

---

MINUTES OF MEETING  
CALIFORNIA LAW REVISION COMMISSION  
NOVEMBER 18, 2005  
OAKLAND

---

A meeting of the California Law Revision Commission was held in Oakland on November 18, 2005.

**Commission:**

*Present:* Edmund L. Regalia, Chairperson  
David Huebner, Vice Chairperson  
Diane F. Boyer-Vine, Legislative Counsel  
Frank Kaplan  
Susan Duncan Lee  
William E. Weinberger

*Absent:* Sidney Greathouse  
Pamela L. Hemminger  
Bill Morrow, Senate Member

**Staff:** Nathaniel Sterling, Executive Secretary  
Brian P. Hebert, Assistant Executive Secretary  
Steven E. Cohen, Staff Counsel  
Barbara S. Gaal, Staff Counsel

**Consultants:** None

**Other Persons:**

Sam Abdulaziz, Construction Trade Groups, North Hollywood  
Frank Bryant, Walnut Creek  
Frank Collard, Southern California Rock Products Association, South Pasadena  
Jaime B. Huff, Office of Assemblyman DeVore, Sacramento  
Shirley Kovar, Executive Committee, State Bar Trusts and Estates Section, San Diego  
Dick Nash, Building Industry Credit Association, Los Angeles  
Mary Pat Toups, Laguna Woods  
Norm Widman, Lumber Association of California and Nevada, San Diego

CONTENTS

Minutes of September 30, 2005, Commission Meeting .....	2
Administrative Matters.....	2
2005-2006 Annual Report.....	2
Report of Executive Secretary .....	3
Personnel.....	3
Meeting Schedule .....	3
Other Matters .....	3
Study F-1301 – Enforcement of Money Judgment Under Family Code.....	3
Study H-821 – Mechanics Lien Law .....	4
Study J-1321 – Jurisdictional Limits of Small Claims and Limited Civil Cases .....	6
Study J-1322 – Technical and Minor Substantive Statutory Corrections .....	6
Study J-1323 – Equitable Relief in Limited Civil Case.....	7
Study L-637 – Revision of No Contest Clause Statute.....	7
Study L-3032 – Beneficiary Deeds .....	8

MINUTES OF SEPTEMBER 30, 2005, COMMISSION MEETING

1       The Commission approved the Minutes of the September 30, 2005,  
2 Commission meeting as submitted by the staff.

ADMINISTRATIVE MATTERS

3       **2005-2006 Annual Report**

4       The Commission considered Memorandum 2005-39 and its First Supplement,  
5 relating to the 2005-2006 Annual Report. The Commission approved the draft  
6 attached to the memorandum, subject to the following changes:

7       (1) A typographical error on page 27 was corrected.

8       (2) The list of the Commission’s staff on page 27 was revised to reflect the  
9 resignation of Korrene Bradford.

10      (3) The following paragraph was added at the end of page 31:

11             Pursuant to the mandate imposed by Government Code Section  
12             8290, the Commission recommends the repeal of the provisions  
13             referred to under “Report on Statutes Repealed by Implication or  
14             Held Unconstitutional,” *supra*, to the extent they have been held  
15             unconstitutional and have not been amended or repealed.

1 **Report of Executive Secretary**

2 *Personnel*

3 There is no action yet by the Governor on the three terms that expired on  
4 October 1, 2005. The current incumbents may hold over for up to 60 days.

5 There is no action yet by the Speaker of the Assembly on the vacancy in the  
6 Assembly membership of the Commission.

7 The Commission's administrative assistant, Korrene Bradford, has resigned  
8 her half-time position with the Commission in order to take a full-time position  
9 with another state agency. The staff has commenced the search for a  
10 replacement.

11 *Meeting Schedule*

12 The Commission may not have a quorum present at its next scheduled  
13 meeting due to the possibility that the Governor may not have acted by then on  
14 the expired terms and scheduling conflicts of the remaining Commission  
15 members. The Commission tentatively decided to change the time and place of  
16 the next meeting to February 16 in Sacramento. That change is subject to the  
17 Executive Secretary's confirmation with persons not present at the meeting that  
18 the change does not cause scheduling conflicts for them.

19 The staff will also present at the next meeting a proposed revision of the  
20 schedule of meetings for 2006 to address anticipated workflow adjustments.

21 *Other Matters*

22 The Commission has been named as a party in a pro per lawsuit. The gist of  
23 the cause of action is unclear. The Attorney General is representing the  
24 Commission. The Attorney General has taken steps to join the Commission in a  
25 motion to dismiss, along with other named state parties such as the Franchise  
26 Tax Board, the Judicial Council, and the State Bar of California.

27 **STUDY F-1301 – ENFORCEMENT OF MONEY JUDGMENT UNDER FAMILY CODE**

28 The Commission considered Memorandum 2005-45 discussing the staff draft  
29 recommendation on enforcement of judgments under the Family Code. The  
30 Commission approved the draft as its final recommendation, except that  
31 proposed Family Code Section 291(e) was revised as follows:

1           (e) Nothing in this section supersedes the law governing  
2 enforcement of a judgment after the death of the judgment creditor  
3 or judgment debtor, ~~including any requirement that a judgment~~  
4 ~~creditor file a timely creditor's claim after the death of a judgment~~  
5 ~~debtor.~~

6           The Commission decided not to study whether Family Code Section 290  
7 requires judicial approval of the method by which a Family Code judgment is  
8 enforced.

#### STUDY H-821 – MECHANICS LIEN LAW

9           The Commission considered Memorandum 2005-43, together with material  
10 distributed at the meeting (attached to the First Supplement to Memorandum  
11 2005-43), relating to public work remedies under the mechanics lien law. The  
12 Commission made the following decisions.

##### 13 *Location of Statute*

14           The Commission deferred decision on whether to relocate the statutory  
15 material relating to a public work from the Civil Code to the Public Contract  
16 Code. For now, the staff will continue to draft the material as part of the Public  
17 Contract Code, but the material may ultimately be moved back to the Civil Code.

##### 18 *Waiver and Release*

19           In connection with the proposed relocation, the staff should incorporate  
20 provisions relating to waiver and release in the Public Contract Code draft.

##### 21 *Completion*

22           The staff should review the definition of completion and its use in proposed  
23 Section 44140 (time for giving notice). As drafted, the provision is internally  
24 inconsistent because the definition of completion includes recordation of a notice  
25 of completion.

26           The staff should research the background on the provision of existing law  
27 that a public work is deemed complete after cessation of labor for 30 days. Why  
28 does that provision differ from the law governing a private work, which deems  
29 completion to have occurred after cessation of labor for 60 days?

1 *Preliminary Notice*

2 The content of the public work preliminary notice should be revised for  
3 consistency with the private work preliminary notice. This would conform to  
4 existing practice to use the same form for both.

5 The provision governing disciplinary action against a subcontractor that fails  
6 to give a preliminary notice on a contract over \$400 was deleted from the draft. It  
7 should be replaced by a provision parallel to the provision applicable to a private  
8 work of improvement, to the effect that disciplinary action may be imposed if the  
9 subcontractor's failure to protect its rights results in a loss to laborers. This  
10 change should be flagged for comment.

11 *Stop Payment Notice*

12 The \$2 fee required as a prerequisite to the requirement of agency notification  
13 of the stop payment enforcement period should be increased to \$10.

14 The jury trial provision of the summary release procedure for a stop payment  
15 notice should be deleted.

16 *Payment Bond*

17 The Commission decided to investigate the possibility of applying one  
18 standard for a payment bond requirement in any public work project, whether of  
19 a state or local entity. In this connection, the Commission will gather information  
20 about what requirement, if any, applies to the Legislature, the Judiciary, and the  
21 University of California. Commissioner Boyer-Vine will check on existing  
22 practice of the Legislature; the staff will check on existing practice of the  
23 Judiciary and the University of California.

24 The Commission decided to rephrase the preliminary notice requirement for  
25 enforcement of payment bond remedies. The remedy under Civil Code Section  
26 3252 for a claimant that does not give a preliminary notice renders preliminary  
27 notice no longer a prerequisite. But the preliminary notice appears to be a useful  
28 alternative and should be preserved as an option rather than as a requirement.

29 *Design Professionals Lien*

30 When the staff goes through the various mechanics lien law remedies in the  
31 effort to standardize forms and procedures, such as the content and manner of  
32 giving notices, the staff should include the design professionals lien in this  
33 process. The staff should also revisit the question whether it would make sense  
34 to try to incorporate the design professionals lien into the mechanics lien law.

STUDY J-1321 – JURISDICTIONAL LIMITS OF SMALL CLAIMS AND  
LIMITED CIVIL CASES

1 The Commission considered Memorandum 2005-41, reporting on recently  
2 enacted legislation increasing the small claims limit for a case brought by a  
3 natural person. In light of that legislation, the Commission decided to end its  
4 study of the jurisdictional limits of small claims and limited civil cases.

5 STUDY J-1322 – TECHNICAL AND MINOR SUBSTANTIVE STATUTORY CORRECTIONS

6 The Commission considered Memorandum 2005-40, discussing technical and  
7 minor substantive statutory corrections. The Commission made the following  
8 decisions.

9 **Clause Authorizing Judge to Substitute for Clerk**

10 Proposed deletion of surplus language from various code sections  
11 authorizing a judge to substitute for an absent clerk, as indicated in the exhibit  
12 attached to the memorandum, should be included in a future tentative  
13 recommendation.

14 **Code of Civil Procedure Section 904**

15 The proposed amendment of Code of Civil Procedure Section 904 deleting  
16 obsolete cross-references to Sections 904.3 and 904.4, as set forth in the  
17 memorandum, should be included in a future tentative recommendation.

18 **Code of Civil Procedure Section 12a**

19 The proposed amendment of Code of Civil Procedure Section 12a, as set forth  
20 below, should be included in a future tentative recommendation.

21 **Code Civ. Proc. § 12a (amended). Calculation of time**

22 12a. (a) If the last day for the performance of any act provided  
23 or required by law to be performed within a specified period of  
24 time is a holiday, then that period is hereby extended to and  
25 including the next day ~~which~~ that is not a holiday. For purposes of  
26 this section, "holiday" means all day on Saturdays, all holidays  
27 specified in Section 135 and, to the extent provided in Section 12b,  
28 all days ~~which~~ that by terms of Section 12b are required to be  
29 considered as holidays.

30 (b) This section applies ~~also to Sections 659, 659a, 946, and 974 to~~  
31 ~~982, inclusive, and the periods of time severally therein prescribed~~  
32 ~~or provided for, and to all other provisions of law, however stated~~  
33 ~~or wherever expressed, to all provisions of law providing or~~

1 requiring an act to be performed on a particular day or within a  
2 specified period of time. ~~The mention of these sections is not~~  
3 ~~intended and shall not be construed to exclude the application of~~  
4 ~~this section to any other provisions of law, whether the latter~~  
5 ~~are, whether~~ expressed in this or any other code or statute,  
6 ordinance, rule, or regulation.

7 **Comment.** Subdivision (b) of Section 12a is amended to delete  
8 cross-references that were included in the statute for illustrative  
9 purposes. This is not a substantive change. Several of the deleted  
10 cross-references are not only surplusage, but are also obsolete. See  
11 1968 Cal. Stat. ch. 385, § 1 (repealing Section 946); 1963 Cal. Stat. ch.  
12 871, § 15 (repealing Sections 974 to 982).

13 Section 12a is also amended to make grammatical corrections.

#### STUDY J-1323 – EQUITABLE RELIEF IN LIMITED CIVIL CASE

14 The Commission considered Memorandum 2005-35, relating to comments on  
15 the tentative recommendation on *Equitable Relief in a Limited Civil Case* (April  
16 2005).

17 The Commission decided to hold off making a final recommendation on this  
18 matter. Instead, the Commission directed the staff to prepare an overview of the  
19 role of the limited civil case in the unified court system. The overview should  
20 include an analysis of the number of limited civil cases filed, the cost of economic  
21 litigation procedures compared with the cost of unlimited civil case litigation, the  
22 satisfaction level of the courts with the limited civil case system, and the  
23 approach taken in other jurisdictions that have a unified court system. We may  
24 seek to have a background study prepared on these matters by a law professor, if  
25 a suitable person can be identified who is willing to perform the work for a small  
26 honorarium. The objective of the overview is to enable the Commission to  
27 determine whether the complexity in the law created by the limited civil case  
28 system is worth the effort to address problems in the system.

#### STUDY L-637 – REVISION OF NO CONTEST CLAUSE STATUTE

29 The Commission considered Memorandum 2005-47, relating to the scope of  
30 the study of no contest clauses. The Commission decided to proceed on this  
31 project in the manner suggested by the staff in the memorandum.

STUDY L-3032 – BENEFICIARY DEEDS

1       The Commission considered Memorandum 2005-46, together with material  
2 distributed at the meeting (attached to the First Supplement to Memorandum  
3 2005-46), relating to the scope of the study of beneficiary deeds. The Commission  
4 decided to proceed on this project in the manner suggested by the staff in the  
5 memorandum.

APPROVED AS SUBMITTED

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Executive Secretary