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MINUTES OF MEETING  
CALIFORNIA LAW REVISION COMMISSION  
JUNE 28, 2007  
SACRAMENTO

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A meeting of the California Law Revision Commission was held in Sacramento on June 28, 2007.

**Commission:**

*Present:* Sidney Greathouse, Vice Chairperson  
Pamela L. Hemminger  
Frank Kaplan  
Susan Duncan Lee  
Edmund L. Regalia  
William E. Weinberger

*Absent:* Diane F. Boyer-Vine, Legislative Counsel  
Ellen Corbett, Senate Member  
Noreen Evans, Assembly Member  
David Huebner, Chairperson

**Staff:**

*Present:* Barbara Gaal, Chief Deputy Counsel  
Catherine Bidart, Staff Counsel  
Steve Cohen, Staff Counsel

*Absent:* Brian Hebert, Executive Secretary

**Other Persons:**

Bill Cody, CDWR  
Frank Collard, Southern California Rock Products Association (CalCIMA)  
Jason Davis, Trutanich & Michel, LLP  
Samuel Hoover, Legal Community Against Violence  
Joe Klinger, Government Strategies, Inc. (on behalf of Executive Council of Homeowners)  
Dick Nash, Building Industry Credit Association  
Bruce Rudman, Abdulaziz, Grossbart & Rudman  
J. David Sackman, California State Council of Laborers  
Mary Pat Toups, Laguna Woods  
Amanda Wilcox, California Brady Campaign Chapters, Brady Campaign  
Nick Wilcox, Brady Campaign to Prevent Gun Violence



1 **AB 310 (Silva) — Technical and Minor Substantive Corrections**

2 The Commission ratified the amendment to AB 310 described in the  
3 memorandum.

4 **SB 649 (Committee on Judiciary) — Trial Court Restructuring: Part 3**

5 The Commission ratified the amendment to SB 649 described in the  
6 memorandum.

7 **STUDY H-821 — MECHANICS LIEN LAW**

8 The Commission considered Memorandum 2007-25, concerning the tentative  
9 recommendation on *Mechanics Lien Law* (June 2006). The Commission approved  
10 the staff's recommendations, subject to the following decisions:

11 **Notice to Public Entity**

12 The staff will analyze whether it would be practical to revise proposed Public  
13 Contract Code Section 42106 to provide additional opportunities for a public  
14 entity to designate a location for service of notice to the entity.

15 **Proof of Notice**

16 Proposed Public Contract Code Section 42114 will be revised to make clear  
17 that proof of mailing by certified or registered mail is sufficient to prove that  
18 notice was given. Proof of completed delivery would not be required.

19 **Preliminary Notice Provisions**

20 The Commission revised proposed Public Contract Code Section 43010 along  
21 the following lines:

22 43010. (a) Except as otherwise provided by statute, ~~preliminary~~  
23 ~~notice is a necessary prerequisite to the validity of a stop payment~~  
24 ~~notice or a claim against a payment bond under this part before~~  
25 giving a stop payment notice or asserting a claim against a  
26 payment bond, a claimant shall give preliminary notice to the  
27 following persons:

28 (1) The public entity.

29 (2) The direct contractor to whom the claimant provides work.

30 (b) Compliance with this section is a necessary prerequisite to  
31 the validity of a stop payment notice under this part.

32 (c) Compliance with this section or with Section 45070 is a  
33 necessary prerequisite to the validity of a claim against a payment  
34 bond under this part.

1 (d) Notwithstanding the foregoing:

2 (1) A laborer or a laborers compensation fund is not required to  
3 give preliminary notice.

4 ~~(e) (2)~~ A claimant that has a direct contractual relationship with  
5 a direct contractor is not required to give preliminary notice.

6 **Comment.** ~~Subdivision (a) of~~ Section 43010 restates part of the  
7 introductory clause and subdivisions (a) and (c) of former Civil  
8 Code Section 3098. Repetitive detail is omitted, in reliance on  
9 defined terms and other substantive provisions. For a statutory  
10 exception to the preliminary notice requirement, see Section 45070  
11 (notice to principal and surety of claim against payment bond).

12 ~~Subdivision (b) restates former Civil Code Section 3098(e).~~

13 ~~Subdivision (c) restates a portion of former Civil Code Section~~  
14 ~~3098(a).~~

15 The transitional provision of former Civil Code Section 3098(e)  
16 is not continued due to lapse of time.

17 See also Sections 41020 (“claimant” defined), 41040 (“direct  
18 contractor” defined), ~~41080 (“laborers compensation fund”~~  
19 ~~defined)~~, 41090 (“payment bond” defined), 41110 (“preliminary  
20 notice” defined), 41120 (“public entity” defined), 41150 (“stop  
21 payment notice” defined) , 41160 (“subcontractor” defined).

22 The Commission made a parallel revision to proposed Civil Code Section  
23 7200:

24 7200. (a) Except as otherwise provided by statute, before  
25 recording a lien claim, giving a stop payment notice, or asserting a  
26 claim against a payment bond, a claimant shall give preliminary  
27 notice to the following persons:

28 (1) The owner or reputed owner.

29 (2) The direct contractor or reputed direct contractor to whom  
30 the claimant provides work, either directly or through one or more  
31 subcontractors.

32 (3) The construction lender or reputed construction lender, if  
33 any.

34 (b) The notice shall comply with the requirements of Article 4  
35 (commencing with Section 7100).

36 ~~Notwithstanding subdivision (a):~~

37 ~~(1) A laborer is not required to give preliminary notice.~~

38 ~~(2) A claimant with a direct contractual relationship with an~~  
39 ~~owner or reputed owner is required to give preliminary notice only~~  
40 ~~to the construction lender or reputed construction lender, if any.~~  
41 Compliance with this section is a necessary prerequisite to the  
42 validity of a lien claim or stop payment notice under this part.

43 (d) Compliance with this section or with Section 7612 is a  
44 necessary prerequisite to the validity of a claim against a payment  
45 bond under this part.

46 (e) Notwithstanding the foregoing subdivisions:

47 (1) A laborer is not required to give preliminary notice.

1           (2) A claimant with a direct contractual relationship with an  
2           owner or reputed owner is required to give preliminary notice only  
3           to the construction lender or reputed construction lender, if any.

4           **Rights of a Material Supplier on a Public Work**

5           The staff will research whether Civil Code Section 3181 was intended by the  
6           Legislature to apply to a person who acts as a material supplier to a material  
7           supplier.

8           STUDY H-855 — STATUTORY CLARIFICATION AND SIMPLIFICATION OF CID LAW

9           The Commission considered Memorandum 2007-24 and its First and Second  
10          Supplements, presenting a staff draft tentative recommendation.

11          The Commission approved the draft for circulation as a tentative  
12          recommendation, with one change: the first line of the preliminary part will be  
13          annotated to acknowledge that some common interest developments are  
14          nonresidential.

15          Public comments that the Commission has received on parts of the proposed  
16          law that were not specifically discussed in Memorandum 2007-24 will be held  
17          and considered after the close of the public comment period for the tentative  
18          recommendation.

19          STUDY J-1403 — TRIAL COURT RESTRUCTURING: MISCELLANEOUS ISSUES

20          The Commission considered Memorandum 2007-23, relating to trial court  
21          restructuring. The Commission directed the staff to prepare a draft of a tentative  
22          recommendation to implement the following decisions:

23          **Municipal Court Action Specifying Number, Qualifications, or Compensation**  
24          **of Municipal Court Officers or Employees**

25          Government Code Section 71617 should be repealed:

26                 ~~71617. To the extent this chapter applies to a municipal court,~~  
27                 ~~any action by the municipal court specifying the number,~~  
28                 ~~qualification, or compensation of officers or employees of the~~  
29                 ~~municipal court which differs from that prescribed by the~~  
30                 ~~Legislature pursuant to Section 5 of Article VI of the California~~  
31                 ~~Constitution shall remain in effect for a period of no more than two~~  
32                 ~~years unless prescribed by the Legislature within that period.~~

33                 **Comment.** Section 71617 is repealed to reflect unification of the  
34                 municipal and superior courts pursuant to former Section 5(e) of  
35                 Article VI of the California Constitution.

1 **Transfer of Case Based on Lack of Subject Matter Jurisdiction**

2 Code of Civil Procedure Section 396 should be repealed:

3 ~~396. (a) If an action or proceeding is commenced in a court that~~  
4 ~~lacks jurisdiction of the subject matter thereof, as determined by the~~  
5 ~~complaint or petition, if there is a court of this state that has subject~~  
6 ~~matter jurisdiction, the action or proceeding shall not be dismissed~~  
7 ~~(except as provided in Section 399, and paragraph (1) of~~  
8 ~~subdivision (b) of Section 581) but shall, on the application of either~~  
9 ~~party, or on the court's own motion, be transferred to a court~~  
10 ~~having jurisdiction of the subject matter that may be agreed upon~~  
11 ~~by the parties, or, if they do not agree, to a court having subject~~  
12 ~~matter jurisdiction that is designated by law as a proper court for~~  
13 ~~the trial or determination thereof, and it shall thereupon be entered~~  
14 ~~and prosecuted in the court to which it is transferred as if it had~~  
15 ~~been commenced therein, all prior proceedings being saved. In that~~  
16 ~~case, if summons is served prior to the filing of the action or~~  
17 ~~proceeding in the court to which it is transferred, as to any~~  
18 ~~defendant, so served, who has not appeared in the action or~~  
19 ~~proceeding, the time to answer or otherwise plead shall date from~~  
20 ~~service upon that defendant of written notice of filing of the action~~  
21 ~~or proceeding in the court to which it is transferred.~~

22 ~~(b) If an action or proceeding is commenced in or transferred to~~  
23 ~~a court that has jurisdiction of the subject matter thereof as~~  
24 ~~determined by the complaint or petition, and it thereafter appears~~  
25 ~~from the verified pleadings, or at the trial, or hearing, that the~~  
26 ~~determination of the action or proceeding, or of a cross-complaint,~~  
27 ~~will necessarily involve the determination of questions not within~~  
28 ~~the jurisdiction of the court, in which the action or proceeding is~~  
29 ~~pending, the court, whenever that lack of jurisdiction appears, must~~  
30 ~~suspend all further proceedings therein and transfer the action or~~  
31 ~~proceeding and certify the pleadings (or if the pleadings be oral, a~~  
32 ~~transcript of the same), and all papers and proceedings therein to a~~  
33 ~~court having jurisdiction thereof that may be agreed upon by the~~  
34 ~~parties, or, if they do not agree, to a court having subject matter~~  
35 ~~jurisdiction that is designated by law as a proper court for the trial~~  
36 ~~or determination thereof.~~

37 ~~(c) An action or proceeding that is transferred under the~~  
38 ~~provisions of this section shall be deemed to have been commenced~~  
39 ~~at the time the complaint or petition was filed in the court from~~  
40 ~~which it was originally transferred.~~

41 ~~(d) This section may not be construed to preclude or affect the~~  
42 ~~right to amend the pleadings as provided in this code.~~

43 ~~(e) Upon the making of an order for transfer, proceedings shall~~  
44 ~~be had as provided in Section 399, the costs and fees thereof, and of~~  
45 ~~filing the case in the court to which transferred, to be paid by the~~  
46 ~~party filing the pleading in which the question outside the~~  
47 ~~jurisdiction of the court appears unless the court ordering the~~  
48 ~~transfer shall otherwise direct.~~

1           **Comment.** Section 396 is repealed due to trial court unification.  
2           The provision directed a court not to dismiss but to transfer a cause  
3           if the court lacked subject matter jurisdiction and another state  
4           court would have such jurisdiction. The provision was often  
5           invoked when a municipal court transferred a case outside its  
6           jurisdiction to the superior court, or vice versa. See, e.g., *Walker v.*  
7           *Super. Ct.*, 53 Cal. 3d 257, 807 P.2d 418, 279 Cal. Rptr. 576 (1991);  
8           *Cal. Employment Stabilization Comm’n v. Mun. Ct.*, 62 Cal. App.  
9           2d 781, 145 P.2d 361 (1944). After unification of the municipal and  
10          superior courts, it no longer served that purpose.

11          There was a split of authority regarding whether the provision  
12          authorized a superior court lacking jurisdiction to transfer a case to  
13          a court of appeal or the state Supreme Court. Compare  
14          *Trafficschoolonline, Inc. v. Super. Ct.*, 89 Cal. App. 4th 222, 225, 107  
15          Cal. Rptr. 2d 412 (2001) (“the superior court is not vested with the  
16          authority by Code of Civil Procedure Section 396 to transfer a case  
17          to the Court of Appeal or the Supreme Court”), with *Padilla v.*  
18          *Dep’t of Alcoholic Beverage Control*, 43 Cal. App. 4th 1151, 1154, 51  
19          Cal. Rptr. 2d 133 (1996) (transfer requirement of Section 396 applies  
20          “in the case of proceedings filed in the superior court which, by  
21          statute, may be filed only in the Supreme Court or the Court of  
22          Appeal”); see also *Pajaro Valley Water Mgmt. Agency v. McGrath*,  
23          128 Cal. App. 4th 1093, 1104 n. 4, 27 Cal. Rptr. 3d 741 (2005) (“It is  
24          possible, though a point of disagreement, that [Section 396] retains  
25          vitality as empowering the *superior* court to transfer cases within  
26          the exclusive original jurisdiction of the *appellate* courts.” (emphasis  
27          in original)).

28          Consistent with the key policy of deciding cases on their merits,  
29          new Section 396 makes clear that if a superior court lacks  
30          jurisdiction of a matter and a state appellate court would have  
31          jurisdiction, the superior court must transfer the matter instead of  
32          dismissing it.

33          A new Code of Civil Procedure Section 396 should be added, along the  
34          following lines:

35          396. No appeal or petition filed in the superior court shall be  
36          dismissed solely because the appeal or petition was not filed in the  
37          proper state court. If the superior court lacks jurisdiction of an  
38          appeal or petition, and the court of appeal or Supreme Court would  
39          have jurisdiction, the appeal or petition shall be transferred to the  
40          court having jurisdiction upon terms as to costs or otherwise as  
41          may be just, and proceeded with as if regularly filed therein.

42          **Comment.** Section 396 requires a superior court to transfer an  
43          appeal or petition over which the superior court lacks jurisdiction  
44          to an appellate court that has jurisdiction. The provision continues  
45          a policy that requires transfer and prohibits dismissal of a cause  
46          simply because it was filed in the wrong court. See, e.g., former  
47          Code Civ. Proc. § 396; Gov’t Code § 68915; see *Friends of Mammoth*

1 v. Bd. of Supervisors, 8 Cal. 3d 247, 269, 104 Cal. Rptr. 761, 502 P.2d  
2 1049 (1972); Morgan v. Somervell, 40 Cal. App. 2d 398, 400, 104  
3 P.2d 866 (1940).

4 **Trial Court Funding Act of 1985**

5 Government Code Sections 16265.3, 16265.6, and 68618 should be repealed as  
6 shown at pages 12-13 and page 19 of Memorandum 2007-23. Government Code  
7 Sections 16265.1, 16265.2, 16265.4, and 16265.5 should be amended as shown at  
8 pages 14-19 of Memorandum 2007-23.

9 STUDY J-1450 — TRIAL COURT RESTRUCTURING:  
10 APPELLATE JURISDICTION OF BAIL FORFEITURE

11 The Commission considered Memorandum 2007-22, discussing appellate  
12 jurisdiction of bail forfeiture and presenting a staff draft tentative  
13 recommendation. The Commission approved the draft for circulation as a  
14 tentative recommendation, with one change. Proposed Penal Code Section 1305.5  
15 was revised as follows:

16 1305.5. Notwithstanding Sections 85, 580, 904.1, and 904.2 of the  
17 Code of Civil Procedure, if the people, a surety, or other person  
18 appeals from an order of the superior court on a motion to vacate a  
19 bail forfeiture declared under Section 1305, the following rules  
20 apply:

21 (a) If the bail forfeiture was in a felony case, or in a case in  
22 which both a felony and a misdemeanor were charged, and the  
23 forfeiture occurred at the ~~judgment~~ sentencing hearing or after the  
24 indictment or the legal commitment by a magistrate, the appeal is  
25 to the court of appeal and it shall be treated as an unlimited civil  
26 case, regardless of the amount of bail.

27 ....

28 STUDY L-622 — DONATIVE TRANSFER RESTRICTIONS

29 The Commission considered Memorandum 2007-18, introducing the study of  
30 Probate Code Sections 21350-21356. The Commission approved the general  
31 approach described in the memorandum.

1                   STUDY M-300 — NONSUBSTANTIVE REORGANIZATION  
2                   OF DEADLY WEAPON STATUTES

3       🔊 **Note.** The staff’s recording of the June 28 discussion of this topic is  
4 inaudible. These Minutes reflect the staff’s best recollection of the decisions made  
5 during that discussion. If your recollection is different, please bring that to the  
6 Commission’s attention.

7       The Commission considered Memorandum 2007-19, Memorandum 2007-20  
8 and its First Supplement, and Memorandum 2007-21, relating to nonsubstantive  
9 reorganization of the statutes governing deadly weapons.

10   **Revised Tentative Outline**

11       The Commission directed the staff to make the following changes in the  
12 revised tentative outline attached to Memorandum 2007-19:

13   *Definitions*

14       For purposes of preparing a tentative recommendation, all definitions now  
15 found in Title 2 of Part 4 of the Penal Code should be placed in alphabetical order  
16 in “Division 1. Definitions” of “Title 1. Preliminary Provisions” of new Part 6 of  
17 the Penal Code. The proposed definition of “generally prohibited weapon” (see  
18 Memorandum 2007-21, Attachment pp. 3-4) should also be placed in “Division 1.  
19 Definitions” of “Title 1. Preliminary Provisions” of new Part 6 of the Penal Code.  
20 The tentative recommendation should solicit comment on whether consolidating  
21 the definitions in this manner is helpful.

22   *“Division 6. Sale, Lease, or Transfer of Firearms” of “Title 4. Firearms and Similar*  
23       *Weapons”*

24       The staff should take another look at how to organize the material within  
25 “Division 6. Sale, Lease, or Transfer of Firearms” of “Title 4. Firearms and Similar  
26 Weapons.” Interested persons are encouraged to submit input on this point. The  
27 staff should report back to the Commission regarding this matter.

28   *Camouflaging Firearm Container, Cane Gun, and Wallet Gun*

29       The provisions relating to a camouflaging firearm container, cane gun, and  
30 wallet gun should be relocated to “Division 3. Disguised or Misleading  
31 Appearance” of “Title 4. Firearms and Similar Weapons.”

1 *Knives*

2 "Division 4. Knives" of "Title 3. Weapons Other Than Firearms" should be  
3 relabeled as "Division 4. Knives and Similar Weapons." In that division, there  
4 should be a chapter entitled "Disguised or Misleading Appearance." That  
5 chapter should include the provisions relating to an air gauge knife, a belt buckle  
6 knife, a cane sword, a lipstick case knife, a shobi-zue, an undetectable knife, and  
7 a writing pen knife.

8 *Penal Code Section 12028(b). Firearm Constituting Nuisance*

9 Penal Code Section 12028(b) should be relocated to "Division 9.  
10 Miscellaneous Rules Relating to Firearms Generally" of "Title 4. Firearms and  
11 Similar Weapons."

12 *Penal Code Section 12028(e). Application of Provision on Firearm Constituting*  
13 *Nuisance*

14 Penal Code Section 12028(e) should be relocated to two places in the outline:  
15 (1) "Division 9. Miscellaneous Rules Relating to Firearms Generally" of "Title 4.  
16 Firearms and Similar Weapons" and (2) "Chapter 2. Carrying Concealed  
17 Firearm" of "Division 5. Carrying Firearms" of "Title 4. Firearms and Similar  
18 Weapons."

19 *Numbering*

20 In "Title 4. Firearms and Similar Weapons," Division 8 should be relabeled as  
21 Division 7. Subsequent divisions should be relabeled accordingly.

22 **Title 1. Preliminary Provisions**

23 The Commission made the following decisions regarding the draft of "Title 1.  
24 Preliminary Provisions" attached to Memorandum 2007-20:

25 *"Basic Firearms Safety Certificate" and "Handgun Safety Certificate"*

26 Penal Code Section 12001 defines these terms for purposes of the entire Penal  
27 Code, not just for purposes of Title 2 of Part 4. The staff should check whether  
28 the terms are used outside of Title 2. After the Commission has that information,  
29 it will consider (1) whether the definitions of "basic firearms safety certificate"  
30 and "handgun safety certificate" should be placed at the beginning of the Penal  
31 Code or in new Part 6 of the Penal Code, and (2) whether those terms should be  
32 defined for purposes of the entire Penal Code or only for purposes of new Part 6.

1 *Proposed Penal Code Section 16013. "Domestic Violence"*

2 The introductory clause of proposed Penal Code Section 16013 should be  
3 revised as follows:

4 16013. ~~"Domestic~~ As used in this part, "domestic violence"  
5 means abuse perpetrated against any of the following persons:

6 *Additional Revisions*

7 The draft of "Title 1. Preliminary Provisions" should also be revised to reflect  
8 the Commission's decisions regarding the revised tentative outline.

9 **Title 2. Weapons Generally**

10 The Commission made the following decisions regarding the draft of "Title 2.  
11 Weapons Generally" attached to Memorandum 2007-21:

12 *List of Minor Clean-Up Issues for Possible Future Legislative Attention*

13 As the Commission works on this study, the staff should maintain a list of  
14 minor clean-up issues for possible future legislative attention. Examples of such  
15 issues are found in the Staff Notes to proposed Penal Code Sections 17305, 17310,  
16 and 17405 in the draft attached to Memorandum 2007-21. As the list of minor  
17 clean-up issues develops, the staff should periodically provide the current  
18 version of the list to the Commission and interested persons for review. The final  
19 version of the list should be included in the report that the Commission submits  
20 to the Legislature.

21 *Revisions*

22 The draft of "Title 2. Weapons Generally" should be revised to reflect the  
23 Commission's decisions regarding the revised tentative outline.

APPROVED AS SUBMITTED

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Chairperson

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