ADVOCATE
December 2009 Issue

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# Legislative Intent: When and how to use it

## Researching and using legislative-history material to show legislative intent

The concept of "legislative intent" is often a crucial factor influencing appellate decisions and is one of the few tools with which practitioners can supplement their positions beyond the appellate record made in the trial court. This article is intended to provide a relatively comprehensive overview of the issues lawyers face when they seek to establish and rely on the legislature's "intent." A link to more detailed discussion on the topics discussed is provided at the end of this article.

As a preliminary point it is important to note that although the term "legislative intent" on its face is only applicable to statutes enacted by a legislature, the term is sometimes used generically to describe the intent of the drafters of other types of laws, such as regulations, rules of court or local ordinances. This article focuses upon the process of seeking and documenting the intent of legislation, but will also touch briefly on what is involved with documenting the history of other types of law. As a result, the phrase "legislative intent" will sometimes be used in this generic sense as a shorthand for the process of using historical documents to develop an interpretation of the intent of the drafters enacting a law.

### When to use legislative intent

The circumstances of your case will usually dictate when legislative intent is appropriate. When the evolving dispute begins to hinge on the interpretation of an ambiguous law, it is time to consider the use of historical materials to establish the intent of the drafters of the law. Written laws of any sort are generally attempts to distill complex concepts into short, easily accessible statements. But the distillation process that creates the accessibility also builds in ambiguity. Legislative-intent arguments build context around the bare bones of a law by developing a history of the deliberations that led to the adoption of the law. Developing a context within which to argue intent can be useful in the interpretation of many types of laws, including statutes, regulations, local ordinances, rules of court, and rules of professional conduct.

### How to use legislative intent

The primary mechanism for building context within which to interpret laws is to look at the documentary history of the deliberations that produced the law. The documentary history can be developed through a commercial service or through undertaking to develop this relevant history on your own.

Using a commercial service is very cost-effective when enough is at stake. But with some disputes it does not make economic sense to engage a commercial service for what may be a small point in a larger argument, so the discussion in the first part of this article on developing a legislative history will focus on providing an overview for those circumstances where you seek to develop a history on your own.

### Finding legislative history

Each body of law has its own characteristic processes and procedures for developing legislative history. Here is a brief overview for some of the most common areas of law. For a document you can download that goes into much greater detail than this article link to http://najfiles.net/web/reference/Finding.Legislative.History.pdf

### California codes and statutes

The primary sources for documenting the legislative history of California statutory law are the various agencies and offices in and around the California State Capitol in Sacramento. In addition, some significant legislative-history material on California legislation is available online, and many local law libraries have some legislative materials.

This discussion begins with a very short summary of the California legislative process and definitions of legislative terms, followed by a discussion of how to find legislative documents.

### The legislative process

The legislative process in California is very typical of the legislative process in Congress and most other states of the union, so the basic process and principles can be applied in many jurisdictions. In California, the process is governed by provisions of Article IV of the Constitution, by statutes primarily contained in sections 9000 et seq. of the Government Code, and by rules of procedure adopted by the Assembly and Senate at the start of each legislative session.

California has two legislative bodies, the Assembly and the Senate, which are often referred to as the two "houses" of the Legislature. Members of both houses of the California Legislature can introduce proposals; each proposal is called a "bill," either an Assembly Bill or a Senate Bill, depending on the house in which it is first introduced.

For a bill to be successfully enacted into a law, it must be heard in at least one committee, be read three times before the entire group of legislators in the house (referred to as on the "floor" of the house) where it was introduced, and approved after the third reading. It must then go through the same process in the other house. The process is sequential; the bill must go through the house of origin before it is considered by the second house. Changes by amendment can be made only on the floor of either house.

If the two houses pass different versions of the same bill, representatives from the two houses negotiate a version of the bill acceptable to both houses in a Conference Committee. Once a bill has passed both houses it goes to the Governor for signature.

### Defining some legislative terms useful in developing legislative history

• **Assembly bill/Senate bill** – A formal proposal to add, amend or repeal some

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provision of statutory law. Each time amendments are adopted, the bill is reprinted. Thus, when the legislature speaks of an "amended version" of a bill, they refer to the bill as it existed after the changes adopted on a particular date.

•**Chaptered Statute** – Each year the state publishes the bills enacted in that year organized according to the order in which the Governor signed the bill, rather than by subject matter, in the published statute book for that year. In annotated codes, following each section, the code will usually set forth the enactment history affecting that section of the code by citing the chapter numbers in the statutes for each year in which a change occurred.

•**Floor analysis** – When a bill is up for approval on the floor of the Senate or Assembly, each legislator receives an analysis of the bill, either a Senate Floor analysis, or an Assembly Floor analysis.

•**Enrolled bill** – An enrolled bill is one that has gone in final form to the Governor. Hence an enrolled bill report is a report that addresses that final form of the bill. Enrolled bill reports are typically requested by the Governor from state agencies that have some interest in the subject matter of the bill.

•**Legislative Analyst** – The Legislature's budget arm, counterpoint to the Governor's Department of Finance. The Legislative Analyst focuses on the state budget, which limits the utility of Legislative Analyst's analyses for legislative-intent questions of substantive law.

•**Legislative Counsel** – Attorneys to the Legislature; the Office of the Legislative Counsel drafts the language of bills, prepares summaries of legislation and renders legal opinions on questions of law posed by legislators. Legislative Counsel regard their relationship with the Legislature as an attorney-client relationship, so opinions rendered to individual legislators are confidential. However, the legislators sometimes release the opinions, or deposit them in legislative files where they become accessible to the public.

•**Policy Committee/Fiscal Committee** – Policy Committees are those committees dealing with specific substantive topics in the law. Policy committees make the initial policy investigation into legislative bills. As an example, bills dealing with local government issues will be assigned to the Local Government Committee. Fiscal committees investigate a bill's impact on the state budget, so fiscal committee analyses are of limited utility in determining the substantive intent in many cases.

•**Third reading** – Legislative rules require that each bill must be read on the floor three times before it can be approved. Thus when a bill is up for third reading it is at the point of final vote on approval/rejection.

•**Uncodified statute** – A bill approved by the Legislature and signed by the governor that, organizationally, has not been formatted for incorporation into a Code. Originally all statutory law was uncodified statutes (see the definition for Chaptered Statute above). Codes were created to provide a secondary organizational structure to make the law more accessible.

## Finding California legislative documents:

• **Step 1: Narrowing your search to what you need**

The materials available documenting the legislative deliberations of the California Legislature vary widely according to when the particular language you are focusing upon was enacted. So the first step is to determine when the language was adopted. This means you must identify the chaptered statute and bill number (Senate Bill or Assembly Bill) making the changes in which you are interested.

Review the legislative history annotations for the section(s) in which you are interested in an Annotated Code. The notes under a particular section may contain references to many different chaptered statutes as the language of the section developed over the years. The codes will sometimes provide summaries of the changes accomplished by each chaptered statute, which can help you identify what is pertinent to your concerns, and what is not pertinent. If the codes don't summarize what the amendments accomplished you generally will have to go to the statute volumes, actually looking at each chaptered statute to compare the language from amendment to amendment.

Much of the language in the codes has evolved over the years through reorganizations and amendments. The codes tend to list only the history since the most recent enactment of the section, even though much of the language of the section may have existed in prior law. To find the prior history, look a little further down the notes under each section for very small type discussing derivation. Be alert to the fact some of the summaries of historical derivation in the codes refer to the section number rather than the substantive language of the section, as the Legislature from time to time recycles section numbers, or renumbers substantive provisions.

The annotated codes usually provide bill numbers (*e.g.*, AB 11) for legislation since about 1990. Where the information is not available in the annotated codes, you can convert the chapter number to a bill number by referencing the tables in the front of the first volume of the statutes for that particular year.

• **Step Two: Finding the documents**

The types of documents available in California for legislative-history research vary according to the historical era being researched. The following provides an overview of the types of documents generally available organized by sources.

***Online materials:*** Copies of all enacted statutes since 1851, the Assembly and Senate Journals since 1851 and all the published procedural histories/indices since the Legislature began publishing procedural histories in 1881 can be found online at http://192.234.213.35/clerkarchive/

For legislation from 1993 through currently pending bills, the California Legislature, through the Office of the Legislative Counsel, provides a procedural history of the bill, copies of the various amended versions of the bill, and committee and floor analyses, which often discuss the source and purpose of the proposal. The link is http://www.leginfo.ca.gov/bilinfo.html.

On some legislation, recommendations of the California Law Revision

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Commission (CLRC) may be pertinent to legislative intent. CLRC recommendations are published and are widely available in law libraries. Background memos and minutes of the CLRC are also pertinent in many cases. These materials are sporadically available in law libraries or other archival sources, and are also available through the CLRC at its Web site, http://www.clrc.ca.gov.

***Legislative files:*** In addition to the material available online, more detailed information is available in the file documents contained in the files of the author, the policy committees, and other organizations within the executive and legislative branch that prepare analyses in response to pending legislation. Typically these files can be accessed in either the State Capitol office of the organization that generated the file or at the California State Archives. To determine which organizations might have maintained files on the bill in which you are interested, you will need to get a copy of the history of the bill, found online as noted above, or in the published final histories available in many law libraries. Many file materials are commonly available since about 1970. Prior to 1970, file materials are sparse other than Governors' files, which go back to about 1943.

Files can often be very voluminous. It is often most cost-effective to physically review files if you want to avoid very large photocopy bills, and many duplicate, non-substantive or redundant documents. In addition, many offices will require that persons requesting access to files handle the photocopying.

***Law library materials:*** The California State Library is the official library for the Legislature, so it has an extensive collection of legislative materials, but many other large law libraries have significant collections of legislative materials, either in paper or microfilm or microfiche form. Final histories, legislative journals and the Chaptered Statutes are widely available. Bill copies, and some legislative-file materials may be available, as well as some legislative committee reports or floor analyses and pertinent legislative publications.

Particularly noteworthy publications include transcripts for the 1849 and 1879 Constitutional Conventions and the annotated versions of the Civil Code, Code of Civil Procedure, Penal Code and Political Code, all adopted in 1872. For nearly 50 years beginning about 1880, the Legislature published extensive appendices to the legislative journals with agency reports that sometimes discuss legislation. With very old legislation it can often be useful in developing the context for an adoption to look at media and treatise sources.

## Finding California regulatory history

***Historical overview:*** The first time a statute created a mechanism for collecting and publishing all regulatory actions by California State agencies was enacted in 1941. Prior to 1941, agencies engaged in making regulatory law (often as rules or orders), but each individual agency determined the form and extent of publication for their regulations. Modern records of what rules or orders existed prior to 1941 are spotty. After the 1941 statute the first Code of Regulations was finally published as the California Administrative Code beginning in 1945. The official name changed from the California Administrative Code to the California Code of Regulations (CCR) in the late 1980s.

A lack of information readily available about the development of regulations is a basic problem to be dealt with for all but the most recently adopted regulations. Agencies seem to repeal and re-adopt regulations often, and generally published California regulations list only the amendments since the last adoption. So finding when any particular regulatory language was adopted can require careful work using the California Administrative Register to trace the language back in time to its source.

***Online research sources:*** The Office of Administrative Law provides the CCR online with annotations at http://www.oal.ca.gov/ (link is on the left). In addition many state agencies, beginning in the late 1990s, began developing archives of documents related to each rulemaking they undertake. Use a search engine to find the particular agency's Web site, and then look for their archives. Rulemaking file archives are not high-demand items so are often buried deep in the agency's Web site and can be difficult to find.

***Library and agency materials:*** Law libraries will generally have some printed version of the actual regulation available that will provide some historical information on how the regulation developed. But for access to the weekly administrative registers where regulations have been published since 1945, which can be crucial to finding when any particular language was enacted, you may need to go to a very large county or law school library. Although the registers will allow you to determine the date particular language was enacted, they provide only the text of the changes in language and the amendment history. For older regulatory enactments (pre-1970) some information may be available at the State Archives, the California State Library, or from the agency, although it is rare to find much.

From 1970 to 1979 the amount of documentation from these sources improves, but is still spotty. However for research from this era the agencies often published summaries of the changes they proposed in the weekly notice register (called a Z register). Since 1979, agencies have been required to develop and maintain formal rulemaking files when promulgating regulations and those files are supposed to be available from the agency. However it took a couple of years for many agencies to establish protocols to retain the records, so often files that should be available for the early 1980s have been lost.

***The research process:*** Generally the first step, which is often the most difficult one, is to determine when the particular language you are focusing upon was adopted. CCR annotations can be of some help, and there are some indices available, but often you simply have to track backward in the administrative registers until you find the date the language was adopted. From there you can begin your search with the various potential sources. Finding the date for notice

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(Z-register) publications can sometimes be done by referring to the original regulatory filing file at the State Archives.

Generally the most detailed substantive materials are going to come from the files of the promulgating agency, when available. The first step is to call the particular agency legal or legislative office to find the person who handles rulemaking file archives. Occasionally the agency may copy the file for you, but more often you or a representative will have to go to the agencies' offices (usually in Sacramento or the Bay Area) to review the file. The files are sometimes very voluminous, and much of the material is redundant or not substantively useful.

### Researching federal law

Many of the definitions and basic legislative procedures discussed above for California law are broadly similar to the terminology and process used by Congress. However the nature of the documents available is significantly different. For example, while California publishes committee reports before legislative hearings for use by the legislators, Congressional committee reports are after-the-fact statements of intent.

In general the Congressional legislative process is much more voluminously documented than state legislative deliberations, and the volume of material creates the primary difficulty with performing legislative-intent research on federal statutes. The search is often a perfect example of looking for a needle in a haystack. Congress has a tendency to move concepts from bill to bill and then throw scores, or even hundreds, of different proposals into one omnibus bill and enact the whole package.

Good federal research often requires tracking language back from the omnibus bill that enacted the language through the prior proposals to the original proposal where the concepts were actually developed or discussed.

Finding and then reviewing actual bill copies for the language in which you are interested is the primary mechanism to track back in time. Once you have identified the first time the language appeared in a bill, you can look for the committee deliberations that produced the bill, or the author's statement when he introduced the bill. Keep in mind you may be going back four, six, eight, perhaps even 10 years, as concepts may be pending in Congress for many years before being finally enacted.

***Online documents:*** Large portions of research on many federal statutes enacted in the last couple decades can be found from various online sources. Perhaps the most comprehensive publicly available source is found at the Library of Congress Web site, http://thomas.loc.gov/. The materials found at this site will usually include the text and procedural histories of the bills, committee reports and Congressional Record excerpts. Hearing transcripts and other publications are not available online, but are usually available either in print or microfilm at any Federal Depository library.

Additional information on federal research, including listings of actual legislative histories available online can be found at the Washington, DC, law-librarians' site, www.llsdc.org/sourcebook.

***Library materials:*** Older federal research materials will only be found at a Federal Depository Library. Most large law libraries are Federal Depository Libraries.

***The Code of Federal Regulations:*** Research on the Code of Federal Regulations begins with the Code itself, and the annotations to the Federal Register found in the Code. The Federal Register publications that occurred during the adoption process contain substantive discussion of the thinking behind the adoption. When you locate adoption publications in the Federal Register, they often must be read carefully for references to other publication dates on the same topic. For later years the CFR does have fairly extensive indexing that can often be helpful in determining the location of pertinent provisions.

### Researching the law of other states

Few other states are similar to California in the volume of actual legislative-file materials available for compiling a legislative history. For most other states, the primary sources of legislative history are minutes of the committee deliberations. For many states, one can only go back a couple of decades, due to the relatively small size of the legislative staffs in small states. Generally the best place to start is the state's Web site, and often phone calls to the state law librarians will provide some sense of what is available.

### Researching local government ordinances

Local-government ordinances generally require a visit to the jurisdiction in question to review archival and library sources, although some information on very recent ordinances may be available online. Even in the largest jurisdictions, the research can be slow, tedious, and the amount of useful material may be limited, particularly as one moves back in time researching older provisions.

### Rules of Court and Rules of Professional Conduct

The Administrative office of the Courts generally promulgates Rules of Court and information will be found in their archives and publications. Rules of Professional Conduct are generally promulgated by the organization that handles licensing and information will be found in their archives and publications.

### Authorities regarding the use of California legislative history documents

There are hundreds, perhaps thousands of cases, addressing the use of legislative-history materials to find legislative intent. But as yet there is no single case that clearly delineates the underlying nature of a legislative-history inquiry, so the cases addressing legislative intent are often fundamentally inconsistent.

Legislative intent is a matter of law but using legislative history to determine intent is a factual inquiry. Because it is a factual inquiry, many lawyers instinctively think in terms of admissibility. But as a matter of law decided by the court, rules of evidence developed to protect juries should have no applicability. Factual inquiries into legislative intent should only need to address two issues: the

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authenticity of the information relied upon and the probative value of the information. But many decisions over the years have tended to treat the use of legislative intent documents as an admissibility issue rather than a probative-value issue. In this writer's view, the admissibility test is fundamentally erroneous, but nonetheless it is out there. (For an example of this approach, see *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2006) 136 Cal.App.4th 212, 221 [39 Cal.Rptr.3d 33].)

## Basic authorities on legislative intent

California Code of Civil Procedure section 1859 states, in pertinent part, that, "In the construction of a statute the intention of the Legislature ... is to be pursued, if possible . . ." Note that this section also goes on to say statutes should be interpreted in the same manner as instruments such as contracts or wills.

California Government Code section 9080, enacted by Chapter 928 of the Statutes of 1996, is an explicit statement that the documents generated in legislative deliberations are evidence of the intent of the Legislature. Section 9080 seems to have been largely overlooked by the legal community, as few of the decisions regarding the use of legislative-intent materials reflect an awareness of section 9080.

A leading authority for the general proposition that is appropriate to take judicial notice of legislative history documents, and a decision with significant discussion about the purpose of and authority for relying upon legislative history, is the Supreme Court decision in *California Teachers Association v. San Diego Community College District* (1981) 28 Cal.3d 692 [170 Cal.Rptr. 817].

## Submitting legislative history to the court

The most common mechanism for bringing legislative history documents to the attention of the court is through the Judicial Notice provisions contained in Evidence Code sections 450 through 458. Key provisions include:

- Evidence Code section 452: "Judicial notice may be taken of the following matters... (c) Official acts of the legislative, executive or judicial departments of the United States and of any state of the United States."
- Evidence Code section 453: "The trial Court shall take judicial notice of any matter specified in section 452 if a party requests it and: (a) Gives each adverse party sufficient notice of the request, through the pleadings or otherwise, to enable such adverse party to prepare to meet the request; and, (b) Furnishes the court with sufficient information to enable it to take judicial notice of the matter." And,
- Evidence Code section 454: "(a) In determining the propriety of taking judicial notice of a matter, or the tenor thereof: (1) Any source of pertinent information, including the advice of persons learned in the subject matter, may be consulted or used... (b) Exclusionary rules of evidence do not apply except section 352 and the rules of privilege."

A leading case citing Evidence Code section 452(c) as authority for a court to take judicial notice of legislative documents is *Post v. Prati* (1979) 90 Cal.App.3d 626, 635 [153 Cal.Rptr. 511]. The court relied upon a variety of legislative documents, including correspondence to the Governor from state agencies and individual legislators.

Although a formal request for judicial notice is probably better practice, in *Lafayette Morehouse, Inc. v. Chronicle Publishing Co.* (1995) 39 Cal.App.4th 1379, 1383 [46 Cal.Rptr.2d 542], the court accepted and relied upon legislative documents simply appended to a brief, apparently with no formal request for judicial notice. The court did extend to each party an opportunity to submit additional briefs, presumably to allow objections to the offered documents. More recently in *Canister v. Emergency Ambulance Service* (2008) 160 Cal.App.4th 388, 401 [72 Cal.Rptr.3d 792], neither party asked the court to take notice of the legislative history of a particular statute. The court, citing statutes from various codes, and in particular Evidence Code section 459(a), stated that courts can take such notice on their own motion and that the intent of the Legislature is to be pursued in statutory construction whenever possible.

## Arguing the probative value of specific documents

There are many types of documents that can be relevant to interpreting a particular statute, but not all documents are of equal persuasive value. For discussion purposes, although case law has not generally categorized documents in this manner, this article will group similar types of documents in categories.

***Primary Sources:*** This category could include documents that are formally developed during the legislative process, pursuant to legislative procedural rules and procedures. Primary documents could include the actual legislative bill, in all its amended versions, Legislative Counsel's digests, committee analyses prepared for committee hearings on the bill, floor analyses given to the legislators when the bill is up for vote on the floor of the Assembly or Senate, fiscal analyses prepared by the Legislative Analysts' Office and various other official legislative publications.

Cases have often treated primary documents as presumptively probative due to their formal status within the legislative process. (See for example, *Wiley v. So. Pacific Trans. Co.* (1990) 220 Cal.App.3d 177, 192 [269 Cal.Rptr. 240] [relying on amended versions of a bill]; *Victoria Groves Five v. Chaffey Joint Union School District* (1990) 225 Cal.App.3d 1548 [276 Cal.Rptr. 14] and *Quelimane Co. v. Steward Title Guar. Co.* (1998) 19 Cal.4th 26 [77 Cal.Rptr.2d 709], and *California Teachers' Ass'n v. Governing Bd. of Hilmar Unified School Dist.* (2002) 95 Cal.App.4th 183, 192 [115 Cal.Rptr.2d 323] [relying upon a Legislative Counsel digest]; *Hutnick v. Fidelity and Guaranty Co.* (1988) 47 Cal.3d 456 [253 Cal.Rptr. 236] [relying upon an analysis of the Assembly Committee on Judiciary]; and *Youngblood v. Gates* (1988) 200 Cal.App.3d 1302 [246 Cal.Rptr. 775] [relying upon floor analyses].) Primary sources could also include documents developed for submission to the Legislature by other branches of State government. For example, recommendations from the

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California Law Revision Commission, a body created by the Legislature for the specific purpose of reviewing the law and making formal recommendations to the Legislature.

In other contexts, for example seeking the legislative intent of a court rule, primary documents might be reports from advisory committees of the Judicial Council that make recommendations for legislation (see *People v. Benhoor* (2009) 177 Cal.App.4th 1308 [99 Cal.Rptr.3d 827] [regarding a report of a traffic advisory committee to judicial council] and *Vidrio v Hernandez* (2009) 172 Cal.App.4th 1443 [92 Cal.Rptr.3d 178] [relying upon a Civil and Small-claims Advisory Committee to Judicial Council].)

***Secondary Sources:*** Documents not developed as a part of the formal legislative process, but developed in response to the legislation and contained in the files of the legislative or executive branch relating to the legislation, can be viewed as secondary sources. With primary sources, the statements in the documents are often presumptively reflective of legislative intent. Secondary-source statements are reflective of the discussion that was occurring during the legislative deliberations, from which intent can be collectively inferred when considered with the entire collection of materials available on the legislation.

Secondary sources might include items such as Enrolled Bill Reports or other documents from the Governor's file, documents from the legislative committee files, the files of the author of the bill, the files of organizations within the Legislature that prepare third-reading analyses or the files of state agencies. While seldom entitled to the same level of automatic presumptive weight as primary documents, individual secondary-source documents can be very probative in particular circumstances, as circumstantial evidence of intent. (See, e.g., *People v. Superior Court (Memorial Medical Center)* (1991) 234 Cal.App.3d 363 [286 Cal.Rtpr. 478] [relying upon documents from a legislative committee file]; *In re York* (1995) 9 Cal.4th 1133 [40 Cal.Rtpr.2d 308] [relying on a letter from the Attorney General found in many legislative bill files,]; and *Kern v. County of Imperial* (1990) 226 Cal.App.3d 391 [276 Cal.Rptr. 524], relying on a statement by the sponsor of the legislation].) Additionally, sponsor statements have been found to be helpful sources of legislative intent, see *Quarterman v. Kefauver* (1997) 55 Cal.App.4th 1366, 1373 [64 Cal.Rptr.2d 741].)

One common secondary source, statements about the intent of legislation by the author of the bill, has been subject to relatively extensive discussion in appellate decisions. Authors' statements are often found in many legislative files, and in particular in the author's bill file. A series of cases from early in this century found author statements not entitled to consideration. These cases were typically addressing situations where the author of a bill, after the bill was passed, appeared in litigation to testify as to the legislative intent in enacting the bill or made other statements about the legislative intent outside legislative deliberations. These older cases often refused to consider these statements as reflective of the intent of the entire Legislature. A line of lower court cases has built upon the evidentiary approach of the rule in the older cases, taking a restrictive view that many legislative documents must always be disregarded. (See, e.g., *People v. Patterson* (1999) 72 Cal.App.4th 438, 443 [84 Cal.Rptr.2d 870].) The logical failing in these cases, in this author's view, is that they test documents by whether the document can stand alone as unimpeachable direct evidence of intent, and then accept or discard the documents accordingly. Thus, they discard the circumstantial value of documents that provide background and context to the legislative deliberations. One basic purpose of the judicial notice provisions of the Evidence Code is to provide a mechanism for courts to develop background and context.

The evolving modern understanding of the law seems to be represented by cases, in some cases decisions of the Supreme Court, recognizing that author statements made during the legislative process are probative. In some cases this finding is supported by explicit discussion, more broadly support can be found in the sheer number of cases relying upon a statement by the author. (See, e.g., *California Teachers Association v. San Diego Community College District* (1981) 28 Cal.3d 692, 699 [170 Cal.Rtpr. 817].)

The guidelines set forth in this 1981 case are much more restrictive than the rule one would distill from the many subsequent appellate decisions that have relied on author's statements. For an example see the Supreme Court decision of the following year, *Commodore Home Systems, Inc. v. Superior Court* (1982) 32 Cal.3d 211, 219-220 [185 Cal.Rtpr. 270]. For a case exemplifying what seems to be the evolving mechanism to harmonize the cases, see *Estate of Sanders* (1992) 2 Cal.App.4th, 462, 474, n. 15 [3 Cal.Rtpr.2d 536], which states that author statements "...that cast light on the history of the measure and the arguments before the Legislature when it considered the matter – as opposed to the personal beliefs of the legislator (which may not reflect the collective view of the enacting legislative body) – are indicia of legislative intent."

Bill analyses by executive branch agencies do not fit easily into this primary/secondary source categorization. They are not a primary document in that they usually have no official status in legislative procedure. However, some executive branch documents, particularly when an agency is directly involved as a sponsor or opponent of the bill, should be viewed as more probative than other secondary documents. The official nature of agency analyses gives additional indicia of reliability beyond the fact that they appear in legislative or executive bill files. As seen in recent case law, "evolution of legislation from its introduction to its final form may provide some insight into underlying legislative intent; statements by sponsor of legislation are instructive, as are legislative committee reports on proposed legislation" (*Quarterman v. Kefauver* (1977) 55 Cal.App.4th 1366, 1373 [64 Cal.Rptr.2d 741].)

Opinions by Legislative Counsel are also difficult to classify as primary or sec-

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ondary. Legislative Counsel opinions are opinions addressing specific interpretation questions about particular legislation. They often are found in legislative bill files. The opinions are prepared in response to a formal request by a legislator. Legislative Counsel views their opinions as subject to the attorney-client privilege. Thus they are ordinarily provided only to the requesting legislator, who may or may not disseminate the opinion. Despite the inability to be certain if anyone actually saw the opinion, other than the legislator who requested the opinion, courts have viewed Legislative Counsel opinions as highly probative in assessing legislative intent, presumably because of the Legislative Counsel's key role in drafting legislation, and their presumed impartiality. (See *North Hollywood Project Area Committee v. City of Los Angeles* (1998) 61 Cal.App.4th 719, 723 [71 Cal.Rptr.2d 675].)

The third category of documents relating to legislative history is documents from outside the legislative process. Examples could include files from lobbying organizations, media articles about the legislation, trade publication discussion of the legislation, Law Review articles, treatises, or other materials providing background on the law. These types of documents are typically used to confirm legislative intent suggested by other documents, or to place legislation in historical context.

## Legislative intent as a cost

Costs expended to obtain legislative history documentation from a commercial service have been found to qualify as costs under Code of Civil Procedure section 1033.5. (*Van DeKamp v. Gumbiner* (1990) 221 Cal.App.3d 1260, 1292 [270 Cal.Rptr.907].)

## The effective date of statutes

The code sections governing the Legislature and legislation are primarily in the Government Code in the 8000 to 11,000 sequence of sections. The two sections that become pertinent to legislative intent most frequently are 9600, which governs the date statutes become effective, and 9605, which governs the effect of two or more pieces of legislation affecting one code section in one legislative session.

Provisions in the Constitution also govern the effective date of statutes, primarily in Article IV, section 8. Some knowledgeable practitioners find Government Code Section 9600 not altogether in harmony with the Constitution. When questions arise about the effective date of statutes, it is wise to go to the Constitution first. See also the discussion on effective dates in the preliminary pages of the annotated codes.

## Citing California legislative documents

The Supreme Court citation booklet provides the form for a few legislative documents, such as Chaptered Statutes, Bills and other basic documents. But many of the most useful legislative documents are not specifically discussed. The Supreme Court also provides general citation guidelines for documents not specifically covered. As the guidelines apply to legislative documents your citation usually should include all the information necessary for the court to determine the source, subject and nature of the document.

## Federal legislative history authorities

A Federal Court exercising diversity jurisdiction and seeking to determine the intent of a State legislative enactment will look to the law of that state to determine how the State statute is to be interpreted, as the federal court is bound to render the same decision as would a state court. (See, generally, 28 U.S.C § 1652, *Erie RR Co. v. Tompkins* (1938) 304 U.S. 64 [58 S.Ct. 817], and *Guaranty Trust Co. v. York* (1945) 326 U.S. 99 [65 S.Ct. 1464]. Generally state procedural rules will be followed as long as there is no direct conflict with the federal rules. (*Hanna v. Plumer* (1965) 380 U.S. 460 [85 S.Ct. 1136].) If the state and federal law do not directly supercede one another, the courts should try to follow both. (See *Gasperini v. Center for Humanities, Inc.* 518 U.S. 415 [116 S.Ct. 2211].)

If the underlying law is federal law under Federal Rule of Evidence 201, a federal court may take judicial notice of adjudicative facts. (See generally *Sutherland on Statutory Construction*, Section 48.04) A number of courts have relied on rule 201(b) to judicially notice documents relating to local, state and federal legislative and administrative enactments. (See.e.g., *Carey v. Population Services, Int'l* (1977) 431 U.S. 678 [97 S.Ct. 2010].). Rule 201(b)(2) allows judicial notice of facts that are "capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned." Under this rule, judicial notice of the legislative history of a statute may be taken. (See *Levy v. Scranton* (N.D. N.Y. 1991) 780 F.Supp. 897, 900).

## Other jurisdictions

Detailed general discussion of the importance and use of legislative intent in state and federal courts is available in a number of treatises and law review articles widely available in law libraries and/or online. Good sources to start a search for more detailed information on the applicable law in an individual jurisdiction include AM JUR, Sutherland on Statutory Construction, and ALR. The discussion in AM JUR 2d is in Volume 73, the annotation regarding "Statutes," beginning at Section 145. A pertinent annotation in ALR is the annotation at 70 ALR 5.

For downloadable pdfs covering and expanding on the topics covered by this article, visit http://najfiles.net/web/reference.php.

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