
MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
DECEMBER 15-16, 2010
BURBANK

A meeting of the California Law Revision Commission was held in Burbank on December 15-16, 2010.

Commission:

Present: Justice John Zebrowski (ret.), Chairperson
Stephen Murphy, Vice-Chairperson
Mark Dundee
Sidney Greathouse
Pamela L. Hemminger

Absent: Diane Boyer-Vine, Legislative Counsel
Ellen Corbett, Senate Member
Susan Duncan Lee

Staff: Brian Hebert, Executive Secretary
Barbara Gaal, Chief Deputy Counsel (Dec. 15)
Steve Cohen, Staff Counsel

Other Persons:

Sandra Bonato, State Bar Real Property Law Section Working Group
Michael Giden, Administrative Office of the Courts
Mary M. Howell, State Bar Real Property Law Section Working Group
Lisa Miller, San Fernando Valley Bar Association
Dale Ortmann, Hunt, Ortmann Law Firm
Dick Pruess, Community Associations Institute-CLAC
Alan Wiener, Administrative Office of the Courts

CONTENTS	
Minutes of October 14, 2010, Commission Meeting	2
Administrative Matters.....	2
Report of Executive Secretary	2
Handbook of Practices and Procedures.....	2
Study H-821 — Mechanics Lien Law	3
Study H-855 — Statutory Clarification and Simplification of CID Law	3
Study J-1451 — Trial Court Restructuring: Rights and Responsibilities of the County as Compared to the Superior Court.....	10
Study L-622 — Donative Transfer Restrictions.....	14
Study M-300 — Nonsubstantive Reorganization of Deadly Weapon Statutes	14
Study T-102 — Obsolete Cross-References to Former Code of Civil Procedure Section 116.780(d)	16

1 MINUTES OF OCTOBER 14, 2010, COMMISSION MEETING

2 The Commission approved the Minutes of the October 14, 2010, Commission
3 meeting as submitted by the staff.

4 ADMINISTRATIVE MATTERS

5 **Report of Executive Secretary**

6 The Executive Secretary reported that the Governor has appointed Damian
7 Capozzola to serve as Commissioner.

8 The Executive Secretary reported that Staff Counsel Catherine Bidart has left
9 the Commission’s staff to take another job. The salary savings resulting from her
10 departure will obviate the need for any layoff in the current fiscal year. The
11 Commission will send a letter to Ms. Bidart expressing its appreciation for her
12 years of excellent service.

13 **Handbook of Practices and Procedures**

14 The Commission considered Memorandum 2010-51, relating to the
15 Commission’s *Handbook of Practices and Procedures*.

16 The Commission made the following decisions:

- 17 • The Handbook’s Appendix E and “Printing and Distribution
- 18 Policies” (Rules 6.1-6.7) should be revised to eliminate routine
- 19 printing of softcover blue pamphlets and make various other
- 20 adjustments, as shown in the attachment to Memorandum 2010-51.

- 1 • Rule 3.3 should be revised to permit email communication with
2 the Chairperson, in addition to telephone communication, as
3 shown on pages 3-4 of Memorandum 2010-51.
- 4 • Rule 7.3.3 should be revised to add a new paragraph at the end,
5 stating: "The Executive Secretary may be known and referred to as
6 the Executive Director."

7 The staff should prepare a new version of the Handbook, incorporating those
8 decisions and the decisions that the Commission made in February.

9 STUDY H-821 — MECHANICS LIEN LAW

10 The Commission considered Memorandum 2010-53 and its First Supplement,
11 relating to clean-up legislation for the reorganization of the mechanics lien
12 statute, which was enacted on the Commission's recommendation earlier this
13 year. See 2010 Cal. Stat. ch. 697.

14 The Commission approved the draft attached to the memorandum for
15 distribution as a tentative recommendation, subject to the following decisions:

16 The tentative recommendation will include a proposed revision of Civil Code
17 Section 8422, which was intended to continue former Civil Code Sections 3118
18 and 3261. Section 8422 would be revised to delete the words "slander title or"
19 and to add language drawn closely from former Section 3118. The preliminary
20 part will explain that the proposed change is intended to avoid any
21 misunderstanding that might result from the reference to slander of title.

22 The staff will present these changes to the Chairperson for review, prior to
23 releasing the tentative recommendation to the public.

24 The period for comment on the tentative recommendation will be short, to
25 facilitate timely enactment of the clean-up legislation. Any comments on the
26 tentative recommendation will be considered at the February 2011 meeting.

27 The staff will submit a bill draft request based on the legislation proposed in
28 the tentative recommendation. If necessary, the content of the bill will be revised
29 later, to incorporate any revisions made in response to comments on the tentative
30 recommendation.

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

33 The Commission considered Memorandum 2010-48 and its First and Second
34 Supplements, Memorandum 2010-49, Memorandum 2010-57, Memorandum

1 2010-58, Memorandum 2010-59, and Memorandum 2010-60, discussing the
2 tentative recommendation on *Statutory Clarification and Simplification of CID Law*
3 (Feb. 2010). The Commission approved all of the staff recommendations in those
4 materials, with the following exceptions and additional decisions:

5 **Proposed Civ. Code § 4010. Application of Act**

6 Proposed Section 4010 was added to the proposed law, along the following
7 lines:

8 4010. Nothing in the act that added this part shall be construed
9 to invalidate a document prepared or action taken before January 1,
10 2013, if the document or action was proper under the law
11 governing common interest developments at the time that the
12 document was prepared or the action was taken.

13 **Comment.** Section 4010 is new. It makes clear that any changes
14 to former law made by enactment of this Act shall not be construed
15 to retroactively invalidate documents prepared or actions taken
16 prior to the operative date of the Act.

17 **Proposed Civ. Code § 4160. "Member"**

18 Proposed Section 4160(b) was deleted.

19 **Proposed Civ. Code § 4165. "Operating Rule"**

20 Proposed Section 4165 was relocated and revised as follows:

21 ~~4165 4340.~~ 4165 4340. "Operating Rule" For the purposes of this article,
22 "operating rule" means a regulation adopted by the board that
23 applies to a matter listed in subdivision (a) of Section 4355
24 generally to the management and operation of the common interest
25 development or the conduct of the business and affairs of the
26 association.

27 **Definition of "Recording"**

28 The proposed law will not include a definition of "recording."

29 **Proposed Civ. Code § 4225. Unlawful Discriminatory Restrictions**

30 No change was made to proposed Section 4225.

31 **Proposed Civ. Code § 4235. Correction of Statutory Cross-Reference**

32 Proposed Section 4235(b) was revised as follows:

33 (b) A ~~governing document~~ declaration that is corrected under
34 this section may be restated in corrected form and recorded,
35 provided that a copy of the board resolution authorizing the

1 corrections is recorded along with the restated ~~governing~~
2 ~~document~~ declaration.

3 **Proposed Civ. Code § 4255. Special Declaration Disclosures**

4 No change was made to proposed Section 4255.

5 **Proposed Civ. Code § 4265. Amendment to Extend Term of Declaration**

6 Proposed Section 4265 was not revised to permit perpetual extension of a
7 declaration.

8 **Proposed Civ. Code § 4270. Amendment Procedure**

9 Proposed Section 4270 was revised as follows:

10 (a) A declaration may be amended pursuant to the ~~governing~~
11 ~~documents~~ declaration or this Act. Except as provided in Section
12 4275, an amendment is effective after all of the following
13 requirements have been met:

14 (1) ~~the approval of~~ The amendment has been approved by the
15 percentage of members required by the governing documents has
16 been given, declaration and any other person whose approval is
17 required by the declaration.

18 (2) ~~that~~ That fact has been certified in a writing executed and
19 acknowledged by the officer designated in the declaration or by the
20 association for that purpose, or if no one is designated, by the
21 president of the association, ~~and~~.

22 (3) ~~that writing~~ The amendment has been recorded in each
23 county in which a portion of the common interest development is
24 located.

25 (b) If the ~~governing documents do~~ declaration does not specify
26 the percentage of members who must approve an amendment of
27 the declaration, an amendment may be approved by a majority of
28 all members, pursuant to Section 4065.

29 **Proposed Civ. Code § 4275. Judicial Approval of Amendment**

30 Proposed Section 4275(c)(2) was revised as follows:

31 (2) Balloting on the proposed amendment was conducted in
32 accordance with ~~all applicable provisions of~~ the governing
33 documents, this Act, and any other applicable law.

34 **Proposed Civ. Code § 4280. Content of Articles**

35 Proposed Section 4280 was not revised to delete the provision relating to a
36 managing agent.

1 **Proposed Civ. Code § 4295. Amendment of Condominium Plan**

2 No change was made to proposed Section 4295.

3 **Proposed Civ. Code § 4365. Rulemaking Referendum**

4 Proposed Section 4365 was revised as follows:

5 4365. (a) Members of an association owning five percent or
6 more of the separate interests may call a special ~~meeting~~ vote of the
7 members to reverse a rule change.

8 (b) A special ~~meeting~~ vote of the members may be called by
9 delivering a written request to the president or secretary of the
10 board, ~~after which the board shall deliver individual notice of the~~
11 ~~meeting to the association's members, pursuant to Section 4040,~~
12 ~~and hold the meeting in conformity with Section 7511 of the~~
13 ~~Corporations Code. Not less than 35 days nor more than 90 days~~
14 ~~after receipt of a proper request, the association shall hold a vote of~~
15 ~~the members on whether to reverse the rule change, pursuant to~~
16 ~~Article 4 (commencing with Section 5100) of Chapter 5.~~ The written
17 request may not be delivered more than 30 days after the members
18 of the association are notified of the rule change. Members are
19 deemed to have been notified of a rule change on delivery of notice
20 of the rule change, or on enforcement of the resulting rule,
21 whichever is sooner.

22 (c) For the purposes of Section 5225 of this code and Section
23 8330 of the Corporations Code, collection of signatures to call a
24 special ~~meeting~~ vote under this section is a purpose reasonably
25 related to the interests of the members of the association. A
26 member request to copy or inspect the membership list solely for
27 that purpose may not be denied on the grounds that the purpose is
28 not reasonably related to the member's interests as a member.

29 (d) The rule change may be reversed by the affirmative vote of a
30 majority of a quorum of the members, pursuant to Section 4070, or
31 if the declaration or bylaws require a greater ~~proportion~~
32 ~~percentage~~, by the affirmative vote ~~or written ballot~~ of the
33 ~~proportion percentage~~ required. ~~In lieu of calling the meeting~~
34 ~~described in this section, the board may distribute a written ballot~~
35 ~~pursuant to Article 4 (commencing with Section 5100) of Chapter 6.~~

36 (e) Unless otherwise provided in the declaration or bylaws, for
37 the purposes of this section, a member may cast one vote per
38 separate interest owned.

39 ~~(f) A meeting called under this section is governed by Chapter 6~~
40 ~~(commencing with Section 7510) of Part 3 of Division 2 of Title 1 of,~~
41 ~~and Sections 7612 and 7613 of, the Corporations Code.~~

42 ~~(g)~~ A rule change reversed under this section may not be
43 readopted for one year after the date of the ~~meeting~~ vote reversing
44 the rule change. Nothing in this section precludes the board from
45 adopting a different rule on the same subject as the rule change that
46 has been reversed.

1 ~~(h)~~ (g) As soon as possible after the close of voting, but not more
2 than 15 days after the close of voting, the board shall provide
3 general notice pursuant to Section 4045 of the results of the member
4 vote.

5 ~~(i)~~ (h) This section does not apply to an emergency rule change
6 made under subdivision (d) of Section 4360.

7 **Proposed Civ. Code § 4610. Partition of Condominium Project**

8 No change was made to proposed Section 4610.

9 **Proposed Civ. Code § 4920. Notice of Board Meeting**

10 Proposed Section 4920(a) was revised as follows:

11 (a) Unless ~~the time and place of meeting is fixed by the~~
12 ~~governing documents, or unless~~ the governing documents provide
13 for a longer period of notice, members shall be given notice of the
14 time and place of a board meeting, except for an emergency
15 meeting held pursuant to Section 4923, at least four days prior to
16 the meeting. Notice shall be given by general delivery pursuant to
17 Section 4045. The notice shall contain the agenda for the meeting.

18 **Proposed Civ. Code § 5115. Voting Procedure**

19 No change was made to proposed Section 5115.

20 **Proposed Civ. Code § 5125. Ballot Custody**

21 No change was made to proposed Section 5125.

22 **Proposed Civ. Code § 5200. "Association Records"**

23 Proposed Section 5200 was not revised to alter or relocate language on the use
24 of "modified accrual accounting," or to add manager disclosures statements to
25 the definition of "association records."

26 **Proposed Civ. Code § 5215. Withholding and Redaction of Records**

27 No change was made to proposed Section 5215.

28 **Proposed Civ. Code §§ 5250-5255. Record Retention**

29 Proposed Sections 5250 and 5255 were deleted.

30 **Proposed Civ. Code § 5260. Mailing-Related Requests**

31 Proposed Section 5260 was added to the proposed law, as follows:

1 **§ 5260 (added). Mailing-related requests**

2 5260. To be effective, any of the following requests shall be
3 delivered in writing to the association, pursuant to Section 4035:

4 (a) A request to change the member's information in the
5 association membership list.

6 (b) A request to add or remove a second address for delivery of
7 individual notices to the member, pursuant to subdivision (b) of
8 Section 4040.

9 (c) A request for individual delivery of general notices to the
10 member, pursuant to subdivision (b) of Section 4045, or a request to
11 cancel a prior request for individual delivery of general notices.

12 (d) A request to opt out of the membership list pursuant to
13 Section 5220, or a request to cancel a prior request to opt out of the
14 membership list.

15 (e) A request to receive a full copy of a specified annual budget
16 report or annual policy statement pursuant to Section 5320.

17 (f) A request to receive all reports in full, pursuant to
18 subdivision (b) of Section 5320, or a request to cancel a prior
19 request to receive all reports in full.

20 **Comment.** Section 5260 is new. It requires that the specified
21 requests be written and delivered to the association pursuant to
22 Section 4035.

23 **Proposed Civ. Code § 5350. Conflict of Interest**

24 Proposed Section 5350(b) was revised as follows:

25 (b) A director or member of a committee shall not vote or
26 otherwise act on behalf of the association with respect to on any of
27 the following matters:

28 ...

29 The Comment to proposed Section 5350 was revised as follows:

30 **Comment.** ...

31 Subdivisions (b) and (c) are new. The "discipline" referenced in
32 subdivision (b)(1) may include discipline for a violation of the
33 governing documents, this Act, or a fiduciary duty.

34 **Proposed Civ. Code § 5655. Payments**

35 The Comment to the proposed section was revised along the following lines:

36 **Comment.** Section 5655 continues former Section 1367.1(b)
37 without substantive change, with the following exceptions:

38 (1) A superfluous reference to assessment debt "set forth, as
39 required in subdivision (a)" is ~~not continued~~ deleted to make
40 the meaning of the provision clearer.

1 **Proposed Civ. Code § 5710. Foreclosure**

2 Proposed Section 5710(b) was revised as follows:

3 (b) In addition to the requirements of Section 2924, ~~a notice of~~
4 ~~default shall be served by the association on the owner's legal~~
5 ~~representative~~ the association shall serve a notice of default on the
6 person named as the owner of the separate interest in the
7 association's records or, if that person has designated a legal
8 representative pursuant to this subdivision, on that legal
9 representative. Service shall be in accordance with the manner of
10 service of summons in Article 3 (commencing with Section 415.10)
11 of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. The
12 ~~owner's legal representative shall be the person whose name is~~
13 ~~shown as the owner of a separate interest in the association's~~
14 ~~records, unless another person has been previously designated by~~
15 ~~the owner as his or her~~ An owner may designate a legal
16 representative in a writing and that is mailed to the association in a
17 manner that indicates that the association has received it.

18 The Commission noted, for possible future study, the difficulties that an
19 association might face when seeking to serve non-resident owners.

20 **Proposed Civ. Code § 5850. Schedule of Monetary Penalties**

21 Proposed Section 5850 was revised along the following lines, subject to
22 review and approval of the Chairperson:

23 5850. (a) If an association adopts or has adopted a policy
24 imposing any monetary penalty, including any fee, on any
25 association member for a violation of the governing documents, the
26 board shall adopt and distribute to each member, in the annual
27 policy statement prepared pursuant to Section 5310, a schedule of
28 the monetary penalties that may be assessed for those violations,
29 which shall be in accordance with authorization for member
30 discipline contained in the governing documents.

31 (b) Any new or revised monetary penalty that is adopted after
32 complying with subdivision (a) may be included in a supplement
33 that is delivered to the members individually, pursuant to Section
34 4040.

35 (c) A monetary penalty for a violation of the governing
36 documents shall not exceed the monetary penalty stated in the
37 schedule of monetary penalties or supplement that is in effect at the
38 time of the violation.

39 (d) An association shall provide a copy of the most recently
40 distributed schedule of monetary penalties, along with any
41 applicable supplements to that schedule, to any member on
42 request.

1 A parallel change will be made in proposed Civil Code Section 6850, in the
2 Commission's pending tentative recommendation on *Commercial and Industrial*
3 *Common Interest Developments* (Oct. 2010).

4 **Next Steps**

5 The Commission approved the proposed legislation, subject to the changes
6 recommended by the staff in the memoranda, as supplemented or modified by
7 the decisions noted in these Minutes and made at prior meetings, for inclusion in
8 a final recommendation. The staff is authorized to request a bill draft based on
9 that language. A final draft of the recommendation will be presented at the
10 February 2011 meeting for Commission review and approval. Implementing
11 legislation will be introduced in 2011, if possible.

12 STUDY J-1451 — TRIAL COURT RESTRUCTURING: RIGHTS AND RESPONSIBILITIES OF 13 THE COUNTY AS COMPARED TO THE SUPERIOR COURT

14 The Commission considered Memorandum 2010-55 and its First and Second
15 Supplements, relating to comments on the tentative recommendation on *Trial*
16 *Court Restructuring: Rights and Responsibilities of the County as Compared to the*
17 *Superior Court (Part 1)*. The Commission made the following decisions:

18 **Bus. & Prof. Code § 25762. Distribution of Money Collected for Violating** 19 **Alcoholic Beverage Control Act**

20 The proposed amendment of Business and Professions Code Section 25762
21 should be left as in the tentative recommendation.

22 **Code Civ. Proc. § 116.940. Small Claims Advisory Services**

23 Paragraph (b)(3) of the proposed amendment of Code of Civil Procedure
24 Section 116.940 should read:

25 (b) Each advisory service shall provide the following services:

26

27 (3) Adjacent counties, superior courts in adjacent counties, or
28 any combination thereof, may provide advisory services jointly.

29 The remainder of the proposed amendment and the corresponding Comment
30 should remain as in the tentative recommendation.

1 **Evid. Code § 754. Interpreter for Individual Who Is Deaf or Hearing Impaired**

2 Subdivisions (i) and (j) of Evidence Code Section 754 should be amended as
3 follows:

4 (i) Persons appointed to serve as interpreters under this section
5 shall be paid, in addition to actual travel costs, the prevailing rate
6 paid to persons employed by the court to provide other interpreter
7 services unless such service is considered to be a part of the
8 person's regular duties as an employee of the state, county, or other
9 political subdivision of the state. ~~Payment~~ Except as provided in
10 subdivision (j), payment of the interpreter's fee shall be a charge
11 ~~against the county, or other political subdivision of the state, in~~
12 ~~which that action is pending~~ court. Payment of the interpreter's fee
13 in administrative proceedings shall be a charge against the
14 appointing board or authority.

15 (j) Whenever a peace officer or any other person having a law
16 enforcement or prosecutorial function in any criminal or quasi-
17 criminal investigation or non-court proceeding questions or
18 otherwise interviews an alleged victim or witness who
19 demonstrates or alleges deafness or hearing impairment, a good
20 faith effort to secure the services of an interpreter shall be made,
21 without any unnecessary delay unless either the individual who is
22 deaf or hearing impaired affirmatively indicates that he or she does
23 not need or cannot use an interpreter, or an interpreter is not
24 otherwise required by Title II of the Americans with Disabilities
25 Act of 1990 (Public Law 101-336) and federal regulations adopted
26 thereunder. Payment of the interpreter's fee shall be a charge
27 against the county, or other political subdivision of the state, in
28 which the action is pending.

29 The remainder of Section 754 should remain unchanged.

30 **Fam. Code § 3153. Compensation of Counsel Appointed for Minor**

31 The proposed amendment of Family Code Section 3153 should be removed
32 from the Commission's proposal. The staff should bring this matter back to the
33 Commission's attention at a later date.

34 **Gov't Code § 1651. Payment of Bond Premium**

35 The proposed amendment of Government Code Section 1651 should be
36 removed from the Commission's proposal for further study. Among the matters
37 to investigate are receivers, special masters, and partition referees: Are they
38 "officers of a superior court" within the meaning of Section 1651? If so, are there
39 "bonds given by surety companies" for them, or for their deputies, clerks,

1 assistants, or subordinate officers? Assuming such bonds exist, is the premium
2 paid by the court, or by the parties, or otherwise?

3 In addition to conducting its own research, the staff should alert the
4 Administrative Office of the Courts to these questions. The staff should bring this
5 matter back to the Commission's attention at a later date.

6 **Gov't Code § 24352. Monthly Record of Fees or Compensation and Fines**
7 **Collected**

8 The proposed amendment of Government Code Section 24352 should be
9 removed from the Commission's proposal. The staff should monitor
10 developments relating to the accounting system for the trial courts, and bring
11 this matter back to the Commission's attention at a later date.

12 **Gov't Code § 25257. Collection of Money Payable to County**

13 The proposed amendment of Government Code Section 25257 should be
14 removed from the Commission's proposal. No further action on this matter
15 appears necessary. See 2010 Cal. Stat. ch. 720, §§ 6, 9.

16 **Gov't Code § 29370.1. County Auditor**

17 The proposed amendment of Government Code Section 29370.1 should be
18 revised to insert paragraph labels, as shown on pages 21-22 of Memorandum
19 2010-55.

20 **Gov't Code § 29370. County Officers' Cash Difference Fund**

21 The proposed amendment of Government Code Section 29370 should be left
22 as in the tentative recommendation.

23 Footnote 36 in the preliminary part of the tentative recommendation should
24 be revised to explain:

- 25 • It may be advisable to enact a statute that authorizes a court to
26 establish a cash difference fund.
- 27 • The Commission has not proposed such a statute because it is
28 debatable whether governance of such a fund should be
29 determined by statute (similar to Gov't Code §§ 29370.1-29390.1),
30 or handled by the court without statutory guidance (see, e.g., the
31 AOC's Trial Court Financial Policies and Procedures Manual).
- 32 • This policy decision appears to be beyond the Commission's
33 authority and better-suited to resolution in the Legislature.

1 **Gov't Code § 68551. Institutes and Seminars**

2 The proposed amendment of Government Code Section 68551 should be
3 removed from the Commission's proposal. The staff should try to reconcile the
4 recent input from the AOC (see Second Supplement to Memorandum 2010-55,
5 pp. 5-6 & Exhibit p. 4) with the input provided in 2002 by the Superior Court of
6 Los Angeles County (see First Supplement to Memorandum 2002-17, pp. 15-16;
7 Memorandum 2002-14, Exhibit p. 56).

8 The staff should bring this matter back to the Commission's attention at a
9 later date.

10 **Gov't Code §§ 71380, 71381, 71382, 71384. Uniform Accounting System for**
11 **Courts**

12 The proposed amendments of Government Code Sections 71380, 71381,
13 71382, and 71384 should be removed from the Commission's proposal. The staff
14 should monitor developments relating to the accounting system for the trial
15 courts, and bring this matter back to the Commission's attention at a later date.

16 **Penal Code § 1463.22. Money Collected for Violating Vehicle Code Section**
17 **16028**

18 The proposed amendment of Penal Code Section 1463.22 should be removed
19 from the Commission's proposal. The staff should bring this matter back to the
20 Commission's attention at a later date, and try to ensure that the input from the
21 Department of Motor Vehicles (regarding how to update several obsolete cross-
22 references to the Vehicle Code) receives appropriate consideration, even if the
23 Commission ultimately decides that revising Section 1463.22 is beyond its
24 purview.

25 **Preliminary Part (Narrative Discussion)**

26 The preliminary part of the Commission's proposal should be revised as
27 recommended by the staff at pages 19-21 of Memorandum 2010-55.

28 **Approval of a Final Recommendation**

29 Subject to the decisions described above, and any further changes necessary
30 to conform to those decisions, the Commission approved the proposal as a final
31 recommendation, for printing and submission to the Legislature.

1 STUDY L-622 — DONATIVE TRANSFER RESTRICTIONS

2 The Commission considered Memorandum 2010-54, discussing comments on
3 Senate Bill 105 (Harman) (2010 Cal. Stat. ch. 620), which implemented the
4 Commission’s recommendation on *Donative Transfer Restrictions*, 38 Cal. L.
5 Revision Comm’n Reports 107 (2008). The Commission decided against taking
6 any position on the issues discussed in the memorandum. The staff will
7 informally communicate that decision to relevant legislative staff.

8 STUDY M-300 — NONSUBSTANTIVE REORGANIZATION
9 OF DEADLY WEAPON STATUTES

10 The Commission considered Memorandum 2010-52, relating to clean-up
11 legislation for the nonsubstantive reorganization of the deadly weapon statutes,
12 which was enacted on Commission recommendation earlier this year. See 2010
13 Cal. Stat. ch. 178; 2010 Cal. Stat. ch. 711.

14 The Commission made the following decisions:

15 **Educ. Code § 49330. “Injurious Object” Defined**

16 For purposes of a tentative recommendation, the Commission approved the
17 amendment shown at pages 26-27 of the draft attached to Memorandum 2010-52.

18 **Gov’t Code § 53071.5. Imitation Firearms**

19 For purposes of a tentative recommendation, the Commission approved the
20 amendment shown at page 40 of the draft attached to Memorandum 2010-52.
21 The Note relating to that amendment should seek input on the following points:

- 22 (1) Whether to replace “By the *enforcement* of this section” with “By
23 the *enactment* of this section”
24 (2) Whether to replace “that *section* shall preempt” with “that
25 *subdivision* shall preempt,” “that *section and any other sections on the*
26 *subject* shall preempt,” or other language.

27 **Penal Code § 171c. Punishment for Bringing or Possessing Loaded Firearm**
28 **Within State Capitol and Other Specified Locations**

29 The amendment of Penal Code Section 171c shown on pages 44-45 of the draft
30 attached to Memorandum 2010-52 should be revised such that paragraph (c)(1)
31 reads:

- 32 (c)(1) Nothing in this section shall preclude prosecution under
33 ~~Sections 12021 and 12021.1~~ Chapter 2 (commencing with Section

1 29800) or Chapter 3 (commencing with Section 29900) of Division 9
2 of Title 4 of Part 6 of this code, Section 8100 or 8103 of the Welfare
3 and Institutions Code, or any other law with a penalty greater than
4 is set forth in this section.

5 The corresponding Comment should indicate that a grammatical error has been
6 corrected. The corresponding Note should solicit comment on whether the
7 Commission has taken the correct approach: Should paragraph (c)(1) refer to
8 “prosecution under Chapter 2 (commencing with Section 29800) *or* Chapter 3
9 (commencing with Section 29900) ...”, or to “prosecution under Chapter 2
10 (commencing with Section 29800) *and* Chapter 3 (commencing with Section
11 29900) ...”?

12 **Penal Code § 171.7. Weapons at Public Transit Facility**

13 For purposes of a tentative recommendation, the Commission approved the
14 amendment shown at pages 46-48 of the draft attached to Memorandum 2010-52.

15 **Penal Code § 11106. Retention of Records**

16 For purposes of a tentative recommendation, the Commission approved the
17 amendment shown at pages 79-83 of the draft attached to Memorandum 2010-52.

18 **Approval of Tentative Recommendation**

19 Subject to the revisions described above, the Commission approved the draft
20 attached to Memorandum 2010-52 as a tentative recommendation, to be
21 circulated for comment and posted to the Commission’s website. The comment
22 deadline should be January 21, 2011, to facilitate timely enactment of the clean-
23 up legislation.

24 **Preparation of Bill Draft**

25 The Commission authorized the staff to seek preparation of a bill draft based
26 on the tentative recommendation. If necessary, the content of the bill will be
27 revised later, to incorporate any revisions made in response to comments on the
28 tentative recommendation.

1 STUDY T-102 — OBSOLETE CROSS-REFERENCES TO FORMER CODE OF CIVIL
2 PROCEDURE SECTION 116.780(D)

3 The Commission considered Memorandum 2010-56, relating to comments on
4 the tentative recommendation on *Obsolete Cross-References to Former Code of Civil*
5 *Procedure Section 116.780(d)*.

6 As recommended by the Civil and Small Claims Advisory Committee of the
7 Judicial Council, the Commission decided that Code of Civil Procedure Section
8 116.820 should be amended as follows:

9 **Code Civ. Proc. § 116.820 (amended). Enforcement of small claims**
10 **judgment**

11 116.820. (a) The judgment of a small claims court, or the
12 judgment of the superior court after a hearing on appeal, may be
13 enforced by the small claims court as provided in Title 9
14 (commencing with Section 680.010) of Part 2 and in Sections 674
15 and 1174 on the enforcement of judgments of other courts. A
16 ~~judgment of the superior court after a hearing on appeal, and after~~
17 ~~transfer to the small claims court under subdivision (d) of Section~~
18 ~~116.780, may be enforced like other judgments of the small claims~~
19 ~~court, as provided in Title 9 (commencing with Section 680.010) of~~
20 ~~Part 2 and in Sections 674 and 1174 on the enforcement of~~
21 ~~judgments of other courts.~~

22 (b) The clerk of the court shall charge and collect all fees
23 associated with the enforcement of judgments under Title 9
24 (commencing with Section 680.010) of Part 2. The clerk shall
25 immediately deposit all the fees collected under this section into a
26 bank account established for this purpose by the Administrative
27 Office of the Courts. The money shall be remitted to the State
28 Treasury under rules adopted by, or trial court financial policies
29 and procedures authorized by, the Judicial Council under
30 subdivision (a) of Section 77206 of the Government Code. The
31 Controller shall distribute the fees to the Trial Court Trust Fund as
32 provided in Section 68085.1 of the Government Code.

33 (c) The prevailing party in any action subject to this chapter is
34 entitled to the costs of enforcing the judgment and accrued interest.

35 **Comment.** Section 116.820 is amended to delete obsolete
36 language referring to a transfer “under subdivision (d) of Section
37 116.780.”

38 In the past, subdivision (d) of Section 116.780 required a
39 superior court to transfer a small claims appeal to the small claims
40 court for enforcement after the superior court resolved the appeal.
41 See 1994 Cal. Stat. ch. 587, § 3; 1991 Cal. Stat. ch. 915, § 26. Such a
42 transfer was necessary before the municipal and superior courts
43 unified, because the small claims court was a division of the
44 municipal court, not the superior court.

1 Now that the trial courts have unified, the small claims court is
2 a division of the superior court. See Code Civ. Proc. § 116.210.
3 Upon resolving a small claims appeal, it is no longer necessary to
4 effect a transfer to the municipal court system. Accordingly, Section
5 116.780 was amended to delete subdivision (d). See 2005 Cal. Stat.
6 ch. 706, § 8. Section 116.820 is now amended to reflect that
7 development.

8 The preliminary part of the Commission's proposal should be revised to conform
9 to this new approach, as described at pages 3-4 of Memorandum 2010-56.

10 Subject to those changes, the Commission approved the proposal as a final
11 recommendation, for printing and introduction in the Legislature.

12

13

APPROVED AS SUBMITTED

Date

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

Chairperson

Executive Secretary