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MINUTES OF MEETING  
CALIFORNIA LAW REVISION COMMISSION  
JANUARY 17, 2008  
SACRAMENTO

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A meeting of the California Law Revision Commission was held in Sacramento on January 17, 2008.

**Commission:**

*Present:* Sidney Greathouse, Chairperson  
Diane F. Boyer-Vine, Legislative Counsel  
Frank Kaplan  
Susan Duncan Lee  
Edmund L. Regalia  
William E. Weinberger

*Absent:* Ellen Corbett, Senate Member  
Noreen Evans, Assembly Member  
Pamela L. Hemminger, Vice Chairperson

**Staff:** Brian Hebert, Executive Secretary  
Barbara S. Gaal, Chief Deputy Counsel  
Catherine Bidart, Staff Counsel  
Steve Cohen, Staff Counsel

**Consultants:** Miguel A. Méndez

**Other Persons:**

Neil I. Horton, State Bar Trusts & Estates Section  
Richard Markuson, WECA  
David Nelson, Loeb & Loeb  
Jeff Rubin, California District Attorneys Ass'n, Alameda County District Attorney's Office  
J. David Sackman, California State Council of Laborers  
Mary Pat Toups, Laguna Woods

C O N T E N T S

Minutes of December 13-14, 2007, Commission Meeting.....	2
Administrative Matters.....	2
Study H-821 — Mechanics Lien Law.....	2
Study K-600 – Miscellaneous Hearsay Exceptions.....	3
Study L-637 — Revision of No Contest Clause Statute.....	4

1                                   MINUTES OF DECEMBER 13-14, 2007, COMMISSION MEETING

2           The Commission approved the Minutes of the December 13-14, 2007,  
3 Commission meeting as submitted by the staff.

4                                   ADMINISTRATIVE MATTERS

5    **Report of Executive Secretary**

6           The Executive Secretary reported that the Governor’s proposed budget for  
7 Fiscal Year 2008-09 would reduce the Commission’s budget by 10%.

8                                   STUDY H-821 — MECHANICS LIEN LAW

9           The Commission considered CLRC Memorandum 2008-4 and its First  
10 Supplement, presenting a staff draft of the narrative “preliminary part” of the  
11 final recommendation on *Mechanics Lien Law*. The Commission adopted the staff  
12 recommendations made in those materials, and provisionally approved the staff  
13 draft, subject to the following decisions:

14   **Lien Priority**

15           The staff will revise the discussion entitled “Priority of Lien,” beginning on  
16 page 7 of the staff draft, to discuss the special case when there is a site  
17 improvement that is conducted pursuant to a contract that is separate from the  
18 contract for the work of improvement.

19   **Completion of Private Work of Improvement**

20           The staff will revise the discussion in the final recommendation entitled  
21 “Commencement and Completion,” beginning on page 24 of the  
22 recommendation, to discuss completion of a private work that is subject to  
23 acceptance by a public entity.

1                   STUDY K-600 – MISCELLANEOUS HEARSAY EXCEPTIONS

2   **Present Sense Impressions**

3       The Commission considered Memorandum 2008-1 and the attached draft  
4 recommendation, relating to present sense impressions. The draft properly  
5 reflects the Commission’s views at this stage of its study.

6       The Commission continues to welcome comments on this topic. At the next  
7 meeting, the Commission will consider any additional comments and approve a  
8 final recommendation.

9   **Forfeiture by Wrongdoing**

10       The Commission considered Memorandum 2008-2, relating to forfeiture by  
11 wrongdoing. The Commission also considered a document prepared by Prof.  
12 Miguel Méndez, which is attached to the First Supplement to Memorandum  
13 2008-2.

14       For the next meeting, the Commission directed the staff to prepare a draft  
15 recommendation along the following lines:

- 16       • The previously proposed revisions of Evidence Code Section 240  
17 relating to a refusal to testify should be included in the draft.
- 18       • The previously proposed revisions of Evidence Code Section 240  
19 relating to memory loss should not be included in the draft. The  
20 Commission might study that issue further when time permits.
- 21       • The draft should point out that *People v. Giles* is pending in the  
22 United States Supreme Court (No. 07-6053) and a decision is  
23 expected by late June. The draft should advise the Legislature to  
24 wait for that decision before determining the best long-term  
25 approach to forfeiture by wrongdoing as an exception to the  
26 hearsay rule.
- 27       • The draft should describe the four options discussed in the  
28 tentative recommendation (Options #1-#4), issues relating to those  
29 options, and points for the Legislature to consider in determining  
30 how to proceed.
- 31       • The draft should mention the possibility of referring the matter  
32 back to the Commission for further study after *Giles* is decided.  
33 The draft should neither advocate nor discourage this approach.

34       Because the Commission’s report is due by March 1, 2008, the Commission  
35 plans to approve a final recommendation at the next meeting.

1                   STUDY L-637 — REVISION OF NO CONTEST CLAUSE STATUTE

2           The Commission considered Memorandum 2008-3 and its First and Second  
3 Supplements, relating to no contest clauses. The Commission also considered a  
4 an email from James S. Graham, which is attached to the Third Supplement to  
5 Memorandum 2008-3.

6           The Commission approved the staff draft recommendation as its final  
7 recommendation, with changes to reflect the following decisions:

8   **Creditor Claim**

9           The proposed law should not add any new substantive limitation on the  
10 enforcement of a no contest clause in response to a creditor claim.

11   **Property Ownership Dispute**

12           The proposed law should not add any new substantive limitation on the  
13 enforcement of a no contest clause in response to a property ownership dispute.

14   **Retroactivity of Proposed Law**

15           The proposed law should not apply to an instrument that became irrevocable  
16 before January 1, 2001. The proposed law should apply to any instrument,  
17 whenever executed, that becomes irrevocable on or after January 1, 2001, except  
18 as otherwise provided in Probate Code Section 3.

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

\_\_\_\_\_ Date

\_\_\_\_\_ Chairperson

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