
MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
DECEMBER 8, 2006
BURBANK

A meeting of the California Law Revision Commission was held in Burbank on December 8, 2006.

Commission:

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

Absent: Noreen Evans, Assembly Member
Frank Kaplan
Susan Duncan Lee

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

Consultants: None

Other Persons:

Howard Brown, Manhattan Beach
Frank Collard, Southern California Rock Products Association
Patrick DeBlase, National Conference of Commissioners on Uniform State Laws
Ken Grossbart, Abdulaziz, Grossbart & Rudman
Tony Klein, Process Server Institute
Shirley L. Kovar, State Bar Trusts and Estates Section
Dick Nash, Building Industry Credit Association
Charles Philipps, Association of California Surety Companies, Surety & Fidelity Association of America
J. David Sackman, California State Council of Laborers, Legislative Department
Mary Pat Toups, Laguna Woods

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1 MINUTES OF OCTOBER 27, 2006, COMMISSION MEETING

2 The Commission approved the Minutes of the October 27, 2006, Commission
3 meeting as submitted by the staff.

4 ADMINISTRATIVE MATTERS

5 **Meeting Schedule**

6 The January 12, 2007, meeting was rescheduled for January 25, 2007.

7 **Report of Executive Secretary**

8 *Personnel*

9 On November 13, 2006, Nathaniel Sterling retired as Executive Secretary.
10 Brian Hebert assumed office as Executive Secretary, effective December 5, 2006.

11 The title of the “Assistant Executive Secretary, California Law Revision
12 Commission” job classification has been changed to “Chief Deputy Counsel,
13 California Law Revision Commission.”

14 The Commission has a new employee. Catherine Bidart has been hired as
15 Staff Counsel.

16 *Other Matters*

17 On December 7, 2006, the Commission received an email from Valerie J.
18 Merritt commenting on the Commission’s study of the Revocable Transfer on
19 Death (TOD) Deed and requesting that the topic be placed on the agenda for the
20 December 8, 2007, meeting. The Commission declined to do so, but will consider
21 issues raised in the email at its January 25, 2007, meeting.

STUDY H-821 — MECHANICS LIEN LAW

The Commission considered Memorandum 2006-48 and its First and Second Supplements, concerning the tentative recommendation on *Mechanics Lien Law* (June 2006).

Except as noted below, the Commission adopted the staff recommendations made in pages 1 to 36 and in the first paragraph of page 37 of Memorandum 2006-48, and the staff recommendations made in the First and Second Supplements.

Terminology

The Commission directed the staff to determine whether to make uniform the references in the proposed law to the terms "trust deed," "deed of trust," and "mortgage."

Notice

Address At Which Notice Is Given

The Commission revised proposed Civil Code Section 7106 as follows:

7106. (a) Notice under this part shall be given to the person to be notified at ~~an address prescribed in this section~~. If the person giving notice knows of more than one address for the person to be notified, notice shall be given at the last known address of the person to be notified.

(b) Notice under this part shall be given to the person to be notified at the address of the person's residence or place of business, or at any of the following addresses:

(a) The person's residence.

(b) The person's place of business.

(c) If the person to be notified is an owner, at the owner's address shown on the contract, the building permit, or a construction trust deed.

(2) (d) If the person to be notified is a construction lender, at the construction lender's address shown on the construction loan agreement or construction trust deed.

(3) (e) If the person to be notified is a direct contractor or a subcontractor, at the contractor's address shown on the contract or building permit, on the contractor's contract, or on the records of the Contractors' State License Board.

(4) (f) If the person to be notified is a claimant, at the claimant's address shown on the contract, preliminary notice, claim of lien, stop payment notice, or claim against a payment bond, or on the records of the Contractors' State License Board.

1 (5) (g) If the person to be notified is the ~~principal or~~ surety on a
2 bond, at the surety's address ~~provided in~~ shown on the bond for
3 service of notices, papers, and other documents, or on the records
4 of the Department of Insurance.

5 The Commission further directed the staff to determine whether sections of
6 existing law governing the manner of giving notice provide that notice "may" be
7 given as provided, or "shall" be given as provided. The staff is to incorporate the
8 uniformly used term, if one exists. If neither term is uniformly used, the
9 Commission will revisit the issue.

10 *Proof of Notice*

11 The Commission revised proposed Civil Code Section 7116 as follows:

12 7116. (a) Proof that notice was given to a person in the manner
13 required by this part shall be made by a proof of notice ~~affidavit~~
14 declaration that states all of the following:

- 15 (1) The type or description of the notice given.
16 (2) The ~~time date~~, place, and manner of notice and facts showing
17 that notice was given in the manner required by statute.
18 (3) The name and address of the person to which notice was
19 given, and, if appropriate, the title or capacity in which the person
20 was given notice.
21 (b) If the notice is given by mail, the ~~affidavit~~ declaration shall
22 be accompanied by one of the following:
23

24 (c) If notice is given in the form of an electronic record, the
25 ~~affidavit~~ declaration shall also state that the document was served
26 electronically and that no notice of non-transmission was received.

27 **Laborers Compensation Fund Issues**

28 The Commission deleted proposed Civil Code Section 7416 and decided not
29 to expand proposed Civil Code Section 7400 to expressly allow assignment of
30 lien rights.

31 **Completion Issues**

32 *Acceptance by Owner*

33 Continuing a discussion from the previous meeting, the Commission deleted
34 a provision of proposed Civil Code Section 7150 that would have recognized
35 "acceptance by the owner" as a form of completion.

36 In reaching that decision, the Commission considered the following options:

- 37 (1) providing that acceptance constitutes a form of completion without any

1 communication requirement; (2) providing that acceptance constitutes
2 completion only as to those claimants to whom the acceptance had been
3 communicated; (3) providing that acceptance constitutes a form of completion
4 only upon recordation of the acceptance; (4) deleting acceptance as a form of
5 completion.

6 *Notice of Recordation of Completion*

7 The Commission revised proposed Civil Code Section 7152 as follows:

8 7152. (a) An owner may record a notice of completion on or
9 within 15 days after completion of a work of improvement.

10 (b) The notice of completion shall be signed and verified by the
11 owner, and include all of the following information:

12 (1) If the notice is given only of completion of a contract for a
13 particular portion of the work of improvement as provided in
14 Section 7154, the name of the direct contractor under that contract
15 and a general statement of the work provided pursuant to the
16 contract.

17 (2) If signed by the owner's successor in interest, the name and
18 address of the successor's transferor.

19 (3) The nature of the interest or estate of the owner.

20 (4) The date of completion. An erroneous statement of the date
21 of completion does not affect the effectiveness of the notice if the
22 true date of completion is 15 days or less before the date of
23 recordation of the notice.

24 (5) If the notice is based on cessation of labor, the date on or
25 about which labor ceased.

26 (6) If the notice is based on cessation of labor under paragraph
27 (4) of subdivision (a) of Section 7150, that cessation of labor has
28 been continuous until recordation of the notice.

29 (7) ~~An affidavit of mailing in the manner provided in Section
30 1013a of the Code of Civil Procedure showing all persons given
31 notice under Section 7156, if compliance with Section 7156 is
32 required.~~

33 (c) A notice of completion that does not comply with the
34 provisions of this section is not effective.

35 **Waiver and Release Issues**

36 *Contractual Impairment of Claimant Rights*

37 The Commission directed the staff to present a recommended revision of
38 proposed Civil Code Section 7160 after analyzing whether the source of that
39 provision in existing law was intended solely to prevent collusion between an
40 owner and an original contractor.

Itemization of Extras

The Commission decided not to require that the waiver and release forms provided in proposed Civil Code Sections 7170 and 7172 itemize any extras that are excepted from the waiver and release.

STUDY J-505 — CIVIL DISCOVERY

The Commission considered Memorandum 2006-46, relating to discovery in California for an out-of-state case. The Commission made the following decisions:

Forum for Resolving a Discovery Dispute

The Commission discussed where to resolve a dispute relating to discovery in California for an out-of-state case. The Commission concluded that if such a dispute affects a nonparty witness, it should be resolved in California, not the out-of-state tribunal. If the dispute only affects the parties, either forum should be permissible. This approach is consistent with the Comment to Section 6 of the draft being developed by the National Conference of Commissioners on Uniform State Laws ("NCCUSL"). But the text of Section 6 appears to require that any dispute be resolved in California. The Commission preferred the language in proposed Code of Civil Procedure Section 2029.060, as shown on pages 19-20 of Attachment #1 to Memorandum 2006-46. The staff should review and perhaps further refine that language to ensure that it achieves the desired result.

Law Applicable to a Discovery Dispute

The Commission discussed what law should apply to a dispute relating to discovery in California for an out-of-state case. The discussion was broken into a number of subparts.

Law Applicable in Conducting the Discovery

The first issue was what procedures to use in conducting discovery in California for an out-of-state case: California's discovery procedures or those of the other jurisdiction. Existing California law (Code Civ. Proc. § 2029.010) and Section 6 of NCCUSL's current draft require use of California's discovery procedures. The Commission agreed with that approach.

1 *Procedures Applicable in Resolving a Discovery Dispute*

2 A separate issue is what procedures to use in resolving a dispute over
3 discovery that is conducted in California for an out-of-state case (e.g., what law
4 should govern the formatting of a request for relief, briefing schedule,
5 availability of sanctions, meet and confer requirements, or the like). The
6 Commission decided that in resolving a discovery dispute, the dispute resolution
7 procedures of the tribunal that resolves the dispute should apply. This approach
8 will not compel a California nonparty witness to submit to procedures of another
9 jurisdiction, because any dispute affecting such a witness would have to be
10 resolved in California. See discussion under “Forum for Resolving a Discovery
11 Dispute” *supra*.

12 *Evidentiary Law Applicable in Resolving a Discovery Dispute*

13 A further issue is what evidence rules to use in resolving a dispute over
14 discovery that is conducted in California for an out-of-state case. The
15 Commission decided that in resolving such a discovery dispute, the evidence
16 rules of the tribunal that resolves the dispute should apply. This approach will
17 not compel a California nonparty witness to submit to evidence rules of another
18 jurisdiction, because any dispute affecting such a witness would have to be
19 resolved in California. See discussion under “Forum for Resolving a Discovery
20 Dispute” *supra*.

21 **Review Path for a Decision in a Discovery Dispute**

22 Proposed Code of Civil Procedure Section 2029.100 (as shown on p. 22 of
23 Attachment #1 to Memorandum 2006-46) provides for review by way of writ.
24 The Commission considered whether to provide for review by way of appeal, as
25 in *Warfield v. Medeiros*, 160 Cal. App. 3d 1035, 207 Cal. Rptr. 94 (1984). Due to
26 practical considerations, the Commission decided to leave Section 2029.100 as is.

27 **Discovery for an Out-of-State Arbitration, Administrative Adjudication, or
28 Other Nonjudicial Proceeding**

29 The Commission considered whether to address discovery for an out-of-state
30 arbitration, administrative adjudication, or other nonjudicial proceeding. The
31 Commission decided not to address that topic in this study. The proposal should
32 expressly state that it does not address that topic.

Use of NCCUSL's Framework

The Commission discussed whether to recast its proposal to track NCCUSL's framework and use as much of NCCUSL's language as possible, consistent with the Commission's substantive views. The Commission directed the staff to implement this approach.

Discovery for an Action Pending in a Foreign Nation

The staff should use its discretion in determining how to draft the proposal to cover discovery for an action pending in a foreign nation.

STUDY J-1402 — STATUTES MADE OBSOLETE BY
TRIAL COURT RESTRUCTURING: PART 3

The Commission considered Memorandum 2006-44, discussing comments on the tentative recommendation on *Statutes Made Obsolete By Trial Court Restructuring: Part 3* (August 2006). The Commission approved the proposal as a final recommendation, subject to the following revisions:

Court Appearance By Two-Way Electronic Audiovideo Communication

The amendment of Penal Code Section 977 should be adjusted to reflect the enactment of Assembly Bill 2174 (Villines), 2006 Cal. Stat. ch. 744, § 1. So adjusted, the amendment should read:

Penal Code § 977 (amended). Presence of defendant and counsel

SEC. _____. Section 977 of the Penal Code is amended to read:

977. (a)(1) In all cases in which the accused is charged with a misdemeanor only, he or she may appear by counsel only, except as provided in paragraphs (2) and (3). If the accused agrees, the initial court appearance, arraignment, and plea may be by video, as provided by subdivision (c).

(2) If the accused is charged with a misdemeanor offense involving domestic violence, as defined in Section 6211 of the Family Code, or a misdemeanor violation of Section 273.6, the accused shall be present for arraignment and sentencing, and at any time during the proceedings when ordered by the court for the purpose of being informed of the conditions of a protective order issued pursuant to Section 136.2.

(3) If the accused is charged with a misdemeanor offense involving driving under the influence, in an appropriate case, the court may order a defendant to be present for arraignment, at the time of plea, or at sentencing. For purposes of this paragraph, a

1 misdemeanor offense involving driving under the influence shall
2 include a misdemeanor violation of any of the following:

3 (A) Paragraph (3) of subdivision (c) of Section 192.
4 (B) Section 23103 as specified in Section 23103.5 of the Vehicle
5 Code.

6 (C) Section 23152 of the Vehicle Code.
7 (D) Section 23153 of the Vehicle Code.

8 (b)(1) In all cases in which a felony is charged, the accused shall
9 be present at the arraignment, at the time of plea, during the
10 preliminary hearing, during those portions of the trial when
11 evidence is taken before the trier of fact, and at the time of the
12 imposition of sentence. The accused shall be personally present at
13 all other proceedings unless he or she shall, with leave of court,
14 execute in open court, a written waiver of his or her right to be
15 personally present, as provided by paragraph (2). If the accused
16 agrees, the initial court appearance, arraignment, and plea may be
17 by video, as provided by subdivision (c).

18 (2) The accused may execute a written waiver of his or her right
19 to be personally present, approved by his or her counsel, and the
20 waiver shall be filed with the court. However, the court may
21 specifically direct the defendant to be personally present at any
22 particular proceeding or portion thereof. The waiver shall be
23 substantially in the following form:

24 “WAIVER OF DEFENDANT’S PERSONAL PRESENCE”

25 “The undersigned defendant, having been advised of his or her
26 right to be present at all stages of the proceedings, including, but
27 not limited to, presentation of and arguments on questions of fact
28 and law, and to be confronted by and cross-examine all witnesses,
29 hereby waives the right to be present at the hearing of any motion
30 or other proceeding in this cause. The undersigned defendant
31 hereby requests the court to proceed during every absence of the
32 defendant that the court may permit pursuant to this waiver, and
33 hereby agrees that his or her interest is represented at all times by
34 the presence of his or her attorney the same as if the defendant
35 were personally present in court, and further agrees that notice to
36 his or her attorney that his or her presence in court on a particular
37 day at a particular time is required is notice to the defendant of the
38 requirement of his or her appearance at that time and place.”

39 (c) The court may permit the initial court appearance and
40 arraignment ~~in municipal or superior court~~ of defendants held in
41 any state, county, or local facility within the county on felony or
42 misdemeanor charges, except for those defendants who were
43 indicted by a grand jury, to be conducted by two-way electronic
44 audiovideo communication between the defendant and the
45 courtroom in lieu of the physical presence of the defendant in the
46 courtroom. If the defendant is represented by counsel, the attorney
47 shall be present with the defendant at the initial court appearance
48 and arraignment, and may enter a plea during the arraignment.

1 However, if the defendant is represented by counsel at an ~~initial~~
2 ~~hearing in superior court~~ arraignment on an information in a felony
3 case, and if the defendant does not plead guilty or nolo contendere
4 to any charge, the attorney shall be present with the defendant or if
5 the attorney is not present with the defendant, the attorney shall be
6 present in court during the hearing. The defendant shall have the
7 right to make his or her plea while physically present in the
8 courtroom if he or she so requests. If the defendant decides not to
9 exercise the right to be physically present in the courtroom, he or
10 she shall execute a written waiver of that right. A judge may order
11 a defendant's personal appearance in court for the initial court
12 appearance and arraignment. In a misdemeanor case, a judge may,
13 pursuant to this subdivision, accept a plea of guilty or no contest
14 from a defendant who is not physically in the courtroom. In a
15 felony case, a judge may, pursuant to this subdivision, accept a plea
16 of guilty or no contest from a defendant who is not physically in
17 the courtroom if the parties stipulate thereto.

18 (d) Notwithstanding subdivision (c), if the defendant is
19 represented by counsel, the attorney shall be present with the
20 defendant in any county exceeding 4,000,000 persons in population.

21 **Comment.** Subdivision (c) of Section 977 is amended to reflect
22 unification of the municipal and superior courts pursuant to Article
23 VI, Section 5(e), of the California Constitution.

24 In the first sentence, the reference to "municipal or superior
25 court" is deleted because municipal courts no longer exist and all
26 arraignments are held before a judicial officer of the superior court.

27 In the third sentence, the reference to "an initial hearing in
28 superior court in a felony case" is replaced by a reference to "an
29 arraignment on an information in a felony case." This revision is
30 necessary to clarify the type of proceeding to which the sentence
31 applies.

32 Before unification, a felony defendant was either (1) indicted
33 and arraigned on the indictment in superior court or (2) arraigned
34 on a complaint before a magistrate in municipal court and, if held
35 to answer at a preliminary hearing, later arraigned on an
36 information in superior court. Because subdivision (c) is expressly
37 inapplicable to an indicted defendant, the reference to "an initial
38 hearing in superior court in a felony case" in the third sentence was
39 sufficient to indicate that the sentence pertained to an arraignment
40 on an information, not an arraignment on a felony complaint.

41 Now that the municipal and superior courts have unified, both
42 an arraignment on a felony complaint and an arraignment on an
43 information occur in superior court (technically, the arraignment on
44 the complaint occurs before a superior court judge acting as
45 magistrate). The phrase "initial hearing in superior court in a felony
46 case" is thus vague; it could encompass either an arraignment on a
47 felony complaint or an arraignment on an information or both. The

1 amendment eliminates this ambiguity consistent with the pre-
2 unification status quo.

3 **Appellate Jurisdiction**

4 The amendments of Code of Civil Procedure Sections 904.1 and 904.2 should
5 be adjusted to reflect the enactment of Assembly Bill 2303 (Committee on
6 Judiciary), 2006 Cal. Stat. ch. 567, §§ 8, 9. So adjusted, the amendments should
7 read:

8 **Code Civ. Proc. § 904.1 (amended). Appeal in unlimited civil case**

9 SEC. _____. Section 904.1 of the Code of Civil Procedure is
10 amended to read:

11 904.1. (a) An appeal, other than in a limited civil case, is to the
12 court of appeal. An appeal, other than in a limited civil case, may
13 be taken from any of the following:

14 (1) From a judgment, except (A) an interlocutory judgment,
15 other than as provided in paragraphs (8), (9), and (11), or (B) a
16 judgment of contempt that is made final and conclusive by Section
17 1222, or (C) a judgment granting or denying a petition for issuance
18 of a writ of mandamus or prohibition directed to a municipal court
19 or the superior court in a county in which there is no municipal
20 court or the judge or judges thereof that relates to a matter pending
21 in the municipal or superior court. However, an appellate court
22 may, in its discretion, review a judgment granting or denying a
23 petition for issuance of a writ of mandamus or prohibition, or a
24 judgment or order for the payment of monetary sanctions, upon
25 petition for an extraordinary writ.

26 (2) From an order made after a judgment made appealable by
27 paragraph (1).

28 (3) From an order granting a motion to quash service of
29 summons or granting a motion to stay the action on the ground of
30 inconvenient forum, or from a written order of dismissal under
31 Section 581d following an order granting a motion to dismiss the
32 action on the ground of inconvenient forum.

33 (4) From an order granting a new trial or denying a motion for
34 judgment notwithstanding the verdict.

35 (5) From an order discharging or refusing to discharge an
36 attachment or granting a right to attach order.

37 (6) From an order granting or dissolving an injunction, or
38 refusing to grant or dissolve an injunction.

39 (7) From an order appointing a receiver.

40 (8) From an interlocutory judgment, order, or decree, hereafter
41 made or entered in an action to redeem real or personal property
42 from a mortgage thereof, or a lien thereon, determining the right to
43 redeem and directing an accounting.

1 (9) From an interlocutory judgment in an action for partition
2 determining the rights and interests of the respective parties and
3 directing partition to be made.

4 (10) From an order made appealable by the provisions of the
5 Probate Code or the Family Code.

6 (11) From an interlocutory judgment directing payment of
7 monetary sanctions by a party or an attorney for a party if the
8 amount exceeds five thousand dollars (\$5,000).

9 (12) From an order directing payment of monetary sanctions by
10 a party or an attorney for a party if the amount exceeds five
11 thousand dollars (\$5,000).

12 (13) From an order granting or denying a special motion to
13 strike under Section 425.16.

14 (b) Sanction orders or judgments of five thousand dollars
15 (\$5,000) or less against a party or an attorney for a party may be
16 reviewed on an appeal by that party after entry of final judgment in
17 the main action, or, at the discretion of the court of appeal, may be
18 reviewed upon petition for an extraordinary writ.

19 **Comment.** Subdivision (a) of Section 904.1 is amended to reflect
20 unification of the municipal and superior courts pursuant to Article
21 VI, Section 5(e), of the California Constitution. Former Section
22 904.1(a)(1)(C) is continued in Section 904.3, with revisions to reflect
23 unification.

24 **Code Civ. Proc. § 904.2 (amended). Appeal from ruling by judicial officer in limited**
25 **civil case**

26 SEC. _____. Section 904.2 of the Code of Civil Procedure is
27 amended to read:

28 904.2. An appeal of a ruling by a superior court judge or other
29 judicial officer in a limited civil case is to the appellate division of
30 the superior court. An appeal of a ruling by a superior court judge
31 or other judicial officer in a limited civil case may be taken from
32 any of the following:

33 (a) From a judgment, except (1) an interlocutory judgment, or
34 (2) a judgment of contempt that is made final and conclusive by
35 Section 1222.

36 (b) From an order made after a judgment made appealable by
37 subdivision (a).

38 (c) From an order changing or refusing to change the place of
39 trial.

40 (d) From an order granting a motion to quash service of
41 summons or granting a motion to stay the action on the ground of
42 inconvenient forum, or from a written order of dismissal under
43 Section 581d following an order granting a motion to dismiss the
44 action on the ground of inconvenient forum.

45 (e) From an order granting a new trial or denying a motion for
46 judgment notwithstanding the verdict.

- (f) From an order discharging or refusing to discharge an attachment or granting a right to attach order.
 - (g) From an order granting or dissolving an injunction, or refusing to grant or dissolve an injunction.
 - (h) From an order appointing a receiver.

Comment. Section 904.2 is amended to make clear that it governs the appealability of a ruling by a superior court judge or other judicial officer in a limited civil case. For the appealability of a judgment by the appellate division of the superior court on a writ petition in a limited civil case, see Section 904.3.

Writ Jurisdiction in a Small Claims Case

The reforms relating to writ jurisdiction in a small claims case (i.e., the proposed amendments to Code Civ. Proc. §§ 1068, 1085 & 1103; proposed new Code Civ. Proc. §§ 1068.5, 1085.3 & 1103.5) should be deleted from the proposal. The corresponding portion of the preliminary part should also be deleted. The Commission intends to study these issues further before making a recommendation to the Legislature.

Concurrent Jurisdiction

The amendment of Business and Professions Code Section 12606.2 should be adjusted to reflect the enactment of Senate Bill 1852 (Committee on Judiciary), 2006 Cal. Stat. ch. 538, § 20. So adjusted, the amendment should read:

Bus. & Prof. Code § 12606.2 (amended). Misleading food containers

SEC. _____. Section 12606.2 of the Business and Professions Code is amended to read:

12606.2. (a) This section applies to food containers subject to Section 403 (d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 343 (d)), and Section 100.100 of Title 21 of the Code of Federal Regulations. Section 12606 does not apply to food containers subject to this section.

(b) No food containers shall be made, formed, or filled as to be misleading.

(c) A container that does not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack fill. Slack fill is the difference between the actual capacity of a container and the volume of product contained therein. Nonfunctional slack fill is the empty space in a package that is filled to less than its capacity for reasons other than the following:

(1) Protection of the contents of the package.

(2) The requirements of the machines used for enclosing the contents in the package.

(3) Unavoidable product settling during shipping and handling.

(4) The need for the package to perform a specific function, such as where packaging plays a role in the preparation or consumption of a food, if that function is inherent to the nature of the food and is clearly communicated to consumers.

(5) The fact that the product consists of a food packaged in a reusable container where the container is part of the presentation of the food and has value that is both significant in proportion to the value of the product and independent of its function to hold the food, such as a gift product consisting of a food or foods combined with a container that is intended for further use after the food is consumed or durable commemorative or promotional packages.

(6) Inability to increase the level of fill or to further reduce the size of the package, such as where some minimum package size is necessary to accommodate required food labeling exclusive of any vignettes or other nonmandatory designs or label information, discourage pilfering, facilitate handling, or accommodate tamper-resistant devices.

(d) This section shall be interpreted consistent with the comments by the United States Food and Drug Administration on the regulations contained in Section 100.100 of Title 21 of the Code of Federal Regulations, interpreting Section 403(d) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. Sec. 343(d)), as those comments are reported on pages 64123 to 64137, inclusive, of Volume 58 of the Federal Register.

(e) If the requirements of this section do not impose the same requirements as are imposed by Section 403(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 343(d)), or any regulation promulgated pursuant thereto, then this section is not operative to the extent that it is not identical to the federal requirements, and for this purpose those federal requirements are incorporated into this section and shall apply as if they were set forth in this section.

(f) Any sealer may seize any container that is in violation of this section and the contents of the container. By order of the superior court of the city or county within which a violation of this section occurs, the containers seized shall be condemned and destroyed or released upon any conditions that the court may impose to ensure against their use in violation of this chapter. The contents of any condemned container shall be returned to the owner thereof if the owner furnishes proper facilities for the return. A proceeding under this section is a limited civil case if the value of the property in controversy is less than or equal to the maximum amount in controversy for a limited civil case under Section 85 of the Code of Civil Procedure.

Comment. Subdivision (f) of Section 12606.2 is amended to reflect unification of the municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution. As amended, subdivision (f) makes clear that if the value of seized containers is

1 less than or equal to the maximum amount in controversy for a
2 limited civil case, a proceeding under this section is a limited civil
3 case even though permanent injunctive relief generally is not
4 allowed in a limited civil case (Code Civ. Proc. §§ 85, 580). This
5 preserves the pre-unification status quo, under which a municipal
6 court had authority to order condemnation of containers under this
7 section in specified circumstances.

8 **Government Code Section 71601**

9 The following amendment of Government Code Section 71601 should be
10 added to the proposal:

11 **Gov't Code § 71601 (amended). Definitions**

12 SEC. _____. Section 71601 of the Government Code is amended to
13 read:

14 71601. For purposes of this chapter, the following definitions
15 shall apply:

16 (a) "Appointment" means the offer to and acceptance by a
17 person of a position in the trial court in accordance with this
18 chapter and the trial court's personnel policies, procedures, and
19 plans.

20 (b) "Employee organization" means either of the following:

21 (1) Any organization that includes trial court employees and has
22 as one of its primary purposes representing those employees in
23 their relations with that trial court.

24 (2) Any organization that seeks to represent trial court
25 employees in their relations with that trial court.

26 (c) "Hiring" means appointment as defined in subdivision (a).

27 (d) "Mediation" means effort by an impartial third party to assist
28 in reconciling a dispute regarding wages, hours, and other terms
29 and conditions of employment between representatives of the trial
30 court and the recognized employee organization or recognized
31 employee organizations through interpretation, suggestion, and
32 advice.

33 (e) "Meet and confer in good faith" means that a trial court or
34 representatives as it may designate, and representatives of
35 recognized employee organizations, shall have the mutual
36 obligation personally to meet and confer promptly upon request by
37 either party and continue for a reasonable period of time in order to
38 exchange freely information, opinions, and proposals, and to
39 endeavor to reach agreement on matters within the scope of
40 representation. The process should include adequate time for the
41 resolution of impasses where specific procedures for resolution are
42 contained in this chapter or in a local rule, or when the procedures
43 are utilized by mutual consent.

44 (f) "Personnel rules," "personnel policies, procedures, and
45 plans," and "rules and regulations" mean policies, procedures,

1 plans, rules, or regulations adopted by a trial court or its designee
2 pertaining to conditions of employment of trial court employees,
3 subject to meet and confer in good faith.

4 (g) "Promotion" means promotion within the trial court as
5 defined in the trial court's personnel policies, procedures, and
6 plans, subject to meet and confer in good faith.

7 (h) "Recognized employee organization" means an employee
8 organization that has been formally acknowledged to represent
9 trial court employees by the county under Sections 3500 to 3510,
10 inclusive, prior to the implementation date of this chapter, or by the
11 trial court under Rules 2201 to 2210, inclusive, of the California
12 Rules of Court, as those rules read on April 23, 1997, Sections 70210
13 to 70219, inclusive, or Article 3 (commencing with Section 71630) of
14 this chapter.

15 (i) "Subordinate judicial officer" means an officer appointed to
16 perform subordinate judicial duties as authorized by Section 22 of
17 Article VI of the California Constitution, including, but not limited
18 to, a court commissioner, probate commissioner, child support
19 commissioner, referee, traffic trial commissioner, traffic referee,
20 juvenile court referee, juvenile hearing officer, and temporary judge
21 pro tempore.

22 (j) "Transfer" means transfer within the trial court as defined in
23 the trial court's personnel policies, procedures, and plans, subject to
24 meet and confer in good faith.

25 (k) "Trial court" means a superior court ~~or a municipal court~~.

26 (l) "Trial court employee" means a person who is both of the
27 following:

28 (1) Paid from the trial court's budget, regardless of the funding
29 source. For the purpose of this paragraph, "trial court's budget"
30 means funds from which the presiding judge of a trial court, or his
31 or her designee, has authority to control, authorize, and direct
32 expenditures, including, but not limited to, local revenues, all grant
33 funds, and trial court operations funds.

34 (2) Subject to the trial court's right to control the manner and
35 means of his or her work because of the trial court's authority to
36 hire, supervise, discipline, and terminate employment. For
37 purposes of this paragraph only, the "trial court" includes the
38 judges of a trial court or their appointees who are vested with or
39 delegated the authority to hire, supervise, discipline, and terminate.

40 (m) A person is a "trial court employee" if and only if both
41 paragraphs (1) and (2) of subdivision (l) are true irrespective of job
42 classification or whether the functions performed by that person
43 are identified in Rule 810 of the California Rules of Court. The
44 phrase "trial court employee" includes those subordinate judicial
45 officers who satisfy paragraphs (1) and (2) of subdivision (l). The
46 phrase "trial court employee" does not include temporary
47 employees hired through agencies, jurors, individuals hired by the
48 trial court pursuant to an independent contractor agreement,
49 individuals for whom the county or trial court reports income to

the Internal Revenue Service on a Form 1099 and does not withhold employment taxes, sheriffs, and judges whether elected or appointed. Any temporary employee, whether hired through an agency or not, shall not be employed in the trial court for a period exceeding 180 calendar days, except that for court reporters in a county of the first class, a trial court and a recognized employee organization may provide otherwise by mutual agreement in a memorandum of understanding or other agreement.

Comment. Subdivision (i) of Section 71601 is amended to refer to types of subordinate judicial officers. See former Section 72450 (traffic trial commissioners); Fam. Code §§ 4250-4253 (child support commissioners); Welf. & Inst. Code § 255 (juvenile hearing officers). Subdivision (i) is also amended for consistency of terminology. See Cal. Const. art. VI, § 21 (temporary judge).

Subdivision (k) is amended to reflect unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution.

This amendment is what the Commission recommended in 2002, updated to reflect recent, unrelated amendments of Section 71601. See *Statutes Made Obsolete By Trial Court Restructuring: Part 1*, 32 Cal. L. Revision Comm'n Reports 1, 319-22 (2002). The staff should add a short explanation of the amendment to the preliminary part of the proposal.

STUDY L-637 — REVISION OF NO CONTEST CLAUSE STATUTE

The Commission considered Memorandum 2006-45 and its First and Second Supplements, discussing issues relating to the enforcement of a no contest clause.

The Commission directed the staff to conduct a brief survey of trust and probate practitioners and judges, to determine the extent to which existing law is perceived to be creating problems. The staff will collate responses and report the results of the survey at the Commission's March meeting.

APPROVED AS SUBMITTED

Date

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

Chairperson

Executive Secretary