

---

MINUTES OF MEETING  
CALIFORNIA LAW REVISION COMMISSION  
NOVEMBER 30, 2001  
LOS ANGELES

---

A meeting of the California Law Revision Commission was held in Los Angeles on November 30, 2001.

**Commission:**

*Present:* Joyce G. Cook, Chairperson  
Howard Wayne, Assembly Member, Vice Chairperson  
David Huebner  
Sanford M. Skaggs (by teleconference)

*Absent:* Bion M. Gregory, Legislative Counsel  
Bill Morrow, Senate Member

**Staff:** Nathaniel Sterling, Executive Secretary  
Stan Ulrich, Assistant Executive Secretary

**Consultants:** James E. Acret (Mechanic's Lien Law)  
Gordon Hunt (Mechanic's Lien Law)

**Other Persons:**

Sam Abdulaziz, Abdulaziz & Grossbart, North Hollywood  
Frank Collard, Catalina Pacific Concrete, Glendora  
Stan Fitzpatrick, Indeco Comfort News, Glendale, CA  
Harvey Foote, Holliday Company, Upland, CA  
Peter C. Freeman, Lumber Association of California & Nevada, Barr Lumber  
Company, San Bernardino  
Ellen Gallagher, Contractors State License Board, Sacramento  
Paul R. Geissler, Surety Company of the Pacific, Encino  
Joseph Hanna, Santa Ana  
Jan Hansen, Lumber Association of California & Nevada, Sacramento  
Cila Leshem, Ferguson Enterprises, Van Nuys  
Dick Nash, Building Industry Credit Association, Los Angeles  
Norman Widman, Dixieline Lumber, San Diego  
Stan Wieg, California Association of Realtors, Sacramento

C O N T E N T S

Administrative Matters . . . . .	2
Report of Executive Secretary . . . . .	2
Study H-820 – Mechanic’s Liens . . . . .	2
Study J-1400 – Statutes Made Obsolete by Trial Court Restructuring . . . . .	3

1

ADMINISTRATIVE MATTERS

2

**Report of Executive Secretary**

3

The Executive Secretary reported that, due to lack of time between the November 15-16, 2001, Commission meeting and the November 30, 2001, Commission meeting, the draft Minutes of the two meetings would both be presented to the Commission for approval at the January 17-18, 2002, Commission meeting.

8

The Executive Secretary reported that, in addition to previous budget reductions totaling \$32,000 in the current fiscal year, the Commission has been directed by the Department of Finance to find a further \$5,000 savings out of operating expenses and equipment.

12

The Executive Secretary noted that one casualty of current fiscal year budget reductions is the elimination of funding for the background study by Professor David English analyzing key differences between the California Trust Law and the Uniform Trust Code. However, the Executive Secretary reported success in locating alternate funding for the study from the State Bar Estate Planning, Trust and Probate Law Section.

18

STUDY H-820 – MECHANIC’S LIENS

19

The Commission considered Memorandum 2001-99, and its First and Second Supplements, concerning comments received on the Tentative Recommendation on *The Double Payment Problem in Home Improvement Contracts* (September 2001).

22

The Commission decided not to propose a scheme with a mandatory bond feature, such as the 50% home improvement contract bond implemented in the tentative recommendation. As a general approach, the Commission decided that it would be preferable to seek simpler solutions that invoke market principles, rather than the more complicated statutory rules needed to implement mandatory bond and direct payment schemes.

1       Accordingly, the Commission directed the staff to prepare and circulate a  
2 discussion draft seeking comment for review at the January 2002 meeting. The  
3 discussion draft should propose two basic alternatives applicable to home  
4 improvement contracts: (1) a good-faith payment rule, limiting the liability of  
5 homeowners to the extent they have paid in good faith, and (2) a privity rule,  
6 limiting mechanic's lien and stop notice rights to claimants who have a contract  
7 with the owner, with recognition of a right for claimants without a contract to  
8 seek an equitable lien (or other appropriate relief). Both proposals would apply  
9 only to home improvement contracts under a certain cap based on the contract  
10 price — the working figure being \$10,000 — but the draft should solicit comment  
11 on the appropriate level for the cap. In addition, commentary should be sought  
12 on whether it would be preferable to apply the cap to the amount of the  
13 individual subcontractor's or supplier's contract, rather than the prime contract,  
14 and what that amount should be.

15       **STUDY J-1400 – STATUTES MADE OBSOLETE BY TRIAL COURT RESTRUCTURING**

16       The Commission considered the following materials relating to the draft  
17 tentative recommendation on statutes made obsolete by trial court restructuring:

18       Memorandum 2001-98 (overview)

19       Second, Third, and Fourth Supplements to Memorandum 2001-88  
20       (issues remaining on draft tentative recommendation)

21       Memorandum 2001-97 (court clerks)

22       The Commission approved the tentative recommendation for distribution for  
23 comment as proposed in the memoranda, subject to the following revisions.

24       **Bus. & Prof. Code § 6365. Discontinuance of law library**

25       The tentative recommendation should propose repeal of this section allowing  
26 discontinuance of the county law library in one-judge counties. The repeal  
27 should be flagged for comment, and the proposal brought to the attention of the  
28 county law libraries' association. Transitional issues may be a problem in a  
29 county in which the law library has already been discontinued.

30       **Code Civ. Proc. § 131.3. Probation records**

31       This section should be revised to require the county probation department to  
32 provide books of record to probation officers.

1 **Gov't Code § 69898. Appointment of executive officer**

2 Notes soliciting comment on whether there is any county in which the county  
3 clerk performs court clerk functions should be added following Sections 69840  
4 (powers, duties, and responsibilities of clerk of court) and 71620 (trial court  
5 personnel).

6 **Gov't Code § 70219. Judicial Council and Law Revision Commission studies**  
7 **and recommendations**

8 This section should be reenacted in the form in which it currently exists,  
9 rather than substituting the new wording approved by the Commission at the  
10 November 15-16, 2001, meeting.

11 **Gov't Code § 71622. Subordinate judicial officers**

12 The prohibition on practice of law except as provided by Judicial Council rule  
13 should be made a separate subdivision, and should not be made part of  
14 subdivision (c) (relating to qualifications and training).

15 **Pub. Res. Code § 14591.5. Enforcement of judgments**

16 The staff should take another look at the language referring to “the clerk of  
17 the small claims court”. This function may well be served by the clerk of the  
18 superior court under unification, and may not be a distinct office or officer. A  
19 better approach might be to recast the section in terms of an application to the  
20 court rather than to the clerk.

APPROVED AS SUBMITTED

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Chairperson

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