
MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
DECEMBER 17, 2009
LOS ANGELES

A meeting of the California Law Revision Commission was held in Los Angeles on December 17, 2009.

Commission:

Present: Susan Duncan Lee, Chairperson
Justice John Zebrowski (ret.), Vice-Chairperson
Diane Boyer-Vine, Legislative Counsel
Sidney Greathouse
Pamela L. Hemminger

Absent: Ellen Corbett, Senate Member
Noreen Evans, Assembly Member
Ali Jahangiri

Staff: Brian Hebert, Executive Secretary
Barbara Gaal, Chief Deputy Counsel
Catherine Bidart, Staff Counsel
Steve Cohen, Staff Counsel
Cindy Dole, Visiting Fellow

Consultants: None

Other Persons:

Wendy Bucknum, Community Associations Institute
Jamie Hackwith, Community Associations Institute
Dick Pruess, Community Associations Institute

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MINUTES OF OCTOBER 22, 2009, COMMISSION MEETING

1 The Commission approved the Minutes of the October 22, 2009, Commission
2 meeting without change.

ADMINISTRATIVE MATTERS

3 **Report of Executive Secretary**

4 The Executive Secretary reported that the seats held by former
5 Commissioners Frank Kaplan and William Weinberger are now vacant.

6 **Annual Report**

7 The Commission considered Memorandum 2009-47, presenting a staff draft
8 of the Commission’s 2009-2010 Annual Report. The Commission approved the
9 draft for publication with one correction: on page 9 the number of the second
10 footnote will be changed to “2.”

LEGISLATIVE PROGRAM

11 The Commission considered Memorandum 2009-48, reporting on the status
12 of SB 189 (Lowenthal). That bill would implement the Commission’s
13 recommendation on *Mechanics Lien Law*, 37 Cal. L. Revision Comm’n Reports
14 527 (2007).

15 The Commission considered a number of stakeholder group concerns about
16 SB 189. For each concern, the Commission decided whether it would assent to a
17 proposed revision to address the concern.

1 The Commission assented to the following changes, which have already been
2 made in the bill:

- 3 (1) Reorganization of the proposed law to place private work
4 provisions and public work provisions in consecutive titles within
5 the same part of the Civil Code.
- 6 (2) Revision of proposed Civil Code Sections 8012, 8204, and 9004 to
7 add landscape architects to provisions relating to architects and
8 other “design professionals.”
- 9 (3) Revision of proposed Civil Code Sections 8118 and 9116 to
10 authorize use of a United States Postal Service tracking record to
11 establish proof of notice.
- 12 (4) Revision of proposed Civil Code Sections 8144 and 9156 to change
13 the term “beneficiary” to “claimant.”
- 14 (5) Revision of proposed Civil Code Sections 8170 and 8172 to
15 standardize statutory form language.
- 16 (6) Revision of proposed Civil Code Section 8308, providing for
17 enforcement of a design professionals lien, to better conform to
18 existing law and to correct a typographical error.
- 19 (7) Revision of proposed Civil Code Section 8490(d) to delete a 20-
20 day hold period on the effectiveness of a court order releasing a
21 recorded lien claim.
- 22 (8) Revision of proposed Civil Code Section 8558(b)(2) to correct a
23 drafting error.
- 24 (9) Revision of the operative date provisions in the proposed law to
25 provide for an operative date of January 1, 2012.

26 STUDY G-200 — CHARTER SCHOOLS AND THE GOVERNMENT CLAIMS ACT

27 The Commission considered Memorandum 2009-52, introducing the study of
28 the legal and policy implications of treating charter schools as public entities for
29 purposes of the Government Claims Act. The Commission approved the study
30 methodology proposed in the memorandum.

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

32 The Commission considered Memorandum 2009-53, presenting a revised staff
33 draft of proposed legislation for inclusion in a tentative recommendation on
34 *Statutory Clarification and Simplification of CID Law*.

35 The Commission decided that it would not review any further public
36 comments on the draft legislation until after it has been circulated as part of a
37 tentative recommendation.

1 The Commission approved the staff recommendations in the memorandum,
2 except as indicated in the list of specific decisions set out below.

3 **2009 Legislation**

4 The staff will consult with legislative staff regarding the proposed treatment
5 of changes in the law made this year by AB 899 (Torres) (discussed at pages 6-9
6 of the memorandum).

7 **Legislative Counsel**

8 The staff will consult with the Legislative Counsel regarding (1) the use of
9 parenthetical references in statutory text and (2) the possibility of providing links
10 to relevant Commission Comments in the online database of California statutory
11 law.

12 **Proposed Civil Code §§ 4065 & 4070. Member Approval Requirements**

13 The Comments to proposed Sections 4065 and 4070 will be revised to make
14 clear that they apply to any election conducted pursuant to a provision of the
15 Davis-Stirling Common Interest Development Act.

16 **Proposed Civil Code § 4220. Condominium Boundaries**

17 The Commission disapproved the revision of proposed Section 4220 that is
18 set out on page 47 of the memorandum. Instead, a note will be added following
19 that section inviting comment on any problems caused by the existing language
20 and requesting specific amendment language to address those problems.

21 **Proposed Civil Code § 4295. Amendment or Revocation of Condominium Plan**

22 Proposed Section 4295 will be revised to read:

23 4295. A condominium plan may be amended or revoked by a
24 recorded instrument that is acknowledged and signed by all the
25 persons who, at the time of amendment or revocation, are persons
26 whose signatures are required ~~pursuant to~~ under Section 4290.

27 **Proposed Civil Code § 4525. Seller Disclosures**

28 The first paragraph of proposed Section 4525 will be revised as proposed on
29 page 39 of the memorandum. No other revisions were made to that section.

1 **Proposed Civil Code § 4600. Grant of Exclusive Use Common Area**

2 Proposed Section 4600 will be revised as set out on pages 50 and 51 of the
3 memorandum. In addition, proposed Section 4600(b) will be revised to provide
4 an exemption for a grant that is required by law.

5 **Proposed Civil Code § 5500. Reserve Accounts**

6 The Commission disapproved the change to proposed Section 5500(e)
7 described on page 16 of the memorandum.

8 **Proposed Civil Code § 5655. Overnight Delivery of Assessments**

9 The Commission disapproved the revision of proposed Section 5655(c) that is
10 set out on page 43 of the memorandum.

11 Proposed Section 5310 will be revised to require that the address for
12 overnight delivery of assessments be included in the annual policy statement.

13 STUDY J-1404 — STATUTES MADE OBSOLETE
14 BY TRIAL COURT RESTRUCTURING: PART 5

15 The Commission considered Memorandum 2009-49, discussing comments
16 received on the Tentative Recommendation on *Statutes Made Obsolete by Trial*
17 *Court Restructuring: Part 5*.

18 Subject to the changes described below, the Commission approved the
19 proposal as a final recommendation, for printing and submission to the
20 Legislature. The staff will conform the preliminary part and remainder of the
21 proposal as necessary to reflect the revisions approved by the Commission.

22 **Government Code Section 53647.5**

23 Government Code Section 53647.5 should be amended as follows:

24 53647.5. Notwithstanding any other provision of law, interest
25 earned on any bail money deposited by a court in a bank account
26 pursuant to Section 1463.1 of the Penal Code and Section 53679 of
27 this code shall, ~~if the board of supervisors so directs,~~ be allocated
28 for the support of ~~the courts in that county~~ that court.

29 **Comment.** Section 53647.5 is amended to reflect enactment of
30 the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch.
31 850 (see generally Gov't Code §§ 77000-77655). See, e.g., Gov't Code
32 §§ 77001 (local trial court management), 77003 ("court operations"
33 defined), 77200 (state funding of "court operations"); see also Cal.
34 R. Ct. 10.810.

1 **Government Code Section 71601**

2 Government Code Section 71601 should be amended as follows:

3 71601. For purposes of this chapter, the following definitions
4 shall apply:

5

6 (i) "Subordinate judicial officer" means an officer appointed to
7 perform subordinate judicial duties as authorized by Section 22 of
8 Article VI of the California Constitution, including, but not limited
9 to, a court commissioner, probate commissioner, child support
10 commissioner, referee, traffic referee, ~~and~~ juvenile court referee,
11 and juvenile hearing officer.

12

13 **Comment.** Subdivision (i) of Section 71601 is amended to
14 expressly refer to a child support commissioner and juvenile
15 hearing officer. See Fam. Code §§ 4251, 4252, 17306, 17441, 17712
16 (child support commissioners); Welf. & Inst. Code § 255 (juvenile
17 hearing officers).

18 Subdivision (i) is also amended for consistency of terminology.
19 See Gov't Code § 70045.4 (juvenile court referee); Penal Code
20 § 853.6a (same); Veh. Code § 40502 (same); Welf. & Inst. Code § 264
21 (same).

22 **Penal Code Section 13510**

23 Penal Code Section 13510 should be amended as follows:

24 13510. (a) For the purpose of raising the level of competence of
25 local law enforcement officers, the commission shall adopt, and
26 may from time to time amend, rules establishing minimum
27 standards relating to physical, mental, and moral fitness that shall
28 govern the recruitment of any city police officers, peace officer
29 members of a county sheriff's office, marshals or deputy marshals
30 ~~of a municipal court~~, peace officer members of a county coroner's
31 office notwithstanding Section 13526, reserve officers, as defined in
32 subdivision (a) of Section 830.6, police officers of a district
33 authorized by statute to maintain a police department, peace officer
34 members of a police department operated by a joint powers agency
35 established by Article 1 (commencing with Section 6500) of Chapter
36 5 of Division 7 of Title 1 of the Government Code, regularly
37 employed and paid inspectors and investigators of a district
38 attorney's office, as defined in Section 830.1, who conduct criminal
39 investigations, peace officer members of a district, safety police
40 officers and park rangers of the County of Los Angeles, as defined
41 in subdivisions (a) and (b) of Section 830.31, or housing authority
42 police departments.

43 The commission also shall adopt, and may from time to time
44 amend, rules establishing minimum standards for training of city
45 police officers, peace officer members of county sheriff's offices,

1 marshals or deputy marshals ~~of a municipal court~~, peace officer
2 members of a county coroner's office notwithstanding Section
3 13526, reserve officers, as defined in subdivision (a) of Section
4 830.6, police officers of a district authorized by statute to maintain a
5 police department, peace officer members of a police department
6 operated by a joint powers agency established by Article 1
7 (commencing with Section 6500) of Chapter 5 of Division 7 of Title
8 1 of the Government Code, regularly employed and paid inspectors
9 and investigators of a district attorney's office, as defined in Section
10 830.1, who conduct criminal investigations, peace officer members
11 of a district, safety police officers and park rangers of the County of
12 Los Angeles, as defined in subdivisions (a) and (b) of Section
13 830.31, and housing authority police departments.

14 These rules shall apply to those cities, counties, cities and
15 counties, and districts receiving state aid pursuant to this chapter
16 and shall be adopted and amended pursuant to Chapter 3.5
17 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of
18 the Government Code.

19

20 **Comment.** Section 13510 is amended to reflect unification of the
21 municipal and superior courts pursuant to former Section 5(e) of
22 Article VI of the California Constitution.

23 The discussion in the preliminary part (p. 2 of the tentative recommendation,
24 lines 17-26) should be revised to read:

25 Penal Code Section 13510 contains references to "marshals or
26 deputy marshals of a municipal court."

27 Marshals historically served the municipal courts. Because there
28 no longer are any municipal courts, most counties no longer have a
29 marshal. However, there are still marshals in a few counties.¹

30 To reflect the current status of marshals, the Commission
31 recommends that Section 13510 be amended to delete the references
32 to "marshals or deputy marshals of a municipal court," and replace
33 them with references to "marshals or deputy marshals."²

34
35 1. For example, the marshal in Shasta County is primarily responsible for
36 providing security services to the superior court, and is employed by the court.

37 2. See proposed amendment to Penal Code § 13510 *infra*.

38 Evidence Code Section 731

39 Evidence Code Section 731 should be amended as follows:

40 731. (a)(1) In all criminal actions and juvenile court proceedings,
41 the compensation fixed under Section 730 shall be a charge against
42 the county in which ~~such~~ the action or proceeding is pending and
43 shall be paid out of the treasury of ~~such~~ that county on order of the
44 court.

1 (2) Notwithstanding paragraph (1), if the expert is appointed for
2 the court's needs, the compensation shall be a charge against the
3 court.

4 (b) In any county in which the superior court so provides, the
5 compensation fixed under Section 730 for medical experts
6 appointed for the court's needs in civil actions shall be a charge
7 against the court. In any county in which the board of supervisors
8 so provides, the compensation fixed under Section 730 for medical
9 experts appointed in civil actions, for purposes other than the
10 court's needs, in such county shall be a charge against and paid out
11 of the treasury of ~~such~~ that county on order of the court.

12 (c) Except as otherwise provided in this section, in all civil
13 actions, the compensation fixed under Section 730 shall, in the first
14 instance, be apportioned and charged to the several parties in ~~such~~
15 a proportion as the court may determine and may thereafter be
16 taxed and allowed in like manner as other costs.

17 **Comment.** Subdivisions (a) and (b) of Section 731 are amended
18 to reflect the enactment of the Lockyer-Isenberg Trial Court
19 Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov't Code
20 §§ 77000-77655). See, e.g., Gov't Code §§ 77001 (local trial court
21 management), 77003 ("court operations" defined), 77200 (state
22 funding of "court operations"); see also Cal. R. Ct. 10.810, Functions
23 4 (court interpreters) & 10 (referring to "court-appointed expert
24 witness fees (for the court's needs)").

25 Subdivisions (a), (b), and (c) are also amended to make stylistic
26 revisions.

27 **Evidence Code Section 752**

28 Evidence Code Section 752 should be amended as follows:

29 752. (a) When a witness is incapable of understanding the
30 English language or is incapable of expressing himself or herself in
31 the English language so as to be understood directly by counsel,
32 court, and jury, an interpreter whom ~~he or she~~ the witness can
33 understand and who can understand ~~him or her~~ the witness shall
34 be sworn to interpret for ~~him or her~~ the witness.

35 (b) The record shall identify the interpreter, who may be
36 appointed and compensated as provided in Article 2 (commencing
37 with Section 730) of Chapter 3, with that compensation charged as
38 follows:

39 (1) In all criminal actions and juvenile court proceedings, the
40 compensation for an interpreter under this section shall be a charge
41 against the court.

42 (2) In all civil actions, the compensation for an interpreter under
43 this section shall, in the first instance, be apportioned and charged
44 to the several parties in a proportion as the court may determine
45 and may thereafter be taxed and allowed in like manner as other
46 costs.

1 **Comment.** Subdivision (a) of Section 752 is amended to make
2 stylistic revisions.

3 Subdivision (b) is amended to reflect enactment of the Lockyer-
4 Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see
5 generally Gov't Code §§ 77000-77655). See, e.g., Gov't Code
6 §§ 77001 (local trial court management), 77003 ("court operations"
7 defined), 77200 (state funding of "court operations"); see also Cal.
8 R. Ct. 10.810, Function 4 (court interpreters).

9 Subdivision (b) is also amended to make a stylistic revision.

10 The purpose of the revisions in the act that amended this section
11 is to remove material made obsolete by trial court restructuring. See
12 Gov't Code § 71674. The act should not be construed as a re-
13 evaluation of the extent to which interpretation or translation
14 should be provided in court proceedings, or who should bear the
15 expense of interpretation or translation.

16 **Evidence Code Section 753**

17 Evidence Code Section 753 should be amended as follows:

18 753. (a) When the written characters in a writing offered in
19 evidence are incapable of being deciphered or understood directly,
20 a translator who can decipher the characters or understand the
21 language shall be sworn to decipher or translate the writing.

22 (b) The record shall identify the translator, who may be
23 appointed and compensated as provided in Article 2 (commencing
24 with Section 730) of Chapter 3, with that compensation charged as
25 follows:

26 (1) In all criminal actions and juvenile court proceedings, the
27 compensation for an interpreter under this section shall be a charge
28 against the court.

29 (2) In all civil actions, the compensation for a translator under
30 this section shall, in the first instance, be apportioned and charged
31 to the several parties in a proportion as the court may determine
32 and may thereafter be taxed and allowed in like manner as other
33 costs.

34 **Comment.** Subdivision (b) is amended to reflect enactment of
35 the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch.
36 850 (see generally Gov't Code §§ 77000-77655). See, e.g., Gov't Code
37 §§ 77001 (local trial court management), 77003 ("court operations"
38 defined), 77200 (state funding of "court operations"); see also Cal.
39 R. Ct. 10.810, Function 4 (court interpreters).

40 Subdivision (b) is also amended to make a stylistic revision.

41 The purpose of the revisions in the act that amended this section
42 is to remove material made obsolete by trial court restructuring. See
43 Gov't Code § 71674. The act should not be construed as a re-
44 evaluation of the extent to which interpretation or translation
45 should be provided in court proceedings, or who should bear the
46 expense of interpretation or translation.

1 **Government Code Section 68092**

2 Government Code Section 68092 should be amended as follows:

3 68092. ~~Interpreters' Court interpreters'~~ and translators' fees or
4 other compensation shall be paid:

5 (a) In criminal cases, ~~and in coroners' cases, from the county~~
6 ~~treasury upon warrants drawn by the county auditor, when so~~
7 ~~ordered by the court or by the coroner, as the case may be.~~

8 (b) In civil cases, by the litigants, in ~~such~~ proportions as the
9 court may direct, to be taxed and collected as other costs. ~~The~~
10 ~~county's proportion of such fees so ordered to be paid in any civil~~
11 ~~suit to which the county is a party shall be paid in the same manner~~
12 ~~as such fees are paid in criminal cases.~~

13 **Comment.** Section 68092 is amended to reflect enactment of the
14 Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850
15 (see generally Sections 77000-77655). Under that act, the state, not
16 the county, funds the cost of "court operations." See, e.g., Sections
17 77003 ("court operations" defined), 77200 (state funding of "court
18 operations"). Interpretation by a court interpreter for a court
19 proceeding is a court operation and therefore payable by the court
20 and ultimately by the state. See Cal. R. Ct. 810, Function 4 (court
21 interpreters). In contrast, interpretation beyond the court context
22 (e.g., during a client interview), or for a coroner's case, is not a
23 court operation and thus remains payable by the county. See Cal. R.
24 Ct. 810 (listing matters classified as court operations).

25 The material relevant to coroner's cases in subdivision (a) is
26 relocated to Section 27473 of the Government Code.

27 Section 68092 is also amended to refer to compensation, not just
28 fees. Under the Trial Court Interpreter Employment and Labor
29 Relations Act (Sections 71801-71829), interpreters may be paid a
30 salary (e.g., as court employees) or may be paid on a daily basis
31 (e.g., as independent contractors). See Section 71802.

32 Section 68092 is further amended to make stylistic revisions.

33 For provisions governing the cost of translation of a writing
34 offered in evidence, see Evidence Code Section 753. For provisions
35 governing compensation of an interpreter for a witness, see
36 Evidence Code Section 752.

37 The purpose of the revisions in the act that amended this section
38 is to remove material made obsolete by trial court restructuring. See
39 Gov't Code § 71674. The revisions should not be construed as a re-
40 evaluation of the extent to which interpretation or translation
41 should be provided in court proceedings, or who should bear the
42 expense of interpretation or translation.

43 A new section should be added to the Government Code, as follows:

44 27473. In coroners' cases, interpreters' and translators' fees or
45 other compensation shall be paid from the county treasury upon

1 warrants drawn by the county auditor, when so ordered by the
2 coroner.

3 **Comment.** Section 27473 continues part of the substance of
4 former Section 68092(a). The material relating to coroners' cases in
5 Section 68092 is relocated to Section 27473 to reflect enactment of
6 the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch.
7 850 (see generally Sections 77000-77655).

8 The purpose of the revisions in the act that amended this section
9 is to remove material made obsolete by trial court restructuring. See
10 Gov't Code § 71674. The revisions should not be construed as a re-
11 evaluation of the extent to which interpretation or translation
12 should be provided, or who should bear the expense of
13 interpretation or translation.

14 STUDY J-1452 — TRIAL COURT RESTRUCTURING: WRIT
15 JURISDICTION IN A SMALL CLAIMS CASE

16 The Commission considered Memorandum 2009-51, presenting a progress
17 update on writ jurisdiction in a small claims case. No Commission action was
18 required or taken.

19 STUDY M-300 — NONSUBSTANTIVE REORGANIZATION
20 OF DEADLY WEAPON STATUTES

21 The Commission considered Memorandum 2009-54, relating to updating the
22 pre-print recommendation that it approved in June 2009. The revisions described
23 in the memorandum were acceptable to the Commission.

APPROVED AS SUBMITTED

Date

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

Chairperson

Executive Secretary