

CALIFORNIA LAW REVISION COMMISSION

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July 2, 1998

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|---|--|--------|--|
| Date: | July 17, 1998 | Place: | San Diego |
| | July 17 (Fri.) 10:00 am – 5:00 pm | | State Building Suite B-109 (Auditorium) 1350 Front Street |
| <p>Changes may be made in this agenda, or the meeting may be rescheduled, on short notice. If you plan to attend the meeting, please call 650-494-1335 and you will be notified of any late changes.</p> | | | |
| <p>Most Commission meeting materials are available on the Internet at: http://www.clrc.ca.gov</p> | | | |

FINAL AGENDA*for meeting of the***C A L I F O R N I A L A W R E V I S I O N C O M M I S S I O N****1. MINUTES OF JUNE 4, 1998, MEETING (6/17/98)****2. ADMINISTRATIVE MATTERS****Election of Officers**

Memorandum 98-49 (NS) (6/11/98)

Location of September Meeting

Memorandum 98-50 (NS) (7/2/98)

1998 Strategic Plan

Memorandum 98-52 (NS) (6/11/98)

Handbook of Practices and Procedures

Memorandum 98-53 (SU) (6/15/98)

Report of Executive Secretary**3. 1998 LEGISLATIVE PROGRAM**

Memorandum 98-51 (NS) (7/2/98)

4. TRIAL COURT UNIFICATION (STUDY J-1300)**Issues on Implementing Legislation**

Memorandum 98-47 (BG) (to be sent)

Draft of Recommendation
Memorandum 98-48 (BG) (to be sent)

5. UNIFORM PRINCIPAL AND INCOME ACT (STUDY L-649)

Memorandum 98-36 (SU) (to be sent)

6. ENVIRONMENT CODE (STUDY E-100)

Division 4 (Air Resources): Parts 5-9
Memorandum 98-45 (BH) (6/29/98)

Draft of Tentative Recommendation

Memorandum 98-46 (BH) (to be sent)

7. EMINENT DOMAIN LAW

Eminent Domain Law Update (Study EmH-450)
Memorandum 98-54 (NS) (7/2/98)

Condemnation by Privately Owned Public Utility (Study EmH-451)
Memorandum 98-43 (NS) (7/2/98)

Date of Valuation (Study EmH-452)

Memorandum 98-44 (NS) (7/2/98)

MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
JULY 17, 1998
SAN DIEGO

A meeting of the California Law Revision Commission was held in San Diego on July 17, 1998.

Commission:

Present: Edwin K. Marzec, Chairperson
Arthur K. Marshall, Vice Chairperson
Pamela L. Hemminger
Ronald S. Orr
Sanford M. Skaggs
Howard Wayne, Assembly Member
Colin Wied

Absent: Robert E. Cooper
Bion M. Gregory, Legislative Counsel
Quentin L. Kopp, Senate Member

Staff: Nathaniel Sterling, Executive Secretary
Stan Ulrich, Assistant Executive Secretary
Barbara S. Gaal, Staff Counsel
Brian P. Hebert, Staff Counsel
Robert J. Murphy, Staff Counsel
Deborah Bardwick, Student Legal Assistant

Consultants: Gideon Kanner, Eminent Domain Law & Inverse
Condemnation
J. Clark Kelso, Trial Court Unification

Other Persons:

Douglas Ditonto, Southern California Edison, Rosemead
Julie Miller, Southern California Edison, Rosemead
Randall Morrow, Southern California Gas Company, Los Angeles
Edward Pablos, Jr., Pacific Bell, San Diego
Bill Winter, California Cable Television Association, Oakland

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MINUTES OF JUNE 4, 1998, MEETING

2 The Minutes of the June 4, 1998, meeting of the Law Revision Commission
3 were approved with the following correction:
4 On page 5, line 24 should refer to the incidence of eminent domain.

5

ADMINISTRATIVE MATTERS

6 **Membership of Commission**

7 The Commission welcomed its two newly appointed members, Pamela L.
8 Hemminger of Los Angeles and Ronald S. Orr of Santa Monica.

9 **Election of Officers**

10 The Commission considered Memorandum 98-49, relating to election of
11 officers of the Commission. The Commission by acclamation elected Arthur K.
12 Marshall as Chairperson and Howard Wayne as Vice Chairperson for the term
13 beginning September 1, 1998.

14 The Commission discussed the possibility of naming a second Vice
15 Chairperson to act during times when legislative business detains Commissioner
16 Wayne. The Commission concluded that the following statement of current

1 practice included in its Handbook of Practices and Procedures is sufficient for
2 this purpose:

3 If both the Chairperson and Vice Chairperson are absent when
4 the meeting should start, a Commission member may convene the
5 meeting and act as temporary Chairperson.

6 **Location of September Meeting**

7 The Commission considered Memorandum 98-50, relating to the location of
8 the Commission's September meeting. The Commission selected Sacramento as
9 the location of that meeting.

10 **1998 Strategic Plan**

11 The Commission considered Memorandum 98-52, relating to the
12 Commission's "strategic plan" for 1998. This was an informational item only,
13 with no Commission action required or taken.

14 In connection with the Commission's discussion of the strategic plan,
15 Commissioner Wayne suggested that the Commission request authority to
16 propose a logical reorganization and clarification of the statutes governing
17 criminal sentencing procedures. This suggestion will be considered by the
18 Commission at its September 1998 meeting, in connection with its review of
19 proposed new topics and priorities.

20 **Handbook of Practices and Procedures**

21 The Commission considered Memorandum 98-53, relating to the latest
22 revision of the Commission's Handbook of Practices and Procedures. The
23 Commission approved the handbook, subject to a staff review of the mechanical
24 procedures outlined in it to ensure conformity with the state open meeting act.

25 **Commission Consultants**

26 The Executive Secretary reported on his progress in locating an appropriate
27 consultant for the project to review discovery laws of other jurisdictions with the
28 view to identifying useful innovations and improvements for California Law.
29 The Executive Secretary suggested a contract with Professor Gregory Weber of
30 McGeorge Law School. The contract would contain the same general terms as
31 and provide compensation commensurate with other Commission consultant
32 contracts. It would call for delivery of the study within two-plus years. The

1 Commission approved proceeding with contract negotiations along these lines
2 with Professor Weber.

1998 LEGISLATIVE PROGRAM

4 The Commission considered Memorandum 98-51, relating to the
5 Commission's 1998 legislative program. The staff supplemented the attached
6 chart with the information that:

7 AB 1683 (Uniform TOD Security Registration Act) has passed the Senate and
8 is being returned to the Assembly for concurrence.

9 AB 2164 (ALJ Code of Ethics) has been signed by the Governor as Chapter 95
10 of the Statutes of 1998. Revised Comments reflecting amendments made during
11 the legislative process are attached to the memorandum.

12 SB 177 (Best Evidence Rule) has been signed by the Governor as Chapter 100
13 of the Statutes of 1998.

14 SCR 65 (CLRC authority to study topics) has been enacted as Resolution
15 Chapter 91 of the Statutes of 1998.

STUDY E-100 – ENVIRONMENTAL LAW CONSOLIDATION

17 The Commission continued its consideration of new material proposed for
18 inclusion in the draft Environment Code. The Commission considered
19 Memorandum 98-45, relating to Parts 5 to 9 of Division 4 of the Environment
20 Code (Air Resources). The Commission approved the draft attached to the
21 memorandum for inclusion in the draft code when it is circulated for comment.

22 The Commission also considered Memorandum 98-46, presenting a draft
23 tentative recommendation relating to the creation of the proposed Environment
24 Code, including its first four divisions. The Commission approved the tentative
25 recommendation, subject to one change — the preliminary part should be revised
26 to better reflect the Commission's understanding that the Commission was
27 instructed by the Legislature to prepare a draft Environment Code.

STUDY EM-450 – EMINENT DOMAIN LAW UPDATE

29 The Commission considered Memorandum 98-54, relating to recent
30 communications concerning the eminent domain law update project. The staff
31 noted that the Commission also has recently received a communication from a
32 practitioner to the effect that Evidence Code Section 822(a)(1) relating to

1 valuation evidence is complex and confusing and should be clarified. The
2 Commission will add this matter to the list of issues to be addressed in the
3 project.

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

5 The Commission considered Memorandum 98-43, along with a letter from
6 Southern California Edison distributed at the meeting and attached to these
7 Minutes as an Exhibit, relating to condemnation by a privately owned public
8 utility. Commissioners Hemminger and Skaggs did not participate in this matter.

9 The staff supplemented the memorandum with empirical information it had
10 collected concerning the incidence of condemnation by privately owned public
11 utilities. Based on preliminary reviews of superior court filings and statistics,
12 reports from practitioners, and published appellate reports, there does not
13 appear to be an immediate upsurge in public utility filings resulting from public
14 utility deregulation.

15 After discussing existing constraints on the exercise of eminent domain
16 authority by a privately owned public utility and the current approach of the
17 Public Utilities Commission, the Law Revision Commission directed the staff to
18 prepare a draft proposal to make public utility condemnation authority expressly
19 subject to the regulatory authority of the Public Utilities Commission. The draft
20 should be careful not to create a right of a property owner to petition for PUC
21 intervention, but should leave it to the PUC to determine whether any regulation
22 is appropriate and, if so, what form it should take.

23 **STUDY EM-452 – DATE OF VALUATION**

24 The Commission considered Memorandum 98-44, relating to date of
25 valuation issues in eminent domain. Commissioner Orr did not participate in this
26 matter.

27 The Commission discussed the relatively unusual circumstances in which a
28 Kirby issue would arise — there is no prejudgment deposit or possession by the
29 condemnor and the property increases sufficiently in value before the award is
30 deposited that the property owner believes it is worth the litigation cost to
31 revalue the property. An added complication for California law, not found in
32 federal law, is that revaluation would have to be a jury, rather than court, matter.

The Commission requested the staff to prepare a draft of a scheme to allow interest on the award from the date of valuation until the date the award is deposited as *prima facie* compensation for the delay. This would tend to minimize the number of cases in which a Kirby claim would or could be made. A backup revaluation procedure would have to be provided for the rare case in which interest was inadequate compensation for the delay. The condemnor can stop the running of interest at any time by depositing the amount of award.

STUDY H-450 – EMINENT DOMAIN LAW UPDATE

9 See entry in these Minutes under Study Em-450.

STUDY H-451 – CONDEMNATION BY PRIVATELY OWNED PUBLIC UTILITY

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

STUDY H-452 – DATE OF VALUATION

13 See entry in these Minutes under Study Em-452.

14 STUDY J-1300 – TRIAL COURT UNIFICATION

15 The Commission considered Memorandum 98-47 and its First Supplement,
16 and Memorandum 98-48, concerning implementing legislation for Proposition
17 220 (SCA 4). The Commission approved the draft recommendation for printing
18 and submission to the Legislature, subject to the following revisions:

19 (1) The preclearance provision (proposed Gov't Code § 70216) should be
20 deleted from the recommendation.

21 (2) The following provision should be added to the recommendation:

Gov't Code § 70216. Unification during municipal court election

70216. (a) If unification of the municipal and superior courts
within a county occurs during an election of a municipal court
judge, the conduct of the direct primary election and general
election is governed by the law otherwise applicable to election of a
municipal court judge.

1 (c) As used in this section, "during an election" means during
2 the period beginning on the 127th day before a direct primary
3 election and ending on the day of the general election.

4 **Comment.** Section 70216 is added to clarify how Article VI,
5 Section 23 of the California Constitution applies where unification
6 occurs during a municipal court election.

7 Under subdivision (a), the election proceeds as originally
8 planned, helping to promote an orderly transition to unification.
9 Cal. Const. art. VI, § 23(a).

10 Under subdivision (b), the winner of the election is a previously
11 selected municipal court judge, and thus becomes a superior court
12 judge through unification. Cal. Const. art. VI, § 23(b).

13 Subdivision (c) makes clear that Section 70216 applies where
14 unification occurs between (1) the first day for filing a declaration
15 of intention to become a candidate for a municipal court judgeship,
16 and (2) the day of the general election. See Elec. Code §§ 8020
17 (nomination documents "shall first be available on the 113th day
18 prior to the direct primary election"), 8022 (declaration of intention
19 to become a candidate shall be filed "not more than 14 nor less than
20 five days prior to the first day on which nomination papers may be
21 presented for filing").

22 To reflect the addition of this provision, the preliminary part of the
23 Commission's report should be revised as set forth in Memorandum 98-47,
24 Exhibit page 3.

25 (3) The proposed amendment of Code of Civil Procedure Section 198.5 should
26 be revised to read:

27 **Code Civ. Proc. § 198.5 (amended). Superior court venires in
28 judicial districts**

29 SEC. _____. Section 198.5 of the Code of Civil Procedure is
30 amended to read:

31 198.5. In (a) Except as provided in subdivision (b), in counties
32 where sessions of the superior court are held in cities other than the
33 county seat, the names for master jury lists and qualified jury lists
34 to serve in those cities may be selected from the judicial district in
35 which the city is located and, if the judges of the court determine
36 that it is necessary or advisable, from a judicial district adjacent to a
37 judicial district in which the city is located.

38 (b) In a county in which there is no municipal court, if sessions
39 of the superior court are held in a location other than the county
40 seat, the names for master jury lists and qualified jury lists to serve
41 in a session may be selected from the area in which the session is
42 held, pursuant to a local superior court rule that divides the county

in a manner that provides all qualified persons in the county an equal opportunity for jury service.

Comment. Section 198.5 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). Subdivision (b) is drawn from Section 191 (policy of state to select jury from population of area served by court; all qualified persons to have an equal opportunity to be considered for jury service). A local rule promulgated pursuant to subdivision (b) may differentiate between misdemeanors and limited civil cases, on the one hand, and felonies and civil cases other than limited civil cases, on the other. See Code Civ. Proc. § 85 (limited civil cases) & Comment; Penal Code § 691 (definitions) & Comment.

(4) The list of "Issues in Judicial Administration Appropriate for Future Study" should be revised to include reexamination of the statutes governing jury selection.

(5) Proposed Code of Civil Procedure Section 395.9(b) should be revised as follows:

(b) If an action or proceeding is commenced as a limited civil case or otherwise pursuant to Section 422.30, and it later If it appears from the verified pleadings, or at the trial, or hearing, that the determination of the action or proceeding, or of a cross-complaint, will necessarily involve the determination of questions inconsistent with that classification the jurisdictional classification of the case, the court shall, on motion of either party within 30 days after the party became or reasonably should have been aware of the grounds for misclassification, or five days in a proceeding for unlawful detainer, forcible detainer, or forcible entry establishing the grounds for misclassification and good cause for not seeking reclassification earlier, or on the court's own motion at any time, reclassify the case.

(6) The proposed procedure for conducting a unification vote should be retained in the report, but subsequent provisions should be renumbered to conform to the numbering in SB 2139 (Lockyer).

STUDY L-649 – UNIFORM PRINCIPAL AND INCOME ACT

The Commission considered Memorandum 98-36 reporting on the progress of the working group that is considering technical issues in the Uniform Principal and Income Act of 1997. The staff reported that significant progress had been

1 made and that the working group should be able to complete its review of the
2 uniform act in time to enable the staff to prepare a draft for Commission
3 consideration at the September meeting.

| | |
|--|---------------------|
| <input type="checkbox"/> APPROVED AS SUBMITTED | Date |
| <input type="checkbox"/> APPROVED AS CORRECTED (for corrections, see Minutes of next meeting) | Chairperson |
| | Executive Secretary |



Julie A. Miller
Attorney

July 15, 1998

Nathaniel Sterling
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, California 94303-4739

Re: Public Utility Eminent Domain Law

Dear Mr. Sterling:

The Law Revision Commission is undertaking a review of the use of the power of eminent domain by public utilities to determine whether there is any need to statutorily limit its use. It has been argued that such restraint may be needed in light of deregulation. The eminent domain law already has significant safeguards built into it to protect landowners from a public utility that might try to abuse its power. Such a statutory limitation is therefore unnecessary.

Public Utilities Code section 701 gives the California Public Utilities Commission plenary power to regulate public utilities. A public utility abusing its power could be easily brought to task at the Commission.

With regard to electric utilities, Commission General Order 131-D allows the Commission to control the planning and construction of electric facilities. General Order 131-D provides for notification of affected property owners and a forum for them to be heard on the issues prior to condemnation.

We believe that the Law Revision Commission need not draft new statutes to control public utilities' use of eminent domain. At a minimum, we request that electric utilities be exempted because statutes and case law already have adequate safeguards built in, and grant the Public Utilities Commission authority to develop regulations, such as General Order 131-D.

Very truly yours,

A handwritten signature in black ink that appears to read "Julie A. Miller".

Julie A. Miller

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