
MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
NOVEMBER 30, 1999
SACRAMENTO

A meeting of the California Law Revision Commission was held in Sacramento on November 30, 1999. On adjournment, the meeting was adjourned in memory of Judge Arthur K. Marshall.

Commission:

Present: Howard Wayne, Assembly Member, Chairperson
Sanford M. Skaggs, Vice Chairperson
Edwin K. Marzec
Colin Wied

Absent: Bion M. Gregory, Legislative Counsel

Staff: Nathaniel Sterling, Executive Secretary
Stan Ulrich, Assistant Executive Secretary
Barbara S. Gaal, Staff Counsel
Brian P. Hebert, Staff Counsel

Consultants: Gordon Hunt, Mechanics Lien Law
Gideon Kanner, Eminent Domain Law & Inverse
Condemnation
J. Clark Kelso, Trial Court Unification, Administrative
Rulemaking

Other Persons:

Sam Abdulaziz, North Hollywood
Juan Acosta, California Building Industry Association, California Business Property
Association, Sacramento
Yolanda Benson, Mattos & Associates, Sacramento
Eddie Bernacchi, National Electrical Contractors Association, Sacramento
Terra Callonea, Assemblyman Margett's Office, Sacramento
Eric Carlson, Bet Tzedek Legal Services, Los Angeles
Mohammed Cato, Assemblyman Honda's Office, Sacramento
Chuck Center, California State Council of Laborers, Sacramento
Julian Chang, AT & T, San Francisco
Frank Coats, Department of Motor Vehicles, Sacramento
Kevin Destruel, Lumber Association of California & Nevada, Mead Clark Lumber
Company, Santa Rosa

Ellen Gallagher, Contractors License Board, Sacramento
Jan Hansen, Lumber Association of California & Nevada, Sacramento
Keith Honda, Assemblyman Honda's Office, San Jose
Martha Johnson, Pacific Telesis, Sacramento
Michael Knudsen, California Mortgage Bankers Association, Sacramento
Edward Levy, Western League of Savings Institutions, Sacramento
Jose Mejia, California State Council of Laborers, Sacramento
Bruce A. Monfross, State Personnel Board, Sacramento
Michael Monagan, California Association of Sheet Metal and Air Conditioning Contractors National Association, Sacramento
Michael R. Nave, Meyers, Nave, Riback, Silver & Wilson, San Leandro
Maurine Padden, California Bankers Association, Sacramento
Craig C. Page, California Land Title Association, Sacramento
Richard A. Pires, License Information Service, Sacramento
Dan Pone, Assembly Judiciary Committee, Sacramento
Richard Mark Redmond, Assembly Republican Caucus, Sacramento
Larry Rohlfes, California Landscape Contractors Association, Sacramento
Mike Rocco, American Subcontractors Association, Sacramento
Les Spahnn, Building Owners and Managers Association, Surety Company of the Pacific, Sacramento
Parke G. Terry, California Landscape Contractors Association, Sacramento
Jennifer Vander Heide, Assemblyman Honda's Office, Sacramento
Philip M. Vermeulen, contractors associations, Sacramento
Sheron Violini, Assemblyman Ackerman's Office, Sacramento
Stan Wieg, California Association of Realtors, Sacramento
Nancy T. Yamada, California State Employees Association and Association of California State Supervisors, Sacramento

C O N T E N T S

Minutes of October 14-15, 1999, Meeting	3
Administrative Matters	3
Memorial to Arthur K. Marshall	3
New Topic Suggestions	4
Report of Executive Secretary	4
Study Em-451 – Condemnation by Privately Owned Public Utility	5
Study Em-455 – Litigation Expenses in Eminent Domain	6
Study Em-456 – Withdrawal of Deposit in Eminent Domain	6
Study H-455 – Litigation Expenses in Eminent Domain	6
Study H-456 – Withdrawal of Deposit in Eminent Domain	7
Study H-820 – Mechanics Liens	7
Study J-1303 – Jurisdictional Classification of Good Faith Improver Claim	8
Study J-1320 – Trial Court Unification – Review of Civil Procedures	8
Study K-410 – Confidentiality of Settlement Negotiations	8
Study L-100 – Alternate Beneficiary for Unclaimed Distribution	8
Study L-1031 – Liability of Property Passing to Surviving Spouse for Debts of Decedent	9
Study L-4003 – Family Consent in Health Care Decisionmaking	9
Study N-200 – Judicial Review of Agency Action	10

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

MINUTES OF OCTOBER 14-15, 1999, MEETING

The Commission approved the Minutes of the October 14-15, 1999, Commission meeting as submitted by the staff.

ADMINISTRATIVE MATTERS

Memorial to Arthur K. Marshall

The Commission remembered former Commission member Judge Arthur K. Marshall. Commissioner Marzec remarked that while Judge Marshall is noted for his legal mind, the human side of Judge Marshall should not be forgotten. The Commission adopted the following resolution, to be printed in the Commission's Annual Report.

**In Memoriam
The Honorable Arthur K. Marshall**

The California Law Revision Commission commemorates the passing of The Honorable Arthur K. Marshall in November 1999. Judge Marshall served as a member of the Commission for 16 years. He was originally appointed to the Commission in 1984 by Governor Deukmejian, and was thrice reappointed, once by Governor Deukmejian and twice by Governor Wilson. During that period he was elected to three terms as the Commission's Chairperson and three terms as the Commission's Vice Chairperson.

Judge Marshall's tenure is marked by a number of notable enactments on recommendation of the Law Revision Commission, including revision of the entire Probate Code, establishment of the new Family Code, creation of the Trust Law and the Power of Attorney Law, revision of the Administrative Procedure Act, implementation of trial court unification, and numerous other important reforms of California law.

Judge Marshall was warm and caring. He treated others with respect and dignity, as well as good humor.

Judge Marshall's depth of knowledge and experience served the Commission well. His spirit and wit endeared him to those who were privileged to work with him. The generous donation of his energies to the cause of law reform will be an enduring legacy to the people of California.

The Commission further resolved that adjournment of this meeting be in memory of Judge Marshall.

1 **New Topic Suggestions**

2 The Commission considered Memorandum 99-89, raising four new topic
3 suggestions that had not been resolved at the October meeting.

4 The Commission decided not to request authority to study either the topic of
5 grand jury selection and procedure or the topic of conflicts of interest under
6 Government Code Section 1090 *et seq.*

7 With respect to the subdivision map and development fees under the
8 Government Code, Commissioner Skaggs indicated that there is a need to redraft
9 and reorganize these complex provisions, and to resolve inconsistencies and
10 rationalize the provisions, in order to make them easier for people to work with.
11 The Commission directed the staff to make inquiry among the various groups
12 that would be interested in and affected by a study in these areas to ascertain
13 their attitudes towards problems in the existing statutory structures and
14 amenability to considering improvements of the type contemplated.

15 Meanwhile, the staff should request a legislative counsel draft of the
16 Commission's standard resolution of authority, without addition of the proposed
17 new topics.

18 In this connection, the Executive Secretary noted that the Commission has
19 received an informal inquiry from the Public Utility Commission's staff
20 concerning the possibility of revision of the Public Utility Act. No action was
21 taken on this matter.

22 **Report of Executive Secretary**

23 The Executive Secretary reported on the following matters:

24 **Gubernatorial appointments to Commission.** As of the date of the meeting
25 (November 30), the Commission has not been informed of any appointments or
26 reappointments by the Governor to the Commission. If no appointments or
27 reappointments have been made, that will leave as of December 1 six vacancies
28 on the Commission to be filled by gubernatorial action (in addition to one
29 legislative vacancy to be filled by the Senate Rules Committee).

30 **Recruitment of staff attorney.** The Commission has received 40+ applications
31 for its open entry-level staff counsel position. The staff is evaluating the
32 applications, but has not yet scheduled any interviews.

33 **Consultants.** The staff is currently seeking to identify possible Commission
34 consultants for the following studies:

1 (1) Evidence Code. This is a project to compare the California Evidence Code
2 with the Federal Rules and the revised Uniform Rules. The staff has spoken with
3 Professor Miguel Mendez at Stanford Law School, who is the author of a treatise
4 comparing California and federal law, about this project. The contract would be
5 on standard terms. Commission agreed with this selection, if Professor Mendez is
6 available.

7 (2) Criminal Sentencing. Our objective here is to identify a few knowledgeable
8 persons from different perspectives who can work together to prepare an outline
9 of what a reorganized California sentencing statute would look like. The staff
10 reported that it has some good leads on prosecution and defense attorney
11 participants. The Commission encouraged the staff also to try to further identify
12 judicial participants. A number of names were suggested for the staff to pursue.

13 (3) Common Interest Developments. At this point we are looking for help in
14 obtaining a perspective or overview of the law and politics of this area, to help us
15 decide on the scope and priorities for this study. The staff has been reviewing
16 nonacademic as well as academic consultants. One problem is that many of the
17 experts in this area are identified with one interest or another, or are not
18 necessarily familiar with all aspects of this very broad field. A possibility is to
19 engage consultants for a joint overview. For example, Professor Susan French of
20 UCLA Law School is an expert on CC&Rs and other aspects of CID law, and
21 Professor Roger Bernhardt of Golden Gate Law School maintains a continuing
22 review of developments in real property law generally; with these
23 complementary qualifications, they could produce a good joint overview.
24 (Professor French has been suggested as a possible consultant by several persons
25 coming from different perspectives in this area; she has served previously as a
26 Commission consultant on other projects.) The Commission felt this approach
27 would be acceptable, if that appears to the staff to be the most efficacious.

28 (4) Mechanics Liens. See the entry in these Minutes under Study H-820.

29 STUDY EM-451 – CONDEMNATION BY PRIVATELY OWNED PUBLIC UTILITY

30 The Commission considered Memorandum 99-86, relating to the status of the
31 study on condemnation by privately owned public utilities. The Commission
32 decided to continue its suspension of work on this study. Commissioner Skaggs
33 did not participate in this matter.

1 STUDY EM-455 – LITIGATION EXPENSES IN EMINENT DOMAIN

2 The Commission considered Memorandum 99-66 and its First Supplement,
3 relating to litigation expenses in eminent domain cases. After discussion of the
4 policies involved, and the statistics available, the Commission decided on the
5 following approach to the matter:

6 (1) The existing scheme based on the reasonableness of the parties' offers and
7 demands should be replaced by a bright line standard allowing the property
8 owner litigation expenses if the award is closer to the property owner's demand
9 than to the condemnor's offer.

10 (2) The "closer to the award" standard should be measured from the final
11 offer and demand, as it is under existing law, rather than an earlier date in the
12 proceedings such as the date of the prejudgment deposit.

13 (3) The standard for the amount of litigation expenses should be based on
14 reasonableness (rather than an arbitrary percentage), as it is under existing law.

15 (4) The final offer and demand of the parties should be required to be filed;
16 the law should not be broadened to allow these documents to be "lodged." If
17 necessary, the law should make clear that the court clerk must accept for filing a
18 document the law requires to be filed.

19 As a separate but related matter, the staff should prepare materials on the
20 possibility of earlier disclosure of valuation data and resolution of legal issues. A
21 scheme patterned after the Los Angeles County system might be considered. The
22 concept is that, with earlier determination of these matters, many cases would be
23 settled that currently go to trial.

24 STUDY EM-456 – WITHDRAWAL OF DEPOSIT IN EMINENT DOMAIN

25 The Commission considered Memorandum 99-67, relating to withdrawal of a
26 prejudgment deposit in eminent domain proceedings and the liability of the
27 condemnor for amounts overwithdrawn. The Commission approved the
28 attached draft tentative recommendation to circulate for comment. However, it
29 should be held and circulated together with the litigation expense item (see entry
30 in these Minutes under Study Em-455) when that item is ready.

31 STUDY H-455 – LITIGATION EXPENSES IN EMINENT DOMAIN

32 See the entry in these Minutes under Study Em-455.

1 **STUDY H-456 – WITHDRAWAL OF DEPOSIT IN EMINENT DOMAIN**

2 **See the entry in these Minutes under Study Em-456.**

3 **STUDY H-820 – MECHANICS LIENS**

4 The Commission considered Memorandum 99-85 and its First Supplement,
5 which commenced the study of California mechanics lien law. The Commission
6 received the report prepared by Mr. Gordon Hunt and heard the comments of
7 interested persons relating to the scope and direction of the study. Several
8 speakers urged the Commission to “go back to square one” and conduct a
9 thorough review and revision of the mechanics lien law and related provisions,
10 which are confusing, complicated, and out of step with modern conditions;
11 others argued that, while there are some improvements that could be made, the
12 statute is basically sound and represents the accumulated improvements from
13 many years’ work.

14 Daniel Pone, Consultant to the Assembly Judiciary Committee, and Mark
15 Redmond, from the Assembly Republican Caucus, recognized that the
16 Commission’s process can be lengthy and that the Commission customarily does
17 not take positions on pending legislation. Mr. Pone also noted that the referral
18 from the Assembly Judiciary Committee is not intended to impede development
19 of the law.

20 Several persons suggested that the Commission hire additional consultants or
21 convene a working group representing all the stakeholders, to make sure that the
22 Commission gets a balanced view of the issues and possible remedies. The
23 procedure for selecting Commission consultants and their role in the
24 Commission’s study process were discussed. The Commission directed the staff
25 to attempt to find an academic consultant knowledgeable in mechanics lien law.
26 The Commission decided not to name consultants representing each of the major
27 stakeholders, noting that the Commission has always relied on written and oral
28 submissions from interested persons. The Chairperson noted that, although
29 many projects start with a consultant’s report prepared by a law professor or a
30 private practitioner, the work on a study is done “in house” by the Commission
31 staff. The Commission considers the staff memorandums at public meetings,
32 along with any written materials submitted by interested persons and comments
33 made at the meeting, and then makes its independent recommendations to the
34 Legislature as to any needed reforms. In this connection, the Chairperson urged

1 interested persons to send their written comments on issues and scope to the
2 staff. The Commission left open the question of whether it would be useful to
3 organize a working group.

4 STUDY J-1303 – JURISDICTIONAL CLASSIFICATION OF
5 GOOD FAITH IMPROVER CLAIM

6 The Commission considered Memorandum 99-80, concerning its tentative
7 recommendation relating to *Jurisdictional Classification of Good Faith Improver*
8 *Claim*. The Commission directed the staff to revise the draft as set forth in the
9 memorandum. Subject to those revisions, the Commission approved the draft as
10 a final recommendation, for printing and submission to the Legislature.

11 STUDY J-1320 – TRIAL COURT UNIFICATION – REVIEW OF CIVIL PROCEDURES

12 The Commission considered Memorandum 99-88, concerning its joint study
13 with the Judicial Council on reviewing civil procedure in light of trial court
14 unification. The Commission decided that the decisionmaking procedure
15 proposed by the Administrative Office of the Courts may be acceptable, but the
16 staff should seek assurance that (1) proposed legislation is an anticipated end-
17 product of the study and (2) the Judicial Council will engage in reconciliation
18 efforts if the Commission and the Judicial Council ultimately reach different
19 conclusions in the study.

20 STUDY K-410 – CONFIDENTIALITY OF SETTLEMENT NEGOTIATIONS

21 The Commission considered Memorandum 99-79, concerning the
22 admissibility, discoverability, and confidentiality of negotiations to settle a
23 pending civil action or administrative adjudication. The Commission approved
24 the attached draft as a final recommendation, for printing and submission to the
25 Legislature.

26 STUDY L-100 – ALTERNATE BENEFICIARY FOR UNCLAIMED DISTRIBUTION

27 The Commission considered Memorandum 99-83, reviewing comments
28 received on the tentative recommendation on alternate beneficiaries for
29 unclaimed distributions.

30 The Commission approved the proposal as a final recommendation for
31 submission to the Legislature, after making the following revisions:

1 (1) Alternate beneficiaries are limited to those that are known or reasonably
2 ascertainable; an extended search should not be required.

3 (2) The Comment was expanded to refer to existing Probate Code procedures
4 for notice to potential alternate beneficiaries.

5 (3) The staff should review the variant references to “beneficiary” and
6 “distributee” in the draft, and use the word “distributee” consistently throughout
7 unless a distinction is required.

8 (4) Charitable bequests were taken out of the operation of the proposed
9 statute. This could be done by making clear that principles of cy pres apply to
10 selection of an alternative beneficiary in the case of a charitable bequest.

11 STUDY L-1031 – LIABILITY OF PROPERTY PASSING TO
12 SURVIVING SPOUSE FOR DEBTS OF DECEDENT

13 The Commission considered Memorandum 99-90, reviewing comments
14 received on the tentative recommendation on the liability of property passing to
15 a surviving spouse for debts of the decedent. In light of the comments received,
16 the Commission decided to discontinue work on this matter.

17 In this connection, the Commission decided to add to the “probate back
18 burner” the suggestion of the California Judges Association that Probate Code
19 Section 13657 be amended to give the spousal property petition in rem effect.

20 STUDY L-4003 – FAMILY CONSENT IN HEALTH CARE DECISIONMAKING

21 The Commission considered Memorandum 99-82, and its First and Second
22 Supplements, concerning the draft recommendation on *Family Consent in Health*
23 *Care Decisionmaking for Adults*.

24 In response to concerns expressed by Daniel Pone, Consultant to the
25 Assembly Judiciary Committee, and Eric Carlson, Bet Tzedek Legal Services, the
26 Commission decided to rework the rules governing surrogate priority and the
27 standards for varying from the presumptive priority in proposed Probate Code
28 Section 4712. The staff will prepare a revised draft for consideration at the next
29 meeting. The staff will explore a number of ideas to meet the concerns, including:
30 (1) revising the structure of Section 4712 to give greater weight to the priority list
31 and to permit recognition of a different surrogate only on a finding that persons
32 ranked higher are not qualified to act as surrogate; (2) providing more detailed
33 procedures to cover situations where there is disagreement among family
34 members; (3) applying more protective standards in more “serious” cases, i.e., by

1 making distinctions based on the degree, significance, or invasiveness of the
2 treatment, as distinct from routine treatments; (4) striving to find more objective
3 standards for varying the priority scheme. The staff will work with interested
4 persons in attempting to find a consensus on the approach for future
5 consideration. Mr. Carlson agreed to send his draft proposals to the staff for the
6 Commission's consideration.

7 As discussed in the First Supplement, the second sentence of Section
8 4712(a)(2) ("This individual may be known as a domestic partner.") should be
9 removed; instead, the relationship of this provision to the domestic partner
10 registration statute should be discussed in the Comment. The Comment should
11 also make clear that the domestic partner relationship must be current.

12 The Commission approved preparation of a bill to meet drafting deadlines,
13 but the bill should not be introduced until possible revisions are considered at
14 the next meeting. If general agreement cannot be reached on an acceptable
15 approach, in particular, one that meets the concerns of both the Assembly
16 Judiciary Committee Chairperson and the medical community, the best
17 alternative may be to table the family consent project.

18 STUDY N-200 – JUDICIAL REVIEW OF AGENCY ACTION

19 The Commission considered Memorandum 99-78 and its First Supplement,
20 presenting a staff draft recommendation on *Mandamus to Review State Agency*
21 *Action: Selected Issues*. In light of potential state agency opposition and the
22 likelihood that the proposed law could not be included as a consent item in a
23 committee bill or omnibus bill, the Commission decided not to proceed with the
24 recommendation.

APPROVED AS SUBMITTED

Date

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

Chairperson

Executive Secretary