
MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
JULY 14, 2005
SACRAMENTO

A meeting of the California Law Revision Commission was held in Sacramento on July 14, 2005.

Commission:

Present: William E. Weinberger, Chairperson
Edmund L. Regalia, Vice Chairperson
Diane F. Boyer-Vine, Legislative Counsel
Sidney Greathouse
Pamela L. Hemminger
David Huebner
Frank Kaplan

Absent: Bill Morrow, Senate Member
Susan Duncan Lee

Staff: Nathaniel Sterling, Executive Secretary
Brian P. Hebert, Assistant Executive Secretary
Barbara S. Gaal, Staff Counsel
Ariana Gallisá, Student Legal Assistant

Consultants: None

Other Persons:

Sam Abdulaziz, Various Construction Trade Groups, North Hollywood
Frank Bryant, Walnut Creek
Oliver Burford, Executive Council of Homeowners, San Jose
Denise Duncan, Lumber Association of California & Nevada, Sacramento
Steven Ingram, Consumer Attorneys of California, Sacramento
Joe Klinger, Executive Council of Homeowners, Sacramento
Dan E. Kocal, California Association of Community Managers, Folsom
Lakiesha McGhee, Sacramento Bee, Sacramento
Dick Nash, Building Industry Credit Association, Los Angeles
Craig C. Page, California Land Title Association, Sacramento
Janet Shaban, Sacramento
Mary Pat Toups, Laguna Woods
Norm Widman, Lumber Association of California and Nevada, San Diego

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MINUTES OF MAY 12, 2005, COMMISSION MEETING

- 1 The Commission approved the Minutes of the May 12, 2005, Commission
2 meeting as submitted by the staff, subject to the following corrections:
3 On page 6, line 8, the number “33” should be “34”.
4 On page 6, line 9, the number “33” should be “34”.

ADMINISTRATIVE MATTERS

5 **Election of Officers**

6 The Commission considered Memorandum 2005-22, relating to the election of
7 Commission officers. The Commission elected Edmund L. Regalia as
8 Chairperson and David Huebner as Vice Chairperson for the term commencing
9 September 1, 2005 and ending August 31, 2006.

10 **Report of Executive Secretary**

11 *Personnel*

12 The Executive Secretary introduced Ariana Gallisá, a Stanford Law School
13 student who is working for the Commission this summer as a law clerk.

14 The Executive Secretary reported that the 2005 Budget authorizes an
15 additional attorney position and a half-time administrative assistant position for
16 the Commission. See discussion of the Budget, below. We hope to be able to fill
17 those positions quickly with outstanding people.

18 *Budget*

19 The 2005 Budget includes an augmentation for the Commission in the
20 amount of \$150,000 — approximately a 25% increase. This will fund an

1 additional 1.5 positions, including salary, benefits, and overhead. The purpose of
2 the augmentation is to increase the Commission's productivity and start to make
3 progress on its backlog of legislative assignments.

LEGISLATIVE PROGRAM

4 The Commission considered Memorandum 2005-23, relating to the
5 Commission's 2005 legislative program. The staff orally updated the chart
6 attached to the memorandum with the information that the Senate has concurred
7 in the Assembly amendments to SB 702 (Ackerman), that SB 853 (Kehoe) has
8 been signed by the Governor and is Chapter 37 of the Statutes of 2005, and that
9 SCR 15 (Morrow/Dunn/Escutia) has been approved by the Senate
10 Appropriations Committee. The Commission ratified the amendments to SB 702
11 (Ackerman) described in the memorandum.

STUDY H-821 – MECHANICS LIEN LAW

12 The Commission considered Memorandum 2005-24 and its First Supplement,
13 together with material distributed at the meeting (attached to the Second
14 Supplement to Memorandum 2005-24), relating to mechanics lien law. The
15 Commission made the following decisions.

16 **Notice of Claim of Lien**

17 The draft provision requiring a lien claimant to notify the owner of the
18 recording of a claim of lien — proposed Section 3083.355 — should be revised so
19 that only the owner, and not the direct contractor or construction lender, is
20 notified. The notice should take the form of a copy of the claim of lien and a
21 statement of the intended county and date of recordation. The staff should
22 research whether proof of mailing should be made by affidavit, certificate, or
23 declaration, for consistency with other statutes.

24 **Judicial Relief**

25 Draft Section 3083.810 should be revised to allow a petition for an expedited
26 lien release order only in four circumstances — where 90 days has elapsed
27 without an enforcement action, where the claim of lien is invalid under Section
28 3083.360 (forfeiture of lien for false claim), where the amount shown on the claim
29 has been paid in full, and where no work has been done on the property. The
30 staff should bring this draft back for further Commission review.

1 **BFP Protection**

2 The title insurance industry will see whether additional language would be
3 helpful to enable them to write around a stale claim of lien. The staff should look
4 into the possibility of clarifying whether the owner must sign an extension of
5 credit in order to enable an extension of the lien enforcement period.

6 **Other Remedies**

7 Proposed Section 3083.360 (forfeiture of lien for false claim) should be revised
8 so that damages are conditioned on the lien claimant's failure to release the lien
9 in response to the owner's request, and to make clear that the remedies are
10 available for a claim of lien made with intent to defraud or disparage title, and
11 that the owner has the burden of proof of these matters. The staff should further
12 research the common law elements of the cause of action for "disparagement of
13 title", as well as the meaning of the existing provision that a filed claim of lien
14 does not bind a bona fide purchaser or encumbrancer if the language was so
15 deficient as to not put the party on further inquiry in any manner.

16 **Limitation of Owner's Liability**

17 The Commission approved the revision of proposed Section 3087.220 set out
18 in the memorandum to the effect that the court must limit the lien liability of the
19 owner if a payment bond is given by sufficient sureties in the amount of 50% of
20 the contract price. The staff should prepare additional material concerning the
21 effect of contract changes in determining the contract price.

22 The Commission discussed, but did not adopt, the suggestion that an
23 admitted surety insurer should be required on all bonds given under the
24 mechanics lien law.

25 **Bond Underwriter Licensed by Department of Insurance**

26 The Commission approved the proposed revision to Section 3085.230 that a
27 construction lender that requires a payment bond as a condition of making a loan
28 may not thereafter object to the bond if given by an admitted surety insurer. This
29 change should be circulated to construction lenders for review.

30 **Prompt Payment**

31 The Commission tentatively approved the progress payment, retention, and
32 stop work notice redrafts. The staff should bring this material back for further

1 review at the end of the legislative session in light of pending legislation that
2 would revise these provisions.

3 **Security for Large Project**

4 The staff will further reorganize the draft of these provisions in a more logical
5 manner. It should be made clear that the reorganization is nonsubstantive.

6 STUDY H-855 – STATUTORY CLARIFICATION AND SIMPLIFICATION OF CID LAW

7 The Commission considered Memorandum 2005-25 and its First and Second
8 Supplements, discussing the first installment of a staff draft tentative
9 recommendation on the clarification and simplification of CID law.

10 The Commission approved the staff draft, except that proposed Civil Code
11 Section 6040 was revised along the following lines:

12 6040. ~~(a) A declaration may be amended at any time,~~
13 ~~notwithstanding any contrary provision of the declaration.~~

14 ~~(b) Any provision of a declaration may be amended, unless the~~
15 ~~declaration expressly prohibits amendment of that provision.~~

16 (a) Unless a declaration expressly provides otherwise, any
17 provision of the declaration may be amended.

18 (b) If a provision of a declaration can be amended, it may be
19 amended at any time.

20 (c) The Legislature finds that there are common interest
21 developments that have been created with deed restrictions that do
22 not provide a means for the property owners to extend the term of
23 the declaration. The Legislature further finds that covenants and
24 restrictions, contained in the declaration, are an appropriate
25 method for protecting the common plan of developments and to
26 provide for a mechanism for financial support for the upkeep of
27 common areas including, but not limited to, roofs, roads, heating
28 systems, and recreational facilities. If declarations terminate
29 prematurely, common interest developments may deteriorate and
30 the ~~housing~~ supply of affordable housing units could be impacted
31 adversely. The Legislature further finds and declares that it is in the
32 public interest to provide a vehicle for extending the term of the
33 declaration if owners having more than 50 percent of the votes in
34 the association choose to do so.

35 (d) A declaration may be amended to extend the termination
36 date of the declaration, notwithstanding any contrary provision of
37 the declaration. No single extension of the term of the declaration
38 made pursuant to this subdivision shall exceed the initial term of
39 the declaration or 20 years, whichever is less. However, more than
40 one extension may be made pursuant to this subdivision.

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STUDY J-505 – CIVIL DISCOVERY

**Calendar Preference for Writ Review of a Discovery Ruling on an Issue
Common to Consolidated Cases**

The Commission considered Memorandum 2005-27, concerning whether to create a calendar preference for writ review of a discovery ruling on an issue common to consolidated cases.

As framed, this issue is within the scope of the Commission’s ongoing study of civil discovery. The Commission decided to focus on this narrow issue, rather than seek authority to study calendar preferences generally.

As an initial approach to the issue, the Commission decided to explore the possibility of creating a calendar preference that

- (1) Applies when a writ petition challenges a ruling on an issue that is common to several consolidated cases (as opposed to a ruling on an issue that is unique to one of several consolidated cases);
- (2) Applies regardless of whether the ruling challenged in the writ petition is a discovery ruling or another type of pretrial ruling;
- (3) Is mandatory rather than discretionary; and
- (4) Directs the reviewing court to give the matter preference over “all other civil actions.”

This new calendar preference could perhaps be drafted along the following lines:

Code Civ. Proc. § 1048.1 (added). Calendar preference for writ review of pretrial ruling on issue common to consolidated cases
1048.1. When several cases are consolidated for some but not all purposes pursuant to Section 1048, a party to one of those cases petitions for an extraordinary writ on an issue common to all of the cases, and the reviewing court issues an alternative writ or an order to show cause, the reviewing court, in setting the case for hearing and hearing the matter, shall give the writ petition precedence over all other civil actions.

The Commission discussed whether the proposed new calendar preference should only apply when the issue under review is common to a certain number of consolidated cases. The Chair suggested that the Commission solicit comment on whether to set such a threshold and, if so, what the threshold number of cases should be.

The staff should take steps to prepare a draft of a tentative recommendation implementing these ideas. The staff should also continue its efforts to obtain

1 information about how the appellate courts currently handle writ petitions and
2 calendar preferences.

3 As a low priority matter, the staff should further investigate whether the
4 following provisions contain obsolete material that should be eliminated: Educ.
5 Code § 43060, Fish & Game Code § 8610.7, Gov't Code § 7910.

6 **Miscellaneous Issues**

7 The Commission considered Memorandum 2005-26, concerning
8 miscellaneous issues relating to civil discovery. For purposes of preparing a draft
9 of a tentative recommendation, the Commission made the following decisions:

10 *Service of Response to Interrogatories (Code Civ. Proc. § 2030.260)*

11 Code of Civil Procedure Section 2030.260 should be amended along the
12 following lines:

13 2030.260. (a) Within 30 days after service of interrogatories, ~~or in~~
14 ~~unlawful detainer actions within five days after service of~~
15 ~~interrogatories~~ the party to whom the interrogatories are
16 propounded shall serve the original of the response to them on the
17 propounding party, unless on motion of the propounding party the
18 court has shortened the time for response, or unless on motion of
19 the responding party the court has extended the time for response.
20 ~~In unlawful detainer actions,~~

21 (b) Notwithstanding subdivision (a), in an unlawful detainer
22 action the party to whom the interrogatories are propounded shall
23 have five days from the date of service to respond, unless on
24 motion of the propounding party the court has shortened the time
25 for response.

26 ~~(b)~~ (c) The party to whom the interrogatories are propounded
27 shall also serve a copy of the response on all other parties who have
28 appeared in the action. On motion, with or without notice, the
29 court may relieve the party from this requirement on its
30 determination that service on all other parties would be unduly
31 expensive or burdensome.

32 **Comment.** Section 2030.260 is amended to improve clarity. This
33 is not a substantive change.

34 *Service of Response to Inspection Demand (Code Civ. Proc. § 2031.260)*

35 Code of Civil Procedure Section 2031.260 should be amended along the
36 following lines:

37 2031.260. (a) Within 30 days after service of an inspection
38 demand, ~~or in unlawful detainer actions within five days of an~~
39 ~~inspection demand,~~ the party to whom the demand is directed shall

1 serve the original of the response to it on the party making the
2 demand, and a copy of the response on all other parties who have
3 appeared in the action, unless on motion of the party making the
4 demand, the court has shortened the time for response, or unless on
5 motion of the party to whom the demand has been directed, the
6 court has extended the time for response. ~~In unlawful detainer~~
7 ~~actions,~~

8 (b) Notwithstanding subdivision (a), in an unlawful detainer
9 action the party to whom an inspection demand is directed shall
10 have at least five days from the ~~dates~~ date of service of the demand
11 to respond, unless on motion of the party making the demand, the
12 court has shortened the time for the response.

13 **Comment.** Section 2031.260 is amended to improve clarity. This
14 is not a substantive change.

15 *Deposition in California for Purposes of a Proceeding Pending Outside California (Code*
16 *Civ. Proc. § 2029.010)*

17 Section 2029.010 should be amended to apply to the oral or written deposition
18 of any person in California, not just a natural person.

19 The statute should specify two alternative means for a litigant to obtain a
20 subpoena to take a deposition of a witness in California for purposes of a
21 proceeding pending elsewhere:

- 22 (1) The litigant may file an application in the superior court of the
23 county in which the deposition is to be taken. The application
24 should be on a form to be prepared by the Judicial Council. The fee
25 for filing the application should be the same as the fee for
26 obtaining a commission to take a deposition outside California. If a
27 litigant seeks multiple subpoenas, the litigant should be required
28 to pay a separate fee for each subpoena. Upon filing of the
29 application and payment of the required fee, the court clerk should
30 issue the subpoena on a form to be prepared by the Judicial
31 Council. Details of the filing procedure (e.g., what caption to use
32 and what type of court file to create) should be uniform from
33 county to county and should be specified in a rule to be
34 promulgated by the Judicial Council.
- 35 (2) If the litigant retains an attorney who is an active member of the
36 California Bar, that attorney may issue the subpoena on a form to
37 be prepared by the Judicial Council.

38 The statute should also make clear that if a dispute arises regarding discovery
39 conducted pursuant to it, a litigant or the deponent may file a petition for
40 appropriate relief in the superior court of the county in which the deposition is to
41 be taken. The statute should require the petitioner to pay a first appearance fee.

1 The statute should also require any person responding to the petition to pay a
2 first appearance fee.

3 The staff should do further research on whether to require a litigant in an out-
4 of-state proceeding (other than a pro per litigant) to retain local counsel or have
5 out-of-state counsel admitted pro hac vice before deposing a witness in
6 California. The staff should also do further research on whether and how Section
7 2029.010 should apply when a litigant in an out-of-state proceeding seeks to
8 depose a witness in California by notice or agreement.

APPROVED AS SUBMITTED

Date

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

Chairperson

Executive Secretary