



ENGROSSMENT*

Successful Fall Meetings and New Research Tools!

LEGISLATIVE INTENT SERVICE, INC. was represented by Tom Stallard, CEO and co-founder of our firm, at the **California Academy of Appellate Lawyers Panel** on October 25, 2008 where he participated in a panel addressing the October/2005 Third District Court of Appeal decision in *Kaufman & Broad v. Performance Plastering*. Tom presented our firm's review of post-*Kaufman* decisions (approx. 23 cases) as well as other cases using legislative history as an extrinsic aide to statutory construction post- 2005. Then, on November 15, 2008, Tom presented at the **2008 Appellate Judges Education Institute Summit**, covering the firm's survey of a sampling of 15 states on the plain meaning rule and use of legislative history materials in statutory construction. He summarized the continuum of approaches that state courts take in construing legislative intent in other states, such as Arizona, Connecticut, Delaware, Georgia, Kansas, Michigan, Nevada, New York, Oregon, Texas, Utah, Washington, and Wisconsin.

For the fifth year, our attorneys, Dorothy H. Thomson and Filomena Yeroshek, were part of a panel for a State Bar class entitled "Nuts and Bolts of Using Legislative Intent," at the **State Bar's Annual Meeting** in late September. Along with Bob Olson of Greines, Martin, Stein & Richland, the panel offered strategies for advocating based on the use of legislative history to determine legislative intent of a statute.

We have published our firm's fourth **Compendium of 2008 Notable California Legislation** and Maria Sanders, Attorney, presented a few of the most notable measures at the November monthly lunch meeting for the Yolo County Bar Association. This Compendium is available free at: <http://www.legintent.com/legislation/legislation2008.pdf> If any of the subject matters covered in this **Compendium** is of interest to you, call us for our outlines of research.

2008 Points and Authorities

LEGISLATIVE INTENT SERVICE, INC. publishes annually an update to its seminal works a) *Legislative History and Intent as Extrinsic Aides to Statutory Construction*, Unabridged; and b) *Authority and Procedure for Judicial Consideration of Legislative History and Intent*, Unabridged. Taken together with the annual supplements as of 2008, these Points and Authorities will set forth more than 900 California cases utilizing legislative history documents as extrinsic aides to statutory construction.

You will find our points and authorities available free and published at:
<http://www.legintent.com/pointsauthorities.php>

Legislative History and Intent as Extrinsic Aides to Statutory Construction presents cases organized by the types of legislative history documents generated by the California Legislature. For example, if you care to see the Court cases citing to a Legislative Counsel's Digest, you would turn to that type of document in these points and authorities.

Authority and Procedure for Judicial Consideration of Legislative History and Intent addresses the issues to be considered when proffering legislative history research to a court. We cover subjects such as the plain meaning rule and the need for ambiguity, whether a motion for judicial notice is needed, authentication, and when to submit a complete legislative history or selected documents.

Looking for Old Laws?

If you need to see what a current section looked like in 1931, look no further -- Call **LEGISLATIVE INTENT SERVICE, INC.!** Our collection of superseded codes and statutes enables us to provide excellent copies of older law, be it regulations or statutes, state and federal, constitutional provisions, rules of court, and local laws.

Often, the need for old law stems from an effort to trace the historical development of the text of a current regulation or statute. **LEGISLATIVE INTENT SERVICE, INC.** can meet this research need also!

Tracing your language in a statute or regulation is a useful strategy that allows you to identify the relevant history and it is economical because you will pay only for the legislative history or rulemaking file that is substantive to your issue.

Tracing statutory history becomes important when there are numerous bills affecting your section. You will want to avoid having to review all of these bills' legislative history documents and materials if they are not relevant to your specific research focus.

You begin by identifying your language of interest. By looking at the annotations in West's and Deerings, you can begin the process of tracing your language by looking at each of the chaptered laws affecting your statute, recommended in chronological order. Each chapter represents a separate legislative measure, or "bill." When you observe a change of importance to your language in one of those chapters, then that bill is very likely the one to research. The Legislature will not discuss earlier enacted changes in later bills.

In a number of cases, we have found that the annotated codebooks published for West's and Deerings lack complete annotations. This becomes obvious when you observe that the very first chapter noted in the annotations states it is "repealing" or "re-enacting" your statute. We then need to go to the superseded codebooks to continue hunting backwards in time for the earliest derivations of your language. At **LEGISLATIVE INTENT SERVICE, INC.**, we have a good collection of superseded codebooks, going back to the 1800's. They are valuable tools for locating undocumented or improperly annotated histories.

We charge a fee to trace language, which works out to be a savings for our clients because by isolating only the most relevant legislation, they save money by ordering only relevant legislation and time because they are reviewing only those materials related to their research focus.

Tracing regulations to determine which rulemaking file you wish to order is another valuable service we provide to our clients. When reviewing the

OAL website maintained by Barclays, we have learned that the published citations may produce one of four possible histories: 1) that the history was added and amended; 2) that there is no history cited; 3) that the history starts with an "add and repeal" of prior regulations; or 4) that the history starts with an amendment.

When the regulation history begins with #2), #3) or #4) above, this means to us that the regulation needs to be traced to its original adoption and possible historical derivation from the early California Administrative Code. We do this by manually accessing the registers noted in the citation, or seek information from superseded presentations of the administrative code or code of regulations. We have learned that access to the complete collection of California Administrative registers, from 1945 to current, is available primarily on microfilm at the California State Law Library at the Capitol. There are different versions of administrative or regulatory language from different time periods: 1) pre-1945, the rules and orders are found under individual agency records in the California State Library; 2) 1945 to 1988, look for the California Administrative Register; 3) 1989 to the present, you will find the regulations in the California Code of Regulations. Once you have reviewed all of the registers and rules related to your regulation, you can then determine which rulemaking file to order.

We charge separate fees for tracing regulations (what we call "Part 1") and for providing rulemaking files (what we call "Part 2").

Free MCLE

We offer a State Bar approved 1.0 free **self-study exam** on legislative intent. To access this exam, go to: <http://www.legintent.com/onlinemcle.php>

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