurisdiction in a Small Claims Case* (Oct. 2010). The Commission
5 directed the staff to prepare a draft of a final recommendation, which should be
6 similar to the tentative recommendation, except in the following respects:

- 7 (1) The jurisdictional rules relating to small claims writs should be
8 stated in a new code section in the Small Claims Act.
- 9 (2) The new section should make clear that there is no appeal from a
10 judgment granting or denying a writ petition relating to an initial
11 hearing in the small claims division. The staff should incorporate
12 language along the lines suggested at page 7 of the memorandum.
- 13 (3) The proposal should rely on the general provisions governing
14 judicial disqualification, instead of expressly requiring that “[t]he
15 judge did not make any ruling that is challenged by the writ
16 petition.”
- 17 (4) The proposal should rely on case law establishing that the
18 Supreme Court, and, in some instances, also a court of appeal, may
19 deny a writ petition on the ground that it was not first presented to
20 a lower tribunal. This principle does not have to be expressly
21 stated in the proposed new code section.
- 22 (5) The Comment to the new section should make clear that the
23 section neither expands nor contracts the circumstances under
24 which a small claims litigant may seek writ relief. To achieve this,
25 the language in the tentative recommendation should be revised
26 along the lines shown on page 5 of the memorandum. Similar
27 adjustments should be made in the preliminary part (narrative
28 discussion) of the proposal.
- 29 (6) The preliminary part should be revised to make clear that
30 although writ relief is sometimes appropriate in a small claims
31 case, that situation is not common. This concept needs to be
32 expressed carefully, so as not to discourage legitimate writ
33 petitions. It may be enough to point out that the proposed
34 legislation would not change existing law on when a small claims
35 litigant may seek writ relief (see #5 above), and, under existing
36 law, courts grant writ relief only on rare occasions.

37 STUDY L-750 — UNIFORM ADULT GUARDIANSHIP AND
38 PROTECTIVE PROCEEDINGS JURISDICTION ACT

39 The Commission considered Memorandum 2011-18, discussing the impact of
40 the Full Faith and Credit Clause in the context of the Uniform Adult

1 Guardianship and Protective Proceedings Jurisdiction Act (“UAGPPJA”). No
2 Commission action was required or taken.

3 The Chief Deputy Counsel disclosed that she is serving as attorney-in-fact for
4 a relative in Illinois, who recently had some medical problems. There have been
5 no related court proceedings and there does not appear to be any conflict of
6 interest, but the Chief Deputy Counsel wanted the Commission to be aware of
7 this situation.

8 STUDY M-301 — DEADLY WEAPONS: MINOR CLEAN-UP ISSUES

9 The Commission considered four memoranda relating to the list of “Minor
10 Clean-Up Issues for Possible Future Legislative Attention” in Appendix B to the
11 Commission’s report on *Nonsubstantive Reorganization of Deadly Weapon Statutes*,
12 38 Cal. L. Revision Comm’n Reports 217 (2009). The Commission made the
13 following decisions:

- 14 (1) **Memorandum 2011-13, relating to the Bureau of Alcohol,**
15 **Tobacco, and Firearms.** The staff should alert the Office of
16 Legislative Counsel to the information in the two bulletpoints on
17 page 2 of this memorandum.
- 18 (2) **Memorandum 2011-14, relating to the definition of “application**
19 **to purchase.”** The definition of “application to purchase” should
20 be generalized to apply to all of new Part 6 of the Penal Code. This
21 proposed revision should be held for eventual incorporation into a
22 tentative recommendation addressing issues of this type.
- 23 (3) **Memorandum 2011-15, relating to the definition of “licensed**
24 **premises.”** The definition of “licensed premises” could be
25 expanded to apply to the material currently located in Penal Code
26 Sections 12035(h), 12036(i), and 12072(f)(2)(D)(ii)(IV), which will be
27 recodified as Penal Code Sections 25130, 25225, and 27560(e)(4),
28 respectively. This proposed revision should be held for possible
29 incorporation into a tentative recommendation addressing issues
30 of this type.
31

1 (4) **Memorandum 2011-19, relating to the definition of “capacity to**
2 **accept more than 10 rounds.”** The definition of “capacity to accept
3 more than 10 rounds” should be generalized to apply to all of new
4 Part 6 of the Penal Code. The definition of “large capacity
5 magazine” should be revised to delete the language excluding a
6 magazine that “has been permanently altered so that it cannot
7 accommodate more than 10 rounds.” That language will be
8 unnecessary if the definition of “capacity to accept more than 10
9 rounds” is revised as proposed. These proposed revisions should
10 be held for eventual incorporation into a tentative
11 recommendation addressing issues of this type.

APPROVED AS SUBMITTED

Date

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

Chairperson

Executive Secretary