
MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
JUNE 22-23, 2000
SACRAMENTO

A meeting of the California Law Revision Commission was held in Sacramento on June 22-23, 2000.

Commission:

Present: Howard Wayne, Assembly Member, Chairperson
Sanford M. Skaggs, Vice Chairperson
Joyce G. Cook
David Huebner

Absent: Bion M. Gregory, Legislative Counsel
Bill Morrow, Senate Member

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

Consultants: Gordon Hunt, Mechanic's Lien Law (June 22)
Gideon Kanner, Eminent Domain Law & Inverse
Condemnation (June 22)
J. Clark Kelso, Trial Court Unification, Administrative
Rulemaking (June 22)
Frederick Tung, Municipal Bankruptcy (June 22)

Other Persons:

Sam Abdulaziz, North Hollywood (June 22)
Deborah Baity, Department of Motor Vehicles, Sacramento (June 22)
Yolanda Benson, Mattos & Associates, Sacramento (June 22)
Skip Daum, American Subcontractors Association of California, Sacramento
(June 22)
Jim Deeringer, State Bar Estate Planning, Trust and Probate Law Section, Sacramento
(June 23)
Peter C. Freeman, Lumber Association of California & Nevada, Barr Lumber, San
Bernardino (June 22)
Ellen Gallagher, Contractors License Board, Sacramento (June 22)
Don Gracey, Meek's Lumber, Sacramento (June 22)
Jan Hansen, Lumber Association of California & Nevada, Sacramento (June 22)

Jasen Hershberger, Assemblyman Ackerman's Office, Sacramento (June 22)
Keith Honda, Assemblyman Honda's Office, San Jose (June 22)
Robin Infausto, Wayside Lumber Company, Sacramento (June 22)
Scott R. Kassahn, Meek's Lumber, Sacramento (June 22)
Carl Lucas, Lumber Association of California & Nevada, Barr Lumber, San Bernardino (June 22)
Deborah Mattos, Lumber Association of California & Nevada, Mattos & Associates, Sacramento (June 22)
Michael R. Nave, Meyers, Nave, Riback, Silver & Wilson, San Leandro (June 22)
Michael L. Petersen, Senate Republican Office of Policy, Sacramento (June 22)
S.L. Roullier, BPPVE, Sacramento (June 22)
Ronald H. Sargis, California Association of Collectors and Bank of America, Sacramento (June 23)
Jeffrey Sievers, Civil Justice Association of California, Sacramento (June 22)
Bill Smelko, Law Offices of William A. Smelko, APC, San Diego (June 22)
Frank Solinsky, Lumber Association of California & Nevada, Payless Building Supply, Chico, Anderson, Susanville (June 22)
Philip M. Vermeulen, Engineering Contractors' Association, Sacramento (June 22)
Karenda Wilson, Wayside Lumber Company, Sacramento (June 22)

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MINUTES OF APRIL 13, 2000, MEETING

The Commission approved the Minutes of the April 13, 2000, Commission meeting as submitted by the staff, subject to following correction:

On page 6, line 7, "Commisison" was changed to "Commission"

ADMINISTRATIVE MATTERS

Report of Executive Secretary

The Executive Secretary made the following report:

Senator Bill Morrow has been appointed as the Senate member of the Commission.

The Commission will be activating work on a number of major projects during the next few months, due primarily to receipt of background studies prepared by Commission consultants. These projects include:

- Criminal Sentencing Statutes
- Uniform Unincorporated Nonprofit Association Act
- Rules of Construction for Trusts
- Application of Evidence Code to Electronic Communications
- Common Interest Development Law
- Discovery Improvements from Other Jurisdictions

The office of the President Pro Tem of the Senate has indicated an interest in having the Commission review the statutes governing trial court staffing, with the view to recommending revisions to clean out obsolete provisions in light of changes in trial court funding, trial court unification, and the like.

2000 LEGISLATIVE PROGRAM

The Commission considered Memorandum 2000-35, relating to the status of bills in the Commission's 2000 legislative program.

The staff reported that Senator Ortiz decided not to set SB 1370 for hearing. The bill would have implemented the Commission's recommendation on confidentiality of settlement negotiations. The reason for the decision was the opposition of the Consumer Attorneys of California and the Judicial Council. The Commission decided not to reintroduce the proposal next session.

1 For additional material relating to bills in the 2000 legislative program, see the
2 entries in these Minutes under the following studies:

3 AB 1358: See Study F-1300 – Family Code Enforcement

4 AB 1822: See Study N-300 – Administrative Rulemaking

5 STUDY D-1003 – DEBTOR-CREDITOR LAW: TECHNICAL REVISIONS

6 The Commission considered Memorandum 2000-10 concerning technical
7 revisions in debtor-creditor law proposed by the Los Angeles County Sheriffs’
8 Department. The Commission made the following decisions:

9 **Code Civ. Proc. §§ 512.060, 514.020, 515.010, 515.020. Bond under Claim and**
10 **Delivery Law**

11 The Commission adopted the Sheriffs’ suggestion to provide for court
12 authority to set the amount of the release bond where there is no plaintiff’s bond.
13 The Commission discussed the possibility of providing a minimum bond as in
14 attachment, but decided the Sheriffs’ approach would be less expensive to the
15 parties. The incomplete sentence in the Comment to Code of Civil Procedure
16 Section 514.020 should be fixed.

17 **§ 703.580. Disposition of property during pendency of exemption proceedings**

18 Where an exemption hearing is taken off calendar and the matter not heard,
19 the property claimed as exempt should not be released to the debtor, but should
20 be applied to the satisfaction of the judgment. The debtor, having made the
21 exemption claim, is responsible for making sure the matter is heard. Subdivision
22 (b) makes clear that the exemption claimant has the burden of proof. This section
23 should be revised to provide that the property is to be applied to satisfaction of
24 the judgment if the matter is not heard within the applicable time provided by
25 statute.

26 **§ 703.610. Disposition of property during pendency of exemption proceedings**

27 This section should be revised as proposed, making clear that the levying
28 officer is to comply with a court order for an earlier release of the property.

29 **§ 712.010. Issuance of writ of possession of real property**

30 The proposal to attempt to coordinate issuance of writs of possession with
31 court-ordered lock-out dates was not approved. The Commission requested the

1 staff to seek further clarification of the practical problem the Sheriffs have
2 encountered and their proposed solution.

3 **§ 715.010. Writ of possession of real property, five-day notice to vacate**

4 The proposed revisions to include the date to vacate and manner of service
5 should be given further review, taking into account the contents of the statutory
6 notice under the prejudgment claim of right to possession under Section 415.46.
7 The staff should provide additional background on the statutory provisions,
8 including the permissible manner of service and the consequences of different
9 manners of service on the time allowed for vacating the premises. The
10 consequences of failure to insert the vacation date or inserting an incorrect date
11 on the form should be considered. The simplest approach may be to revise the
12 first sentence of Section 715.010(b)(2) to provide for a statement of the vacation
13 date, since the statute already requires a statement of the rule that the property is
14 to be vacated within five days from the date of service on the debtor. The
15 revision should also make clear that absence of the date does not invalidate the
16 service.

17 **§ 715.020. Time for execution of writ of possession of personal property**

18 The Commission declined to codify the rule in *Cardenas v. Noren*, 235 Cal.
19 App. 3d 1344, 1 Cal. Rptr. 2d 367 (1991), concerning restoration of tenants
20 inadvertently or improperly evicted.

21 **Electronic Filing**

22 The Commission rejected the proposal to amend the new statute concerning
23 electronic filing (Section 1010.6). The staff should convey the Sheriffs' concern to
24 the Judicial Council. It would be best if the problem were addressed by local
25 rules developed under the new statute and statewide rules to be in place by 2003.

26 The staff will prepare a draft tentative recommendation implementing these
27 decisions for consideration in the fall, with a view toward seeking to have any
28 finally recommended revisions added to a committee omnibus bill in the 2001
29 session.

30 **STUDY D-1100 – MUNICIPAL BANKRUPTCY**

31 The Commission considered Memorandum 2000-38, presenting Prof.
32 Frederick Tung's background study on *California Municipal Bankruptcy Legislation*

1 (March 2000). Professor Tung gave an overview of his study and briefly
2 discussed the alternative approach suggested by Henry Kevane in materials
3 attached to the First Supplement to Memorandum 2000-38. The Commission
4 decided it was premature to make any policy decisions, particularly in light of
5 the lack of any response from local public entities or their associations. It would
6 also be useful to get the Governor's office involved in the early stages of the
7 project; Commissioner Huebner agreed to contact the Governor's office. The staff
8 will devote further efforts to eliciting comments from local government
9 representatives.

10 STUDY EM-457 – OFFSET OF BENEFITS IN PARTIAL TAKING IN EMINENT DOMAIN

11 The Commission considered Memorandum 2000-40 and its First and Second
12 Supplements, relating to offset of benefits in a partial taking in an eminent
13 domain proceeding. The Commission considered issues raised by *Los Angeles*
14 *County Metropolitan Transit Authority v. Continental Development*, 16 Cal. 4th 634,
15 66 Cal. Rptr. 630, 941 P.2d 809 (1997), including the possibility of codifying the
16 principles announced in the case. After discussion, the Commission decided to
17 leave the matter to continued case law development.

18 STUDY EM-458 – EARLY DISCLOSURE OF VALUATION DATA AND
19 RESOLUTION OF ISSUES IN EMINENT DOMAIN

20 The Commission considered Memorandum 2000-39 and its First and Second
21 Supplements, relating to early disclosure of valuation data and resolution of
22 issues in an eminent domain proceeding. The Commission approved the draft
23 tentative recommendation attached to the memorandum to circulate for
24 comment, with the following revisions:

25 **Code Civ. Proc. § 1250.410 (amended). Pretrial settlement offers**

26 The Comment to this section was revised as set out in the First Supplement:

27 **Comment.** Subdivision (a) of Section 1250.410 is amended to
28 counteract dictum in cases to the effect that the provision is not
29 intended to require the offer and demand to cover items other than
30 the value of the part taken and damage, if any, to the remainder.
31 See, e.g., *Coachella Valley County Water Dist. v. Dreyfuss*, 91 Cal.
32 App. 3d 949, 154 Cal. Rptr. 467 (1979); *People ex rel. Dep't of*
33 *Transp. v. Gardella Square*, 200 Cal. App. 3d 559, 246 Cal. Rptr. 139
34 (1988).

1 The amendment makes clear that the final offer and demand
2 should include all statutorily or constitutionally required elements
3 of compensation, including compensation for loss of goodwill.
4 Although interest and costs are not covered by this provision, the
5 amendment also requires, for the purpose of clarity, that each offer
6 and demand also indicate whether or not interest and costs are
7 included.

8 It should be noted that subdivision (b) requires the offer made
9 by the plaintiff pursuant to Section 7267.2 of the Government Code
10 to be considered in determining the amount of litigation expenses.
11 In making the determination, the court should discount differences
12 between that offer and the final offer under subdivision (a), to the
13 extent matters such as claimed loss of business goodwill or
14 eventual interest and costs in the proceeding would not have been
15 known to the plaintiff at the time of the earlier offer.

16 **Code Civ. Proc. § 1260.040 (amended). Resolution of legal issues affecting**
17 **valuation**

18 This section was revised to provide that the motion for resolution of legal
19 issues should be made not later than 60 days before commencement of the
20 “valuation” trial.

21 **Gov’t Code § 7267.2 (amended). Precondemnation offer**

22 The statute should be revised to provide that (1) the precondemnation
23 appraisal is available to the property owner, (2) the appraisal may not be used at
24 trial as an admission of the condemnor, but (3) the appraisal may be used at trial
25 for purposes of impeaching a witness who prepared the appraisal.

26 STUDY F-910 – EFFECT OF DISSOLUTION OF MARRIAGE
27 ON NONPROBATE TRANSFERS

28 The Commission considered Memorandum 2000-41 and its First Supplement,
29 discussing whether to pursue legislation to implement the Commission’s
30 recommendation on the *Effect of Dissolution of Marriage on Nonprobate Transfers*.
31 The Commission decided against taking action at this time, but will revisit the
32 issue in the fall of 2000.

33 STUDY F-911 – ESTATE PLANNING DURING DISSOLUTION OF MARRIAGE

34 The Commission considered Memorandum 2000-42, discussing comments on
35 its tentative recommendation on *Estate Planning During Marital Dissolution*. The

1 Commission instructed the staff to prepare a draft recommendation embodying
2 the tentative recommendation, with the changes described below:

3 **Fam. Code § 2040. Automatic Temporary Restraining Order**

4 The proposed amendments to Family Code Section 2040(a)(4) and the
5 Commission Comment to that section should be revised as follows:

6 2040. (a) In addition to the contents required by Section 412.20
7 of the Code of Civil Procedure, the summons shall contain a
8 temporary restraining order:

9 ...

10 (4) Restraining both parties from creating a nonprobate transfer
11 or modifying a nonprobate transfer in a manner that affects the
12 disposition of property subject to the transfer, without the written
13 consent of the other party or an order of the court.

14 (b) Nothing in this section restrains revocation of a nonprobate
15 transfer, ~~severance of a joint tenancy~~ elimination of a right of
16 survivorship between owners of jointly-owned property, or the
17 creation, modification, or revocation of a will.

18 **Comment.** Section 2040 is amended to clarify the scope of the
19 automatic temporary restraining order with respect to estate
20 planning changes. The fact that the restraining order does not
21 restrain revocation of a nonprobate transfer does not mean that
22 such a ~~provision~~ transfer is necessarily subject to revocation by a
23 one party without the consent of the other party. The question of
24 whether a nonprobate transfer is subject to unilateral revocation is
25 governed by the terms of the nonprobate transfer and applicable
26 substantive law. See, e.g., Prob. Code § 5506 (action by all
27 surviving joint owners required to cancel beneficiary registration of
28 jointly-owned security); 31 C.F.R. § 353.51 (restricting changes in
29 ownership of jointly-owned Series EE savings bond).

30 The Comment will be further revised to provide examples of types of
31 modifications to a nonprobate transfer that would be restrained as “affecting the
32 disposition of property subject to the transfer” (e.g., a change in beneficiary or in
33 a power of appointment).

34 **Requests for Further Input**

35 The memorandum presenting the draft recommendation will specifically ask
36 for additional public input on the following questions:

- 37 (1) Should the ATRO restrain creation of an unfunded living trust?

1 (2) Is the proposed restraint on modification of a nonprobate transfer
2 “in a manner that affects the disposition of property subject to the
3 transfer” sufficient, or should any modification of a nonprobate
4 transfer be restrained?

5 **Judicial Council Form Language**

6 The Judicial Council form for summons in a dissolution proceeding includes a
7 description of the effect of the ATRO. If the Commission’s recommendation is
8 eventually enacted, the staff will work with the Judicial Council to recommend
9 language to make this description as clear as possible (e.g., by including the
10 proposed statutory definition of “nonprobate transfer”).

11 **STUDY F-1300 – FAMILY CODE ENFORCEMENT**

12 The Commission considered the First Supplement to Memorandum 2000-35
13 presenting revised Comments relating to Commission-recommended provisions
14 in AB 1358. The staff reported on the status of the bill, and the Commission
15 approved the revised Comments.

16 **STUDY H-820 – MECHANIC’S LIENS**

17 The Commission considered Memorandum 2000-36 and its First Supplement,
18 concerning constitutional issues in mechanic’s lien reform, and Memorandum
19 2000-37 and its First Supplement, concerning several proposals for reform of
20 mechanic’s lien law. (Other materials received and considered at the meeting are
21 attached to the Second Supplement to Memorandum 2000-37.)

22 After discussing a number of options in some detail, and hearing the views of
23 interested persons, the Commission directed the staff to prepare drafts of the full-
24 pay defense proposal and the direct pay proposal. A review of draft language
25 should help test the viability of these proposals. These special rules would be
26 limited to situations involving home improvement contracts affecting single-
27 family, owner-occupied dwellings. Commissioners stressed the need to simplify
28 the existing statute and to avoid making any new notices and statutory rules as
29 complicated as existing law.

30 The Commission would also like to receive additional information on the use
31 of joint control companies performing escrow functions, as well as the possibility
32 of using check-writing services to regularize the payment process.

1 **STUDY H-910 – EFFECT OF DISSOLUTION OF MARRIAGE**
2 **ON NONPROBATE TRANSFERS**

3 See entry in these Minutes under Study F-910.

4 **STUDY H-911 – ESTATE PLANNING DURING DISSOLUTION OF MARRIAGE**

5 See entry in these Minutes under Study F-911.

6 **STUDY J-111 – STATUTE OF LIMITATIONS FOR LEGAL MALPRACTICE**

7 The Commission considered Memorandum 2000-43, concerning the statute of
8 limitations for legal malpractice.

9 The Commission discussed whether equitable tolling should continue only
10 until the trial court or other initial tribunal fully resolves the underlying action,
11 or also during the pendency of an appeal or other attempt to overturn the initial
12 decision. The Commission directed the staff to prepare alternative proposals on
13 this point and solicit input on these alternatives.

14 In the next draft, the staff should address pure transactional malpractice only
15 in specific, well-defined contexts such as a tax audit. Tolling should not be linked
16 to the establishment of causation.

17 With regard to alleged malpractice in estate planning, the staff should
18 monitor the work of the State Bar Estate Planning Trust and Probate Law Section,
19 but should not take further action at this time.

20 In amending Code of Civil Procedure Section 340.6, the word “or” should be
21 deleted from the last clause of subdivision (a):

22 **340.6. (a) An action against attorney for a wrongful act or**
23 **omission, other than for actual fraud, arising in the performance of**
24 **professional services shall be commenced within one year after the**
25 **plaintiff discovers, or through the use of reasonable diligence**
26 **should have discovered, the facts constituting the wrongful act or**
27 **omission, or four years from the date of the wrongful act or**
28 **omission, or whichever occurs first.**

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

3 The Commission considered Memorandum 2000-29 and its First and Second
 4 Supplements, concerning costs and contractual attorney’s fees. The Commission
 5 decided:

- 6 • Civil Code Section 1717 should be revised to clarify that it applies
 7 regardless of whether the prevailing party’s attorney charged a
 8 traditional fee. The staff should present further discussion and
 9 analysis on application of the provision to pro se litigants,
 10 including pro se attorneys.
- 11 • In preparing the next draft, the staff should attempt to provide
 12 greater clarity, particularly regarding voluntary dismissals. This
 13 could include referring to proposed Code of Civil Procedure
 14 Section 1039.30 in proposed Code of Civil Procedure Section
 15 1039.20(a).
- 16 • The staff should pursue Mr. Lomax’s suggestion regarding Code
 17 of Civil Procedure Section 1025 (see pages 1-2 of the Second
 18 Supplement to Memorandum 2000-29). The staff should also check
 19 whether the term “costs” as used in that provision encompasses
 20 attorney’s fees.

21 STUDY J-1309 – EXPIRED PILOT PROJECTS

22 The Commission considered Memorandum 2000-32, and its First and Second
 23 Supplements, presenting a draft tentative recommendation on *Expired Pilot*
 24 *Projects*. The Commission approved distribution of the tentative
 25 recommendation.

26 STUDY J-1312 – RECLASSIFICATION OF CIVIL CASES

27 The Commission considered Memorandum 2000-25 and its First Supplement,
 28 concerning reclassification of civil cases. The staff should take steps to ensure
 29 that the misspelling of “simultaneously” in Code of Civil Procedure Section
 30 403.020(a) is corrected. The Commission did not approve any other statutory
 31 revisions.

1 **STUDY L-910 – EFFECT OF DISSOLUTION OF MARRIAGE**
2 **ON NONPROBATE TRANSFERS**

3 See entry in these Minutes under Study F-910.

4 **STUDY L-911 – ESTATE PLANNING DURING DISSOLUTION OF MARRIAGE**

5 See entry in these Minutes under Study F-911.

6 **STUDY L-3060 – RIGHTS AND DUTIES UNDER REVOCABLE TRUSTS**

7 The Commission considered Memorandum 2000-23 concerning rights and
8 duties under revocable trusts. The staff reported on the ongoing project to
9 address these issues by the State Bar Estate Planning, Trust and Probate Law
10 Section Executive Committee. In view of the State Bar Section’s project, the
11 Commission decided to table further work on this subject.

12 **STUDY N-300 – ADMINISTRATIVE RULEMAKING**

13 The Commission considered the Second Supplement to Memorandum 2000-
14 35, describing amendments to AB 1822 (Wayne) and presenting revised
15 Comments to the Commission’s recommendations on *Administrative Rulemaking*
16 and *Improving Access to Rulemaking Information*. The Commission ratified the
17 decisions described in the memorandum and approved the revised Comments.

APPROVED AS SUBMITTED

Date

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

Chairperson

Executive Secretary