
MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
APRIL 27, 2006
SACRAMENTO

A meeting of the California Law Revision Commission was held in Sacramento on April 27, 2006.

Commission:

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

Absent: Noreen Evans, Assembly Member
Sidney Greathouse
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:

Oliver Burford, Executive Council of Homeowners, San Jose
Karen D. Conlon, California Association of Community Managers, Laguna Hills
Lisa Engel, Assembly Committee on Housing and Community Development,
Sacramento
Steve Ingram, Consumer Attorneys of California, Sacramento
Charlotte Ito, State Bar of California, San Francisco
Tony Klein, Attorney Service of San Francisco
Joe Klinger, Executive Council of Homeowners, Sacramento
David L. Mandel, Senior Legal Hotline, Sacramento
Craig Page, California Land Title Association, Sacramento
Valerie Rose, Executive Council of Homeowners, Sacramento
Mary Pat Toups, Laguna Woods
Jennifer Wada, California Association of Community Managers, Sacramento

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1 MINUTES OF FEBRUARY 23, 2006, COMMISSION MEETING

2 The Commission approved the minutes of the February 23, 2006, meeting as
3 submitted by the staff, subject to the following correction:

4 On page 10, line 3, the word “statute” should read “memorandum”.

5 ADMINISTRATIVE MATTERS

6 **Personnel Matters**

7 The Executive Secretary reported that the Senate has unanimously confirmed
8 the appointments of Commissioners Greathouse, Hemminger, Huebner, and Lee.

9 The Commission met in closed session pursuant to Government Code Section
10 11126(a) to consider the prospective retirement of its executive secretary and to
11 discuss succession plans. The Commission plans to discuss the matter further at
12 its August meeting.

13 **Budget**

14 The Executive Secretary reported that the Governor’s Budget for 2006-2007
15 would maintain the Commission’s funding at its current level. That portion of
16 the budget has now been approved by the relevant budget subcommittee in each
17 house.

18 2006 LEGISLATIVE PROGRAM

19 The Commission considered Memorandum 2006-13, relating to the
20 Commission’s 2006 legislative program.

1 The staff updated the chart attached to the memorandum with the
2 information that AB 2126 (Lieu and Leno) was approved by the Assembly
3 Appropriations Committee on April 26, as amended. The Commission ratified
4 the amendments, as set out in the memorandum.

5 Commission action with respect to AB 770 (Mullin) and SB 551 (Lowenthal),
6 relating to the CID ombudsperson proposal, is reported in these minutes in
7 connection with Study H-853, relating to the CID ombudsperson pilot project.

8 STUDY H-853 – CID OMBUDSPERSON PILOT PROJECT

9 The staff reported orally on the status of Assembly Bill 770 (Mullin) and
10 Senate Bill 551 (Lowenthal). Those two bills would implement the Commission's
11 recommendation on *CID Ombudsperson Pilot Project* (March 2005).

12 The Commission took no position on a proposal by Senator Lowenthal to
13 amend Senate Bill 551 to provide for state enforcement of common interest
14 development law, but noted that such a change would not be inconsistent with
15 the Commission's recommendation.

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

17 The Commission approved, as a general practice, the exclusion of
18 controversial substantive changes from the study. A change that is deemed too
19 controversial for inclusion in the study will be added to the list of common
20 interest development issues for future study.

21 STUDY J-103 – ORAL ARGUMENT IN CIVIL PROCEDURE

22 The Commission considered Memorandum 2006-15, relating to oral argument
23 in civil procedure. The Commission noted the interest of the Commission's
24 legislative members — Senator Morrow and Assembly Member Evans — in this
25 topic, and that each of them had hoped to be present when the matter was taken
26 up but was prevented from attending due to length of the legislative floor
27 session that day. The Commission deferred decision on the matter until its next
28 meeting, and meanwhile directed the staff to, if possible, obtain the perspectives
29 of the Commission's legislative members on it.

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

7 **Comment.** Section 2030.260 is amended to improve clarity by
8 separately stating the special deadline for an unlawful detainer
9 case. The amendment also eliminates an ambiguity by clearly
10 permitting a court to extend, as well as shorten, the time to respond
11 to interrogatories in an unlawful detainer case.

12 Section 2030.260 is further amended to make a stylistic revision.

13 **Code Civ. Proc. § 2031.260 (amended). Service of response to**
14 **inspection demand**

15 SEC. _____. Section 2031.260 of the Code of Civil Procedure is
16 amended to read:

17 2031.260. (a) Within 30 days after service of an inspection
18 demand, ~~or in unlawful detainer actions within five days of an~~
19 ~~inspection demand,~~ the party to whom the demand is directed shall
20 serve the original of the response to it on the party making the
21 demand, and a copy of the response on all other parties who have
22 appeared in the action, unless on motion of the party making the
23 demand, the court has shortened the time for response, or unless on
24 motion of the party to whom the demand has been directed, the
25 court has extended the time for response. ~~In unlawful detainer~~
26 ~~actions,~~

27 (b) Notwithstanding subdivision (a), in an unlawful detainer
28 action the party to whom an inspection demand is directed shall
29 have at least five days from the ~~dates~~ date of service of the demand
30 to respond, unless on motion of the party making the demand, the
31 court has shortened the time for the response, or unless on motion
32 of the party to whom the demand has been directed, the court has
33 extended the time for response.

34 **Comment.** Section 2031.260 is amended to improve clarity by
35 separately stating the special deadline for an unlawful detainer
36 case. The amendment also eliminates an ambiguity by clearly
37 permitting a court to extend, as well as shorten, the time to respond
38 to an inspection demand in an unlawful detainer case.

39 Section 2031.260 is further amended to make stylistic revisions.

40 **Code Civ. Proc. § 2033.250 (amended). Service of response to**
41 **requests for admission**

42 SEC. _____. Section 2033.250 of the Code of Civil Procedure is
43 amended to read:

44 2033.250. (a) Within 30 days after service of requests for
45 admission, ~~or in unlawful detainer actions within five days after~~
46 ~~service of requests for admission,~~ the party to whom the requests
47 are directed shall serve the original of the response to them on the

1 requesting party, and a copy of the response on all other parties
2 who have appeared, unless on motion of the requesting party the
3 court has shortened the time for response, or unless on motion of
4 the responding party the court has extended the time for response.

5 ~~In unlawful detainer actions,~~

6 (b) Notwithstanding subdivision (a), in an unlawful detainer
7 action the party to whom the request is directed shall have at least
8 five days from the date of service to respond, unless on motion of
9 the requesting party the court has shortened the time for response,
10 or unless on motion of the responding party the court has extended
11 the time for response.

12 **Comment.** Section 2033.250 is amended to improve clarity by
13 separately stating the special deadline for an unlawful detainer
14 case. The amendment also eliminates an ambiguity by clearly
15 permitting a court to extend, as well as shorten, the time to respond
16 to requests for admission in an unlawful detainer case.

17 Section 2033.250 is further amended to make a stylistic revision.

18 The new tentative recommendation should also propose to amend a number
19 of other provisions that establish a special time limit for discovery in an unlawful
20 detainer discovery case:

21 **Code Civ. Proc. § 2030.020 (amended). Time of propounding**
22 **interrogatories**

23 SEC. _____. Section 2030.020 of the Code of Civil Procedure is
24 amended to read:

25 2030.020. (a) A defendant may propound interrogatories to a
26 party to the action without leave of court at any time.

27 (b) A plaintiff may propound interrogatories to a party without
28 leave of court at any time that is 10 days after the service of the
29 summons on, ~~or in unlawful detainer actions five days after service~~
30 ~~of the summons on~~ or appearance by, that party, whichever occurs
31 first.

32 (c) Notwithstanding subdivision (b), in an unlawful detainer
33 action a plaintiff may propound interrogatories to a party without
34 leave of court at any time that is five days after service of the
35 summons on, or appearance by, that party, whichever occurs first.

36 (d) Notwithstanding subdivisions (b) and (c), on motion with or
37 without notice, the court, for good cause shown, may grant leave to
38 a plaintiff to propound interrogatories at an earlier time.

39 **Comment.** Section 2030.020 is amended to improve clarity by
40 separately stating the special deadline for an unlawful detainer
41 case.

42 **Code Civ. Proc. § 2031.020 (amended). Time of making inspection**
43 **demand**

44 SEC. _____. Section 2031.020 of the Code of Civil Procedure is
45 amended to read:

1 2031.020. (a) A defendant may make a demand for inspection
2 without leave of court at any time.

3 (b) A plaintiff may make a demand for inspection without leave
4 of court at any time that is 10 days after the service of the summons
5 on, ~~or in unlawful detainer actions within five days after service of~~
6 ~~the summons on~~ or appearance by, the party to whom the demand
7 is directed, whichever occurs first.

8 (c) Notwithstanding subdivision (b), in an unlawful detainer
9 action a plaintiff may make a demand for inspection without leave
10 of court at any time that is five days after service of the summons
11 on, or appearance by, the party to whom the demand is directed,
12 whichever occurs first.

13 (d) Notwithstanding subdivisions (b) and (c), on motion with or
14 without notice, the court, for good cause shown, may grant leave to
15 a plaintiff to make an inspection demand at an earlier time.

16 **Comment.** Section 2031.020 is amended to improve clarity by
17 separately stating the special deadline for an unlawful detainer
18 case.

19 **Code Civ. Proc. § 2031.030 (amended). Form of inspection demand**

20 SEC. _____. Section 2031.030 of the Code of Civil Procedure is
21 amended to read:

22 2031.030. (a) A party demanding an inspection shall number
23 each set of demands consecutively.

24 (b) In the first paragraph immediately below the title of the case,
25 there shall appear the identity of the demanding party, the set
26 number, and the identity of the responding party.

27 (c) Each demand in a set shall be separately set forth, identified
28 by number or letter, and shall do all of the following:

29 (1) Designate the documents, tangible things, or land or other
30 property to be inspected either by specifically describing each
31 individual item or by reasonably particularizing each category of
32 item.

33 (2) Specify a reasonable time for the inspection that is at least 30
34 days after service of the demand, ~~or in unlawful detainer actions at~~
35 ~~least five days after service of the demand,~~ unless the court for
36 good cause shown has granted leave to specify an earlier date. In
37 an unlawful detainer action, the demand shall specify a reasonable
38 time for the inspection that is at least five days after service of the
39 demand, unless the court for good cause shown has granted leave
40 to specify an earlier date.

41 (3) Specify a reasonable place for making the inspection,
42 copying, and performing any related activity.

43 (4) Specify any related activity that is being demanded in
44 addition to an inspection and copying, as well as the manner in
45 which that related activity will be performed, and whether that
46 activity will permanently alter or destroy the item involved.

1 **Comment.** Subdivision (c) of Section 2031.030 is amended to
2 improve clarity by separately stating the special deadline for an
3 unlawful detainer case.

4 **Code Civ. Proc. § 2033.020 (amended). Time of making request for**
5 **admissions**

6 SEC. _____. Section 2033.020 of the Code of Civil Procedure is
7 amended to read:

8 2033.020. (a) A defendant may make requests for admission by a
9 party without leave of court at any time.

10 (b) A plaintiff may make requests for admission by a party
11 without leave of court at any time that is 10 days after the service of
12 the summons on, ~~or, in unlawful detainer actions, five days after~~
13 ~~the service of the summons on,~~ or appearance by, that party,
14 whichever occurs first.

15 (c) Notwithstanding subdivision (b), in an unlawful detainer
16 action a plaintiff may make requests for admission by a party
17 without leave of court at any time that is five days after the service
18 of the summons on, or appearance by, that party, whichever occurs
19 first.

20 (c) Notwithstanding subdivisions (b) and (c), on motion with or
21 without notice, the court, for good cause shown, may grant leave to
22 a plaintiff to make requests for admission at an earlier time.

23 **Comment.** Section 2033.020 is amended to improve clarity by
24 separately stating the special deadline for an unlawful detainer
25 case.

26 The staff should investigate Code of Civil Procedure Section 2025.270 (time of
27 taking oral deposition) and assess how to amend the provision to eliminate the
28 ambiguity discussed at pages 15-16 of Memorandum 2006-7. The staff should
29 present the results of that research at the same time as it presents a draft of the
30 new tentative recommendation for the Commission to review.

31 **Deposition of a Witness in California for Purposes of a Proceeding Pending in**
32 **Another Jurisdiction**

33 The Commission discussed whether to table its study of interstate depositions
34 (Code Civ. Proc. § 2029.010) pending completion of the similar study being
35 conducted by the National Conference of Commissioners on Uniform State Laws
36 (“NCCUSL”). In light of comments and testimony indicating a need for statutory
37 guidance without delay, the Commission decided to continue working on this
38 topic rather than waiting for NCCUSL to complete its study. The staff should
39 continue to monitor NCCUSL’s study and communicate with persons involved
40 in that study, so that the Commission has the benefit of the NCCUSL’s work and
41 vice versa.

1 The staff should prepare a draft of a final recommendation for the
2 Commission to consider. The draft should reflect the following decisions:

3 *Existing Substance of Section 2029.010*

4 The Commission discussed the concerns raised by the State Bar Committee
5 on Administration of Justice (“CAJ”) regarding the existing substance of Section
6 2029.010. In particular, the Commission discussed CAJ’s concern that the
7 provision is not sufficiently clear about whether a witness deposed in California
8 for purposes of an out-of-state case is entitled to at least as much procedural
9 protection (e.g., mileage restrictions on deposition location) as a witness deposed
10 in California for purposes of a case pending in the state.

11 The Commission decided not to try to revise the existing substance of Section
12 2029.010 to address CAJ’s concern. In the Commission’s view, the existing
13 statutory language (“in the same manner, and by the same process”) is sufficient
14 to convey the principle advocated by CAJ. The Commission decided to leave that
15 language as is, because it is from the Uniform Foreign Depositions Act and is
16 used in many other states.

17 *Representation By Out-of-State Counsel*

18 The Comment to Section 2029.010 should be revised to differentiate between
19 two situations: (1) when out-of-state counsel attends a deposition in California
20 and (2) when a dispute arises in such a deposition and out-of-state counsel wants
21 to appear in a California court in connection with the dispute. Although out-of-
22 state counsel generally can attend a California deposition without being
23 admitted to the State Bar or admitted pro hac vice, different considerations may
24 apply when a discovery dispute arises and an out-of-state attorney wants to
25 appear in a California court. The Comment should mention this distinction;
26 similar changes should be made in the preliminary part (narrative portion) of the
27 Commission’s proposal.

28 *Deposition “on notice or agreement”*

29 The Commission did not think it necessary to add language to Section
30 2029.010 clarifying the reference to a deposition “on notice or agreement.” The
31 Commission thought that the existing language would encompass a witness who
32 voluntarily agrees to appear at a deposition.

1 *Use of the Terms "Deponent" and "Deposition"*

2 The Commission discussed the use of the terms "deponent" and "deposition"
3 in Section 2029.010, and whether that terminology is confusing as applied to a
4 subpoena that requests records but no testimony. The Commission decided to
5 continue using the terms "deponent" and "deposition" for purposes of the
6 proposed amendment of Section 2029.010. The terminological issue should be
7 examined more globally, not addressed solely in this specific context.

8 *Use of the Term "Letters Rogatory"*

9 The Commission decided to continue using the term "letters rogatory" in
10 Section 2029.010, instead of switching to "letter rogatory."

11 *Filing Fee for a Petition to Resolve a Discovery Dispute*

12 The Commission discussed the appropriate filing fee for a petition seeking
13 relief with regard to a deposition in California for purposes of an out-of-state
14 proceeding. The Commission approved in concept Janet Grove's suggestion to
15 charge a flat fee for filing such a petition or a response to such a petition. The
16 staff should work on the details with the Administrative Office of the Courts and
17 incorporate the concept when preparing its draft of a final recommendation. In
18 particular, the staff should check on the proper treatment of a nonparty witness:
19 Should a nonparty witness have to pay a filing fee that is similar in amount to a
20 first appearance fee, or would it be enough to pay an amount similar to a motion
21 fee?

22 *Fee for Issuing a Subpoena Under Section 2029.010*

23 For the administrative reasons identified by Janet Grove, Government Code
24 Section 70626 should not be amended in the manner shown in the tentative
25 recommendation. Instead, the provision should be amended along the following
26 lines:

27 **Gov't Code § 70626 (amended). Miscellaneous filing fees**

28 SEC. _____. Section 70626 of the Government Code is amended to
29 read:

30 70626. (a) The fee for each of the following services is fifteen
31 dollars (\$15). Amounts collected shall be distributed to the Trial
32 Court Trust Fund under Section 68085.1.

33 (1) Issuing a writ of attachment, a writ of mandate, a writ of
34 execution, a writ of sale, a writ of possession, a writ of prohibition,
35 or any other writ for the enforcement of any order or judgment.

36 (2) Issuing an abstract of judgment.

1 (3) Issuing a certificate of satisfaction of judgment under Section
2 724.100 of the Code of Civil Procedure.

3 (4) Certifying a copy of any paper, record, or proceeding on file
4 in the office of the clerk of any court.

5 (5) Taking an affidavit, except in criminal cases or adoption
6 proceedings.

7 (6) Acknowledgment of any deed or other instrument, including
8 the certificate.

9 (7) Recording or registering any license or certificate, or issuing
10 any certificate in connection with a license, required by law, for
11 which a charge is not otherwise prescribed.

12 (8) Issuing any certificate for which the fee is not otherwise
13 fixed.

14 (b) The fee for each of the following services is twenty dollars
15 (\$20). Amounts collected shall be distributed to the Trial Court
16 Trust Fund under Section 68085.1.

17 (1) Issuing an order of sale.

18 (2) Receiving and filing an abstract of judgment rendered by a
19 judge of another court and subsequent services based on it, unless
20 the abstract of judgment is filed under Section 704.750 or 708.160 of
21 the Code of Civil Procedure.

22 (3) Filing a confession of judgment under Section 1134 of the
23 Code of Civil Procedure.

24 (4) Filing an application for renewal of judgment under Section
25 683.150 of the Code of Civil Procedure.

26 (5) Issuing a commission to take a deposition in another state or
27 place under Section 2026.010 of the Code of Civil Procedure, or
28 issuing a subpoena under Section 2029.010 of the Code of Civil
29 Procedure to take a deposition in this state for purposes of a
30 proceeding pending in another jurisdiction.

31 (6) Filing and entering an award under the Workers'
32 Compensation Law (Division 4 (commencing with Section 3200) of
33 the Labor Code).

34 (7) Filing an affidavit of publication of notice of dissolution of
35 partnership.

36 (8) Filing an appeal of a determination whether a dog is
37 potentially dangerous or vicious under Section 31622 of the Food
38 and Agricultural Code.

39 (9) Filing an affidavit under Section 13200 of the Probate Code,
40 together with the issuance of one certified copy of the affidavit
41 under Section 13202 of the Probate Code.

42 (10) Filing and indexing all papers for which a charge is not
43 elsewhere provided, other than papers filed in actions or special
44 proceedings, official bonds, or certificates of appointment.

45 **Comment.** Subdivision (b) of Section 70626 is amended to
46 specify the fee for obtaining a subpoena from a California court to
47 take a deposition in this state for purposes of a proceeding pending
48 in another jurisdiction. If a person seeks multiple subpoenas, a

1 separate fee is payable under this subdivision for each subpoena
2 sought.

3 *Depositions in Different Counties for the Same Out-of-State Case*

4 The Commission discussed whether a party seeking to depose witnesses in
5 two or more California counties for purposes of the same out-of-state case should
6 be able to obtain all of the subpoenas from a single California court. The
7 Commission decided to stick with the approach in the tentative
8 recommendation, under which each subpoena must be issued by the superior
9 court of the county in which the deposition is to be taken.

10 *Discovery Disputes in Different Counties*

11 The Commission considered how to handle discovery disputes that arise in
12 different California counties but relate to the same out-of-state case.

13 The tentative recommendation provides that if a dispute arises regarding a
14 deposition under Section 2029.010, "the deponent or a party to the proceeding
15 may file a petition for ... appropriate relief in the superior court of the county in
16 which the deposition is being taken." If there is more than one such dispute and
17 the disputes are in different counties, it would be necessary to file a petition in
18 each county.

19 The Commission discussed whether it should be possible to transfer one of
20 the disputes so that both disputes could be resolved in the same court. The
21 Commission concluded that existing provisions governing transfer and
22 consolidation of cases are sufficient to address the situation; a court should
23 consider factors such as the convenience of deponents and the similarity of issues
24 in deciding whether to order a transfer and consolidation. The staff should add
25 some discussion of this point to the preliminary part (narrative portion) of the
26 Commission's proposal. The proposal should also make clear how Government
27 Code Section 70618 (fees for transfer) applies in this situation.

28 *Multiple Disputes in the Same County Relating to the Same Out-of-State Case*

29 The Commission considered what procedures should apply when two or
30 more discovery disputes relating to the same out-of-state case arise in the same
31 county. The Commission concluded that (1) the disputes should be given the
32 same California case number, (2) the disputes should bear the same caption, and
33 (3) documents filed in connection with the disputes should be placed in the same

1 case file. The Commission tentatively decided to use the following procedures to
2 achieve these goals:

- 3 • Any subpoena issued or petition filed under Section 2029.010 must
4 bear the caption of the out-of-state case to which it relates. Any
5 response to a petition filed under Section 2029.010, or other
6 document relating to the petition, must also bear the caption of the
7 out-of-state case to which it relates. Any such subpoena, petition,
8 response, or other document must also indicate the California
9 court in which it is issued or filed.
- 10 • A California case number need not be assigned simply for issuing
11 a subpoena under Section 2029.010. But if a dispute arises in
12 connection with a deposition taken under Section 2029.010, and a
13 petition to resolve the dispute is filed in a California court, a
14 California case number must be assigned. Any documents relating
15 to the petition must bear that case number.
- 16 • If another dispute later arises in the same county with respect to
17 the same out-of-state case, a new petition should be filed, bearing
18 the same California case number as the previous one. The fee for
19 filing the new petition should be \$40, the same as the fee for filing
20 a motion. The cover of the new petition should indicate that it is
21 not the first such petition filed in the county in connection with the
22 out-of-state case. Any response or other document filed in
23 connection with the new petition must bear the same California
24 case number as the petition.

25 *Hearing Date and Briefing Schedule*

26 The Commission discussed how much notice should be given for a hearing
27 on a dispute relating to a deposition under Section 2029.010, and what briefing
28 schedule should apply to such a dispute. The Commission decided that such a
29 dispute should be subject to the normal notice requirements and briefing
30 schedule for a discovery motion, which are specified in Code of Civil Procedure
31 Section 1005. The staff should revise the Commission's proposal to make this
32 clear.

33 *Issuance of a Subpoena Under Section 2029.010 By a California Attorney*

34 The Commission observed that a subpoena issued under Section 2029.010
35 should indicate which California court to go to in the event of a dispute relating
36 to the deposition. The Commission directed the staff to make any revisions
37 necessary to ensure that this information is provided when a California attorney
38 issues a subpoena under Section 2029.010, not just when a court issues such a
39 subpoena.

1 *Subpoena for Consumer Records or Employment Records*

2 The Commission discussed the need to coordinate the procedures under
3 Section 2029.010 with the special procedures for subpoenaing consumer records
4 (Code Civ. Proc. § 1985.3) and employment records (Code Civ. Proc. § 1985.6).
5 The Commission noted that Sections 1985.3 and 1985.6 are structured such that
6 service of a written objection in a specified manner protects a nonparty from
7 having to produce records absent a court order or agreement of the parties. The
8 Commission's proposal would not change this; it would not require nonparty
9 consumers and employees to follow a more demanding procedure. The
10 Commission therefore decided that no revisions of the proposal are necessary to
11 ensure that nonparty consumers and employees can readily prevent production
12 of their records.

13 The Commission noted that Sections 1985.3 and 1985.6 authorize filing of
14 certain motions: a motion to enforce a subpoena, or a motion to quash or modify
15 a subpoena. To prevent confusion, the Commission directed the staff to clarify
16 that if a subpoena under Section 1985.3 or 1985.6 is for purposes of an out-of-
17 state case, the proper procedure would be to file a *petition* to enforce the
18 subpoena or a *petition* to quash or modify the subpoena, instead of a motion.

19 *Entry of Judgment and Appellate Review*

20 The Commission discussed the procedure for obtaining appellate review of a
21 ruling on a petition for relief regarding a deposition under Section 2029.010. The
22 Commission decided that the procedure should be to seek a writ from a court of
23 appeal. The staff should investigate this matter further.

24 *Drafting Approach*

25 In implementing the Commission's decisions, the staff should use its
26 discretion regarding whether to expand Section 2029.010 or create a number of
27 new sections in the same area of the code (Sections 2029.020, 2029.030, etc.).

28 STUDY J-506 – CIVIL DISCOVERY IMPROVEMENTS

29 The Commission considered Memorandum 2006-8, relating to subpoenaed
30 consumer records.

31 The Commission directed the staff to consult with the Assembly and Senate
32 Judiciary Committees or their staff regarding whether the Commission should
33 study this area and to report back at the next Commission meeting. In particular,

1 the staff should seek guidance on whether to clarify the proper treatment of a
2 limited liability corporation, whether to examine other issues relating to the
3 definition of “consumer,” and whether to explore any additional matters, such as
4 what constitutes a record “pertaining to a consumer.”

5 **STUDY L-3032 – BENEFICIARY DEEDS**

6 The Commission considered Memorandum 2006-16 and its First Supplement,
7 relating to the transfer on death deed. The Commission completed consideration
8 of pages 1-31 of the memorandum and pages 1-9 of the supplement. The
9 Commission plans to consider the remainder of the material, in consolidated
10 form, at its June meeting.

11 To expedite its consideration of this material, the Commission proceeded on
12 the basis that the staff recommendation on each point in the materials would be
13 considered adopted by the Commission, unless the matter was raised at the
14 meeting and a different resolution adopted. Therefore, the Commission adopted
15 all of the staff recommendations on pages 1-31 of the memorandum and pages 1-
16 9 of the supplement, with the exceptions noted below.

17 **Recordation**

18 The Commission considered the concept of permitting recordation of a TOD
19 deed up to a week after the transferor’s death, if the deed was executed within
20 three days before death. The Commission requested the staff to work through
21 some hypotheticals of the impact of such a rule on a bona fide purchaser or
22 encumbrancer of the property (including a BFP from the transferor as well as
23 from the beneficiary), and also to check the operation of a similar provision in
24 existing law for a deathbed severance of a joint tenancy.

25 **Effect on Joint Tenancy**

26 The TOD deed should sever a joint tenancy as of the date of the transferor’s
27 death, rather than as of the date of recordation. Conforming adjustments should
28 be made to the other draft provisions in the memorandum.

29 **Effect on Community Property**

30 The staff should review whether any special provisions need to be added to
31 ensure that a TOD deed works in conjunction with Family Code Section 2440
32 (automatic temporary restraining order in dissolution proceeding). The

1 treatment of the TOD deed perhaps should parallel the treatment of severance of
2 joint tenancy property in this circumstance.

3 **Contest of Deed**

4 In working through the contest procedure, the staff should make sure that
5 there is an appropriate lis pendens provision. The procedure should preclude a
6 contest before the transferor's death.

7 **Revocability**

8 The deed should be revocable notwithstanding language to the contrary in
9 the deed. The revocability feature should be noted in any statutory form of deed.
10 A transferor should be able to revoke a recorded TOD deed by an instrument
11 recorded before the transferor's death.

12 Any revocation by the transferor's agent under a power of attorney should be
13 properly authorized under Probate Code Section 4264, which arguably should be
14 revised to accommodate a TOD deed.

15 **Ownership Interest Conveyed**

16 A TOD deed should convey all of the owner's interest in the property. The
17 staff should pursue information about experience in jurisdictions that allow an
18 owner to convey less than all of the owner's interest. The staff should also
19 consider the consequences of a TOD deed that purports to convey less than all of
20 the owner's interest.

21 **Multiple Ownership**

22 The Commission was unable to come to a consensus as to the appropriate
23 rule where co-owners jointly execute a TOD deed. The tentative recommendation
24 should request comment on at least three alternatives:

- 25 1. The interest of each co-owner passes to the named beneficiary on the
26 death of that co-owner, with the interest of the surviving co-owner
27 being revocable.
- 28 2. The interest of each co-owner passes to the surviving co-owner and
29 then to the named beneficiary on the death of the surviving co-owner,
30 with the interest of the surviving co-owner being either revocable or
31 irrevocable.

1 3. There could be different rules depending on whether the property is
2 held as joint tenants, as community property with right of
3 survivorship, or as tenancy in common.

4 STUDY T-100 – TECHNICAL AND MINOR SUBSTANTIVE STATUTORY CORRECTIONS

5 The Commission considered Memorandum 2006-14, which discusses three
6 technical and minor substantive statutory corrections, and presents a staff draft
7 tentative recommendation incorporating all technical and minor substantive
8 statutory corrections heretofore presented in this study and Study J-1322.

9 The Commission adopted each of the staff recommendations in the
10 memorandum relating to the three new proposed corrections, and approved the
11 staff draft tentative recommendation to be circulated for comment.

APPROVED AS SUBMITTED

Date

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

Chairperson

Executive Secretary