
MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
OCTOBER 14-15, 1999
SACRAMENTO

A meeting of the California Law Revision Commission was held in Sacramento on October 14-15, 1999.

Commission:

Present: Howard Wayne, Assembly Member, Chairperson
Sanford M. Skaggs, Vice Chairperson (Oct. 15)
Bion M. Gregory, Legislative Counsel (Oct. 14)
Edwin K. Marzec (Oct. 14)
Colin Wied

Absent: Arthur K. Marshall

Staff: Nathaniel Sterling, Executive Secretary
Stan Ulrich, Assistant Executive Secretary
Barbara S. Gaal, Staff Counsel
Brian P. Hebert, Staff Counsel

Consultants: J. Clark Kelso, Trial Court Unification, Administrative Rulemaking

Other Persons:

Cliff Berg, California Association of Collectors, Sacramento (Oct. 15)
Herb Bolz, Office of Administrative Law, Sacramento (Oct. 15)
Phyllis Boyson, California Department of Social Services, Sacramento
Blanca Breeze, Board of Equalization, Sacramento (Oct. 15)
Randy Cape, Pacific Telesis, Sacramento (Oct. 14)
Larry Cassidy, California Association of Collectors, Sacramento (Oct. 15)
Frank Coats, Department of Motor Vehicles, Sacramento (Oct. 15)
Loretta Hollis, Department of Corrections, Sacramento (Oct. 15)
Martha Johnson, Pacific Telesis, Sacramento (Oct. 14)
Miles E. Locker, Division of Labor Standards Enforcement, San Francisco (Oct. 15)
Roman Munoz, Joint Committee on Prison Construction and Operations, Sacramento (Oct. 15)
Frederick L. Pilot, Common Interest Consumer Project, Sacramento (Oct. 14)
Christine Roloff, Department of Corrections, Sacramento (Oct. 15)

- Ronald H. Sargis, California Association of Collectors and Bank of America, Sacramento (Oct. 15)
- Les Spahn, Building Owners and Managers Association, Sacramento (Oct. 14)
- Brian Stuart, Downtown Resources, Sacramento (Oct. 14)
- Donald R. Travers, State Bar Estate Planning, Trust and Probate Law Section, Paradise (Oct. 14)
- Carolyn Veal-Hunter, Assemblyman Roderick Wright's Office, Sacramento (Oct. 14)
- Joshua Weinstein, Judicial Council of California, San Francisco (Oct. 15)
- Nancy T. Yamada, California State Employees Association and Association of California State Supervisors, Sacramento

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- 1 MINUTES OF AUGUST 12-13, 1999, MEETING
- 2 The Commission approved the Minutes of the August 12-13, 1999, meeting as
- 3 submitted by the staff.

ADMINISTRATIVE MATTERS

Annual Report

The Commission considered Memorandum 99-59 and the staff draft 1999-2000 Annual Report. The report was approved, subject to any needed revisions to reflect decisions made by the Commission concerning topics and priorities. In addition, the Annual Report should include information on active consultants and their subjects.

Schedule of Future Meetings

The Commission considered Memorandum 99-57, relating to the schedule of future Commission meetings. The Commission changed the meeting scheduled for December 9 and 10 in San Francisco to November 30 in Sacramento, commencing at 9:00 am. The Commission adopted the meeting schedule for 2000 proposed in the memorandum.

November 1999	Sacramento
Nov. 30 (Tue.)	9:00 am – 5:00 pm
December 1999	No Meeting
January 2000	No Meeting
February 2000	Sacramento
Feb. 10 (Thur.)	1:00 pm – 5:00 pm
Feb. 11 (Fri.)	9:00 am – 4:00 pm
March 2000	No Meeting
April 2000	Sacramento
Apr. 6 (Thur.)	1:00 pm – 5:00 pm
Apr. 7 (Fri.)	9:00 am – 4:00 pm
May 2000	No Meeting
June 2000	Sacramento
June 1 (Thur.)	1:00 pm – 5:00 pm
June 2 (Fri.)	9:00 am – 4:00 pm
July 2000	San Diego
July 20 (Thur.)	10:00 am – 5:00 pm
July 21 (Fri.)	9:00 am – 4:00 pm
August 2000	No Meeting

1	September 2000	San Francisco
2	Sept. 21 (Thur.)	10:00 am – 5:00 pm
3	Sept. 22 (Fri.)	9:00 am – 4:00 pm
4	October 2000	No Meeting
5	November/December 2000	Los Angeles
6	Nov. 30 (Thur.)	10:00 am – 5:00 pm
7	Dec. 1 (Fri.)	9:00 am – 4:00 pm

8 **New Topics and Priorities**

9 The Commission considered Memorandum 99-58 and its First Supplement,
10 relating to new topics and priorities. Except as noted below, the Commission
11 approved the staff recommendations concerning new topics and priorities, and
12 consultant contracts, as set out in the memorandum.

13 **Mediation confidentiality.** The staff should request further and more specific
14 information from Mr. Balingit as to the precise problem caused by existing law
15 and why existing statutes are not adequate to handle the problem.

16 **Judicial and nonjudicial foreclosure of real property liens.** The Commission
17 decided not to pursue this matter at this time.

18 **Uniform Trust Act.** The Commission approved the suggested consultant
19 contract for execution either late this fiscal year or early next fiscal year,
20 depending on availability of funds and subject to promulgation of the Uniform
21 Act by the National Conference of Commissioners on Uniform State Laws at its
22 summer 2000 annual meeting.

23 **Common interest development law.** The Commission directed the Executive
24 Secretary to identify, and execute a contract with, a qualified and available
25 individual to prepare for the Commission a “scope” study along the lines
26 outlined in the memorandum. The Executive Secretary suggested Professor
27 Katharine Rosenberry as a possible consultant. The Commission, while
28 recognizing Professor Rosenberry’s outstanding qualifications, requested the
29 Executive Secretary to determine whether an alternative consultant might be
30 available who is not as closely identified as Professor Rosenberry is with the
31 development of the California law in this area. For this purpose it may be
32 necessary to consider a nonacademic consultant.

33 **Matters deferred for decision at a later meeting.** Four new topic suggestions
34 — Subdivision Map Act, Government Code provisions relating to development
35 fees, contracts made by a public body where a member of the body has a conflict

1 of interest (Gov't Code § 1090), and grand jury procedures — were deferred for
2 decision until the next Commission meeting.

3 **Report of Executive Secretary**

4 The Executive Secretary reported on steps taken to recruit a new entry level
5 attorney to replace Bob Murphy, who has retired as staff counsel. The
6 Commission directed the Executive Secretary to place a job announcement in
7 legal newspapers in major areas around the state and to request that the
8 Commission's law faculty consultants direct their best third-year students to the
9 Commission.

10 The Executive Secretary reported that the Commission has applied to the
11 State Bar to become an MCLE provider in connection with the current
12 Commission meeting, and intends to do so for future meetings as well. After
13 several authorized MCLE sessions have been conducted, we would be eligible to
14 apply to become a certified MCLE provider on an ongoing basis.

15 **1999 LEGISLATIVE PROGRAM**

16 The Commission considered Memorandum 99-60, presenting the final report
17 on the Commission's 1999 legislative program. No Commission action was
18 required or taken on this item.

19 **STUDY D-354 – HOMESTEAD ISSUES**

20 The Commission considered Memorandum 99-76 and its First Supplement,
21 concerning the staff draft recommendation on the *Homestead Exemption*. In view
22 of the difficulty in finding any consensus on the proper extent of the voluntary
23 sale proceeds exemption, the Commission decided not to pursue this topic.

24 **STUDY E-100 – ENVIRONMENTAL LAW**

25 The Commission considered Memorandum 99-68, presenting comments on
26 the tentative recommendation relating to *Air Resources Technical Revisions*. The
27 Commission approved the tentative recommendation as its final
28 recommendation, subject to the following changes:

29 **Health & Safety Code § 39515. Executive officer**

30 An obsolete cross-reference to Section 41507 should be deleted from Section
31 39515.

1 **§ 40454. Trip reduction plans**

2 A superfluous comma in subdivision (a) will be deleted.

3 **§ 41865. Rice straw burning**

4 The cross-reference in subdivision (i)(1), to subdivision (c)(3), is erroneous
5 and will be replaced with a cross-reference to subdivision (c)(4).

6 **§ 42301.5. Compliance with regulations**

7 Subdivisions (a) and (b) of Section 42301.5 will be deleted as obsolete.

8 **§ 42402.5. Administrative civil penalties**

9 The proposed amendment of Section 42402.5, providing that each day in
10 which a violation occurs is a separate offense for the purpose of calculating an
11 administrative civil penalty, will be deleted.

12 **Other Issues**

13 Before making the changes to Sections 39515, 40454, 41865, and 42301.5, the
14 staff will consult with the California Council for Environmental and Economic
15 Balance to confirm that those changes would be nonsubstantive.

16 **STUDY EM-451 – CONDEMNATION BY PRIVATELY OWNED PUBLIC UTILITY**

17 The Commission considered Memorandum 99-65 and its First Supplement,
18 relating to condemnation by a privately owned public utility and the status of
19 1999 legislation addressed to the matter. After hearing from interested parties
20 concerning legislative efforts to work out an accommodation of interests in
21 connection with AB 651 (Wright), the Commission decided to continue to defer
22 work on this matter until its next meeting, rescheduled for November 30. The
23 Commission will request the interested parties for a status report at that time,
24 and decide then whether there is a need to reactivate its study of this matter.

25 **STUDY EM-453 – CLARIFICATION OF EVIDENCE CODE SECTION 822**

26 The Commission considered Memorandum 99-77, relating to clarification of
27 Evidence Code Section 822 and the status of AB 321 (Wildman), which would
28 implement the Commission's recommendation on the matter. The Commission
29 approved the staff's recommendation in the memorandum that, if AB 321
30 proceeds, the bill should be amended to limit the scope of the water system
31 acquisition provision, and that, if AB 321 does not proceed, the Commission's

1 recommendation be reintroduced in the form set out on pages 3-5 of the
2 memorandum.

3 STUDY F-910 – EFFECT OF DISSOLUTION OF MARRIAGE
4 ON NONPROBATE TRANSFERS

5 See entry in these Minutes under Study L-910.

6 STUDY F-1300 – ENFORCEMENT OF JUDGMENTS UNDER THE FAMILY CODE

7 The Commission considered Memorandum 99-75 and the staff draft
8 Recommendation on *Enforcement of Judgments Under the Family Code: Technical*
9 *Revisions*. The Commission approved the recommendation to be printed, subject
10 to any technical revisions that may be required to reflect changes to affected
11 sections by 1999 legislation. The staff will seek to have the proposed legislation
12 added to a committee omnibus bill.

13 STUDY H-451 – CONDEMNATION BY PRIVATELY OWNED PUBLIC UTILITY

14 See entry in these Minutes under Study Em-451.

15 STUDY H-453 – CLARIFICATION OF EVIDENCE CODE SECTION 822

16 See entry in these Minutes under Study Em-453.

17 STUDY H-910 – EFFECT OF DISSOLUTION OF MARRIAGE
18 ON NONPROBATE TRANSFERS

19 See entry in these Minutes under Study L-910.

20 STUDY J-901 – AWARD OF COSTS AND CONTRACTUAL
21 ATTORNEY’S FEES TO PREVAILING PARTY

22 The Commission considered Memorandum 99-32 and its First and Second
23 Supplements, concerning awards of costs and contractual attorney’s fees to the
24 prevailing party in litigation.

25 On determination of the prevailing party, the Commission tentatively
26 concluded:

- 27 • The standard for determining the prevailing party should be the
28 same for purposes of awarding (1) statutory costs other than
29 attorney’s fees, (2) contractual attorney’s fees on a contract claim

1 covered by an attorney's fee clause, and (3) contractual attorney's
2 fees on a noncontract claim covered by an attorney's fee clause.

3 • As under existing law, the standard should apply to different claims
4 depending on the type of award sought (e.g., in determining the
5 prevailing party for purposes of awarding contractual attorney's
6 fees on a contract claim, the court should examine the outcome of
7 the contract claim; in determining the prevailing party for purposes
8 of awarding statutory costs other than attorney's fees, the court
9 should examine the outcome of the entire action, not just the
10 contract claim).

11 • The standard should include guidelines for commonly occurring
12 situations (including dismissal), so that the courts do not have to
13 review every request for costs or fees. To account for differing facts
14 and circumstances, parties should be given an opportunity to object
15 to application of these guidelines.

16 • The standard should address the problems identified at pages 14-17
17 of Memorandum 99-32.

18 The staff should draft a proposal along these lines and present it to the
19 Commission for review.

20 The Commission discussed and rejected Mr. Avery's suggestion to repeal the
21 statutes governing costs and contractual attorney's fees (Civ. Code § 1717; Code
22 Civ. Proc. § 1032), subject to the court's discretionary power to award fees and
23 costs resulting from bad-faith actions, frivolous tactics, or acts solely intended to
24 cause unnecessary delay (Code Civ. Proc. §§ 128.5, 128.6). See Second
25 Supplement to Memorandum 99-32.

26 The Commission did not reach the issues discussed at pages 26-35 of
27 Memorandum 99-32 (nonstatutory litigation expenses; reciprocity of unilateral
28 clause covering nonstatutory litigation expenses and/or attorney's fees for
29 noncontract claims; issues for future study) and the issues discussed at pages 2-5
30 of the First Supplement to Memorandum 99-32 (scope of study).

31 **STUDY J-1300 – TRIAL COURT UNIFICATION**

32 The Commission considered Memorandum 99-72, reporting on the status of
33 the trial court unification follow-up studies for which the Commission has
34 primary responsibility. No Commission action was required or taken.

1 STUDY J-1310 – CATALOG OF CASES WITHIN JURISDICTION
2 OF COURT OF APPEAL ON JUNE 30, 1995

3 The Commission considered Memorandum 99-73, concerning the Judicial
4 Council’s study on preparation of a catalog of cases within the appellate
5 jurisdiction of the courts of appeal on June 30, 1995. The Commission sought to
6 identify adverse consequences that could result from the current constitutional
7 scheme, under which the “courts of appeal have appellate jurisdiction in causes
8 of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995,
9 and in other causes prescribed by statute.”

10 The Commission concluded that the critical situation is where a statute
11 classifies a cause as a limited civil case and the losing party appeals to the
12 appellate division in reliance on the statutory classification, only to have the
13 appeal dismissed on the ground that the underlying cause is “of a type within
14 the appellate jurisdiction of the courts of appeal on June 30, 1995.” To address
15 this situation, the Commission suggested preparation of a statute or rule
16 directing the appellate division to transfer such an appeal to the court of appeal.
17 Joshua Weinstein (Administrative Office of the Courts) agreed to present this
18 suggestion to the Judicial Council’s Appellate Advisory Committee.

19 STUDY K-410 – CONFIDENTIALITY OF SETTLEMENT NEGOTIATIONS

20 The Commission considered Memorandum 99-50, concerning the
21 admissibility, discoverability, and confidentiality of negotiations to settle a
22 pending civil action or administrative adjudication. In the draft attached to the
23 memorandum, the Comment to Evidence Code Section 1130 should be revised as
24 follows:

25 **Comment.** ... Under subdivision (a)(3), if parties attempt to
26 reach a settlement that includes both pending claims and unfiled
27 claims (either related or unrelated to the pending claims), the entire
28 negotiation is subject to the provisions of this chapter. ~~If, however,~~
29 ~~parties attempt to settle a pending action, and then attempt to reach~~
30 ~~a separate compromise of an unfiled claim, the latter attempt is not~~
31 ~~subject to the provisions of this chapter, even if it occurs at the same~~
32 ~~meeting as the attempt to settle the pending action.~~

33 The remainder of the draft should be left as is, except that the staff should review
34 and incorporate 1999 legislation as necessary. With these revisions, the staff

1 should present the draft for approval as a final recommendation at the
2 Commission's next meeting.

3 STUDY L-910 – EFFECT OF DISSOLUTION OF MARRIAGE
4 ON NONPROBATE TRANSFERS

5 The Commission considered Memorandum 99-64, which discussed issues
6 relating to the automatic temporary restraining order (ATRO) that is in effect
7 during a proceeding for dissolution or annulment of marriage or legal separation
8 (pursuant to Family Code Section 2040). The Commission instructed the staff to
9 draft a tentative recommendation providing that the ATRO automatically
10 restrains the creation or modification of a nonprobate transfer but does not
11 automatically restrain the revocation of a nonprobate transfer (other than life
12 insurance) or the creation, modification, or revocation of a will. The term
13 “nonprobate transfer” should be defined by reference to the most common forms
14 of instruments making a nonprobate transfer of property on death (e.g., a
15 revocable trust, joint tenancy, Totten trust, or pay-on-death account in a financial
16 institution).

17 STUDY L-3059 – REVOCABLE TRUST ACCOUNTING

18 The Commission considered Memorandum 99-63 and its First Supplement
19 concerning the staff draft Tentative Recommendation on *Revocable Trust*
20 *Accounting*. The Commission approved the tentative recommendation to be
21 distributed for comment.

22 STUDY L-4002 – SURROGATE COMMITTEE IN HEALTH CARE DECISIONMAKING

23 The Commission considered Memorandum 99-39 reviewing the prospects for
24 reviving the surrogate committee proposal from the recommendation on *Health*
25 *Care Decisions for Adults Without Decisionmaking Capacity*. In view of the
26 controversial nature of the issue of making health care decisions for “friendless”
27 patients, the Commission decided not to make any recommendation to the
28 Legislature on this topic in the near future.

29 STUDY L-4003 – FAMILY CONSENT IN HEALTH CARE DECISIONMAKING

30 The Commission considered Memorandum 99-61 and its First Supplement
31 concerning the family consent rules that were removed from AB 891

1 (implementing the Recommendation on *Health Care Decisions for Adults Without*
2 *Decisionmaking Capacity*). The Commission reaffirmed its decision to pursue
3 enactment of the family consent proposal, subject to revisions needed to address
4 concerns raised by the Assembly Judiciary Committee Chair and committee
5 consultant. The Commission approved the staff proposals to omit Section 4710
6 (restating preconditions to using surrogate decisionmakers) and to revise Section
7 4712 (setting out the priority of statutory surrogates). The Commission decided
8 not to implement any other revisions until those objecting to the family consent
9 rules make their concerns specific. The staff will prepare a final recommendation
10 for consideration at the next meeting to implement these decisions.

11 STUDY N-200 – MANDAMUS TO REVIEW AGENCY ACTION

12 The Commission considered Memorandum 99-71, reviewing comments
13 received on the tentative recommendation on mandamus to review agency
14 action, together with a letter from the Consumers Union received at the meeting
15 (see Exhibit p. 1). The Commission approved the recommendation, possibly for
16 incorporation into a committee bill or other omnibus legislation, with the
17 following changes. The staff should prepare a revised draft along these lines for
18 final approval at the next Commission meeting.

19 **Reconsideration by agency.** In light of the Supreme Court decision
20 effectuating the Commission's proposal, there is no longer a need for legislation
21 on this matter, and the proposal should be omitted from the recommendation.

22 **Venue to review state agency action.** This provision was revised to read:

23 1099. In addition to any other county authorized by law,
24 Sacramento County is a proper county for commencement of
25 proceedings in superior court under this chapter to review state
26 agency action, and venue shall not be affected by the provisions of
27 Section 401.

28 **Comment.** Section 1099 is new, and authorizes Sacramento
29 County as an additional county for commencement of
30 administrative or traditional mandamus proceedings in superior
31 court under this chapter to review state agency action. The general
32 rule is that venue is proper in the county where the cause of action
33 arose. See Sections 1109 (general rules of civil practice apply to
34 proceedings under this title), 393(1)(b) (venue); *Duval v.*
35 *Contractors State License Bd.*, 125 Cal. App. 2d 532, 271 P.2d 194
36 (1954) (administrative mandamus).

1 and to provide that the entire informative digest must be in plain English. A
2 redundant requirement for a “plain English summary of the proposed action”
3 will be deleted.

4 **§ 11346.9. Final statement of reasons and updated informative digest**

5 The following language, originally proposed in Assembly Bill 486, will be
6 added to Section 11346.9:

7 (d) If an agency determines that a requirement of this section
8 can be satisfied by reference to an agency statement made pursuant
9 to Sections 11346.2 to 11346.5, inclusive, the agency may satisfy that
10 requirement by incorporating the relevant statement by reference.

11 **§ 11347.1. Documents added to rulemaking file**

12 Section 11347.1 codifies the existing practice of the Office of Administrative
13 Law, but makes a change to what is required by Sections 11346.8(d) and
14 11346.9(a)(1). The preliminary part of the recommendation and the Comment to
15 Section 11347.1 will be revised to note the change from existing law. Conforming
16 changes to Sections 11346.8 and 11346.9 may also be required.

17 The Comment to Section 11347.1 will also be revised to make clear that
18 Section 11347.1 does not require provision of an opportunity for additional
19 public comment in response to a comment letter (although an opportunity for
20 additional comment may be required in response to a study or report attached to
21 a comment letter).

22 **§ 11349(a). Necessity standard**

23 The last sentence of the subdivision will be revised to read as follows:

24 An agency that relies solely on a statement of its rationale for
25 the necessity of the regulation under this subdivision shall explain
26 why the necessity of the regulation cannot, as a practical matter, be
27 demonstrated by facts or expert opinion.

28 **§ 11350(d). Record of review in declaratory relief action**

29 In the draft recommendation, paragraph (4) provides that a court may
30 consider affidavits for the sole purpose of proving whether a regulation used by
31 an agency should have been adopted under the rulemaking procedure. The
32 paragraph will be revised so that it no longer limits the form of evidence that
33 may be considered for such a purpose. The Comment to Section 11350 will note
34 that evidence offered to prove that an agency has used a regulation that should

1 have been adopted under the rulemaking procedure will typically be
2 documentary evidence, but that a court may consider oral testimony in
3 appropriate circumstances (e.g., to judge the credibility of an affiant or
4 declarant).

5 **Other Improvements**

6 The Commission also considered the First Supplement to Memorandum 99-
7 51, discussing other possible improvements of the rulemaking procedure. These
8 changes were suggested by the Regulation Review Unit of the Trade and
9 Commerce Agency. The Commission approved distribution of a tentative
10 recommendation proposing two of the suggested changes:

11 **Availability of final statement of reasons.** The notice of proposed action
12 should explain that the final statement of reasons is a public document and
13 instruct the public in how to obtain a copy if they wish to do so. An agency that
14 has an Internet website should be required to publish its final statement of
15 reasons on its website.

16 **Notice of abandonment.** An agency that decides not to proceed with a
17 proposed regulatory action should provide notice of its decision to the Office of
18 Administrative Law, for publication in the California Regulatory Notice Register.

19 **STUDY N-304 – EXEMPTIONS FROM APA**

20 The Commission considered Memorandum 99-70, discussing Penal Code
21 Section 5058, which provides special rulemaking procedures for the California
22 Department of Corrections (CDC). The Commission approved the circulation of a
23 request for public comment on whether the special emergency rulemaking and
24 pilot program provisions of Section 5058 are creating problems. The request for
25 public comment will include draft legislation presenting the following possible
26 alternatives to existing law:

27 (1) Use of the emergency rulemaking procedure to address
28 urgent operational needs could be limited to cases where a
29 regulatory action is required to address an unforeseen circumstance
30 or to comply with an urgency statute.

31 (2) When using the emergency rulemaking procedure to address
32 urgent operational needs, CDC could be required to provide 30
33 days public notice and hold a public hearing before submitting the
34 proposed emergency regulation to the Office of Administrative

1 Law. Notice and comment would not be required before using the
2 regular emergency rulemaking procedure.

3 (3) The provision establishing an exception from the rulemaking
4 procedure for a regulation related to a pilot program could include
5 a definition of “pilot program” that is consistent with the prevailing
6 usage of that term.

7 The request for public comment will also include draft legislation to correct
8 technical problems with Section 5058. CDC is invited to work with the staff in
9 developing the draft legislation.

10 The request for public comment will be distributed to persons on the
11 Commission’s mailing list as well as selected groups from CDC’s list of persons
12 interested in receiving notice of CDC rulemaking activity.

APPROVED AS SUBMITTED

Date

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

Chairperson

Executive Secretary



Publisher of Consumer Reports

October 14, 1999

VIA FACSIMILE

California Law Revision Commission
4000 Middlefield Road, Room D 1
Palo Alto, CA 94303-4739

Re: Mandamus to Review Agency Action, Memorandum 99-71

Dear Members of the Commission:

Consumers Union, the nonprofit publisher of Consumer Reports magazine, opposes the staff recommendation regarding (proposed) CODE OF CIVIL PROCEDURE (CCP) SECTION 1099 (Memorandum 99-71, pp. 2-3). The staff recommends adopting language that would prohibit application of the venue provisions of CCP Section 401 from applying to review of agency action.

The staff proposal would eliminate as proper venue a city where the Attorney General has an office: Los Angeles, Oakland, San Diego, and San Francisco. The Commission should not act to restrict venue, especially for public interest litigation against state agencies. Section 401 is an important part of the venue provisions and should not be cut back by the Commission.

The Tentative Recommendation dated April 14, 1999 states the Commission believes "judges in small counties are inexperienced in administrative law matters" thus justifying the addition of Sacramento, California as another permissible venue. This concern simply does not apply to Los Angeles, Oakland, San Diego and San Francisco. We are greatly concerned by any attempt to centralize or restrict venue for suits against state agencies. Any such attempt would add to the costs and difficulties of bringing important public interest cases. In effect, the staff proposal would gravely restrict the realistic probability of due process for citizens across California who cannot travel to Sacramento to be heard. We believe other public interest organizations, once made aware of the Commission's proposal, will agree with our position.

In conclusion, we concur with the proposal to add Sacramento as an additional permissible venue. In doing so, however, CCP Section 401 should not be restricted in any way.

Sincerely,

[Handwritten signature of Earl Lui]

Earl Lui
Senior Attorney

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