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MINUTES OF MEETING  
CALIFORNIA LAW REVISION COMMISSION  
FEBRUARY 10-11, 2000  
SACRAMENTO

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A meeting of the California Law Revision Commission was held in Sacramento on February 10-11, 2000.

**Commission:**

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

*Absent:* Bion M. Gregory, Legislative Counsel

**Staff:** Nathaniel Sterling, Executive Secretary  
Stan Ulrich, Assistant Executive Secretary  
Barbara S. Gaal, Staff Counsel  
Brian P. Hebert, Staff Counsel

**Consultants:** Gordon Hunt, Mechanic's Lien Law (Feb. 11)  
Gideon Kanner, Eminent Domain Law & Inverse  
Condemnation (Feb. 11)

**Other Persons:**

Sam Abdulaziz, North Hollywood (Feb. 11)  
Juan Acosta, California Building Industry Association, Sacramento (Feb. 11)  
Yolanda Benson, Mattos & Associates, Sacramento (Feb. 11)  
Eddie Bernacchi, National Electrical Contractors Association, Sacramento (Feb. 11)  
Todd Bloomstine, Assemblyman Margett's Office, Arcadia (Feb. 11)  
Herb Bolz, Office of Administrative Law, Sacramento (Feb. 10)  
Brian Branine, State Board of Equalization, Sacramento (Feb. 10)  
Terra Callonea, Assemblyman Margett's Office, Sacramento (Feb. 11)  
Eric Carlson, Bet Tzedek Legal Services, Los Angeles (Feb. 10)  
Thomas Chapman, Assemblyman Margett's Office, Arcadia (Feb. 11)  
David Collins, Gordon & Rees, San Francisco (Feb. 11)  
Richard Desmond, Desmond, Miller & Desmond, Sacramento (Feb. 11)  
Theresa Drought, California Coalition for Compassionate Care, Oakland (Feb. 10)  
Maxine Ferguson, Caltrans, Sacramento (Feb. 11)  
Ellen Gallagher, Contractors License Board, Sacramento (Feb. 11)  
Charles Goodman, Sacramento (Feb. 10)  
Jan Hansen, Lumber Association of California & Nevada, Sacramento (Feb. 11)  
Keith Honda, Assemblyman Honda's Office, San Jose (Feb. 11)

Eric R. Krebs, California Medical Association, San Francisco (Feb. 10)  
 Deborah Mattos, Mattos & Associates, Sacramento (Feb. 11)  
 Michael Monagan, California Association of Sheet Metal and Air Conditioning  
 Contractors National Association, Sacramento (Feb. 11)  
 Michael R. Nave, San Leandro (Feb. 11)  
 Amber Pearce, Department of Finance, Sacramento (Feb. 10)  
 Matt Petersen, Mead Clark Lumber Company, Santa Rosa (Feb. 11)  
 Dan Pone, Assembly Judiciary Committee, Sacramento (Feb. 10)  
 Eileen Reynolds, California Association of Realtors, Sacramento (Feb. 10)  
 Daniel L. Siegel, Attorney General's Office, Sacramento (Feb. 11)  
 Michael Siegel, California Medical Association, San Mateo (Feb. 10)  
 Donald R. Travers, State Bar Estate Planning, Trust and Probate Law Section,  
 Paradise (Feb. 10)  
 Philip M. Vermeulen, contractors associations, Sacramento (Feb. 11)  
 Sheron Violini, Assemblyman Ackerman's Office, Sacramento (Feb. 11)  
 Stan Wieg, California Association of Realtors, Sacramento (Feb. 10)  
 Richard B. Williams, Caltrans, Sacramento (Feb. 11)  
 Nancy T. Yamada, California State Employees Association and Association of  
 California State Supervisors, Sacramento (Feb. 10)

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1 MINUTES OF NOVEMBER 30, 1999, MEETING

2 The Commission approved the Minutes of the November 30, 1999,  
3 Commission meeting as submitted by the staff, subject to following corrections:

4 On page 4, line 7, the word “act” was inserted following the word “map”.

5 On page 5, line 5, the word “The” was inserted preceding the word  
6 “Commission”.

7 ADMINISTRATIVE MATTERS

8 **Handbook of Practices and Procedures**

9 The Commission considered Memorandum 2000-1, which presented a revised  
10 and updated version of the main text of the Commission’s Handbook of Practices  
11 and Procedures. The staff will conform the statement of customary meeting times  
12 in paragraph 2.1.2 to conform to the current practice. The Commission approved  
13 the revised version of the Handbook.

14 **Conflict of Interest Disclosure and Disqualification Matters**

15 The Commission considered Memorandum 2000-2 discussing alternative  
16 approaches to revising the Commission’s Conflict of Interest Code and recent  
17 changes to the regulations governing disqualification from governmental  
18 decisionmaking under the Political Reform Act. The Commission instructed the  
19 staff to determine the extent to which clients of a spouse must be disclosed as  
20 part of an official’s statement of economic interests. A decision as to how to  
21 amend the Conflict of Interest Code will be made after the staff has reported its  
22 findings.

23 **2000 Strategic Plan**

24 The Commission reviewed Memorandum 2000-16 and the attached draft of  
25 the Commission’s 2000 Strategic Plan. The Commission noted that the proposed  
26 schedule for the Common Interest Development Law project was incomplete in  
27 the draft, and should be completed.

28 **New Topics**

29 The Commission considered Memorandum 2000-17, relating to proposed  
30 studies of the Subdivision Map Act and the Mitigation Fee Act. The Commission  
31 determined to request legislative authority to conduct these studies. The request  
32 should be made a part of the Commission’s general resolution of authority at the

1 2001 legislative session. Meanwhile, the staff should begin to collect relevant  
2 material on these matters so that it is in a position to present the material for  
3 Commission consideration if the studies are approved by the Legislature.

#### 4 **Meeting Schedule**

5 The Commission considered Memorandum 2000-18, relating to the  
6 Commission's meeting schedule. The Commission adopted the following revised  
7 meeting schedule for the remainder of 2000.

8	<b>March 2000</b>	<b>No Meeting</b>
9	<b>April 2000</b>	<b>Sacramento</b>
10	Apr. 13 (Thur.)	9:00 am – 5:00 pm
11	<b>May 2000</b>	<b>No Meeting</b>
12	<b>June 2000</b>	<b>Sacramento</b>
13	June 8 (Thur.)	10:00 am – 5:00 pm
14	June 9 (Fri.)	9:00 am – 4:00 pm
15	<b>July 2000</b>	<b>San Diego</b>
16	July 20 (Thur.)	10:00 am – 5:00 pm
17	July 21 (Fri.)	9:00 am – 4:00 pm
18	<b>August 2000</b>	<b>No Meeting</b>
19	<b>September 2000</b>	<b>No Meeting</b>
20	<b>October 2000</b>	<b>San Francisco</b>
21	Oct. 5 (Thur.)	10:00 am – 5:00 pm
22	Oct. 6 (Fri.)	9:00 am – 4:00 pm
23	<b>November/December 2000</b>	<b>Los Angeles</b>
24	Nov. 30 (Thur.)	10:00 am – 5:00 pm
25	Dec. 1 (Fri.)	9:00 am – 4:00 pm

#### 26 **Report of Executive Secretary**

27 The Executive Secretary reported on the following matters.

28 **Staff Attorney.** We have hired a new staff attorney, Michael Edson, who is  
29 currently clerking for a Ninth Circuit judge. He will start in September and will  
30 be based in our Sacramento office.

31 **Consultants on Criminal Sentencing Statute Reorganization.** We have  
32 retained Judge David Wesley of the Los Angeles County Superior Court, Deputy  
33 District Attorney David Ross of the Los Angeles County District Attorney's

1 Office, and defense attorney Mark Overland of Santa Monica, to jointly prepare a  
2 proposed outline or suggested reorganization of the California criminal  
3 sentencing statutes. The proposed outline or suggested reorganization is due  
4 June 1, 2000.

5 **Consultants on Common Interest Development Law.** We have retained  
6 Professors Susan French of UCLA Law School and Roger Bernhardt of Golden  
7 Gate University Law School to jointly prepare a report on the scope of the  
8 Common Interest Development Law Project. Their report is due August 1, 2000.

9 **Consultant on Evidence Code Review.** We are pursuing with Professor  
10 Miguel Mendez of Stanford Law School the possibility of his preparing a study  
11 for the Commission comparing the California Evidence Code with the Revised  
12 Uniform Evidence Code and the Federal Rules of Evidence.

13 **Mechanic's Liens.** See the entry in these Minutes under Study H-820  
14 (mechanic's liens).

15 **2000 LEGISLATIVE PROGRAM**

16 The Commission considered Memorandum 2000-19 and its First Supplement,  
17 relating to the Commission's 2000 legislative program. This was an information  
18 item, and no action was taken with the exception of the matter reported in these  
19 Minutes under Study K-410 (settlement negotiations).

20 **STUDY EM-455 – LITIGATION EXPENSES IN EMINENT DOMAIN**

21 The Commission considered Memorandum 2000-11 and its First, Second, and  
22 Third Supplements, relating to litigation expenses in eminent domain  
23 proceedings. The Commission discussed the policy and the politics of the  
24 proposal to substitute a "closer to the award" standard for the existing  
25 "reasonableness" standard in determining when the property owner should be  
26 entitled to an award of litigation expenses. The Commission decided not to  
27 circulate the proposal for comment as a tentative recommendation.

28 **STUDY EM-458 – EARLY DISCLOSURE OF VALUATION DATA AND**  
29 **RESOLUTION OF ISSUES IN EMINENT DOMAIN**

30 The Commission considered Memorandum 2000-12 and its First, Second, and  
31 Third Supplements, relating to early disclosure of valuation data and resolution  
32 of issues in eminent domain proceedings. The Commission decided to devote  
33 further consideration to these concepts, with the objective of developing a

1 package of consensus improvements in the law that will facilitate resolution of  
2 eminent domain cases without the need for trial. Specific ideas to be developed  
3 include requiring an exchange of valuation data 90 days before trial coupled with  
4 a process enabling early resolution of legal disputes and some form of  
5 encouragement of alternative dispute resolution. More detailed disclosure of  
6 prelitigation appraisal information should also be considered for inclusion in this  
7 package, along with a requirement that positions on loss of goodwill be disclosed  
8 (pursuant to an earlier Commission recommendation).

9           **STUDY F-911 – ESTATE PLANNING DURING DISSOLUTION OF MARRIAGE**

10           The Commission considered Memorandum 99-84 and its First Supplement,  
11 presenting a draft tentative recommendation relating to *Changes in Estate Plan*  
12 *During Dissolution of Marriage*. The Commission approved the draft for  
13 circulation as a tentative recommendation, with the following changes:

14           (1) The preliminary part of the tentative recommendation and the Comments  
15 to the proposed legislation should be revised to recognize the recent case, *Estate*  
16 *of Mitchell*, 91 Cal. Rptr. 2d 192 (1999).

17           (2) The list of common nonprobate transfers used in the proposed legislation  
18 should be replaced with the term “nonprobate transfer,” which should be  
19 defined as follows:

20                   “Nonprobate transfer” means an instrument, other than a will,  
21 that makes a transfer of property on death, including a revocable  
22 trust, pay-on-death account in a financial institution, Totten trust,  
23 transfer-on-death registration of personal property, or other  
24 instrument of a type described in Section 5000 of the Probate Code.  
25                   “Nonprobate transfer” does not include a provision for the transfer  
26 of property on death in an insurance policy or other coverage held  
27 for the benefit of the parties and their child or children for whom  
28 support may be ordered.

29           **STUDY H-455 – LITIGATION EXPENSES IN EMINENT DOMAIN**

30           See entry in these Minutes under Study Em-455.

31           **STUDY H-820 – MECHANIC’S LIENS**

32           The Commission considered Memorandum 2000-9 and its First Supplement  
33 concerning the study of California mechanic’s lien law. The Commission received  
34 the second half of the report prepared by Mr. Gordon Hunt (attached to the

1 memorandum) and heard the comments of interested persons relating to the  
2 scope and direction of the study. Keith Honda, Assemblyman Mike Honda's  
3 chief of staff, presented an analysis of issues (see copy attached to the Second  
4 Supplement to Memorandum 2000-9), and the Commission received a  
5 submission from Ellen Gallagher, on behalf of the Contractors State License  
6 Board (also attached to the Second Supplement).

7 The discussion centered on the desirability of getting empirical evidence on  
8 the double-payment problem and other potential abuses, the constitutionality of  
9 limiting the mechanic's lien right by statute, and alternative remedies such as  
10 bonding, recovery funds, and joint control agencies (escrow). The Commission  
11 requested a review of statutory approaches in other states.

12 The Commission approved the staff's request for authority to make  
13 consultant contracts with James Acret and Professor Justin Sweet.

14 STUDY H-911 – ESTATE PLANNING DURING DISSOLUTION OF MARRIAGE

15 See entry in these Minutes under Study F-911.

16 STUDY J-111 – STATUTE OF LIMITATIONS FOR LEGAL MALPRACTICE

17 The Commission considered Memorandum 2000-14, concerning the statute of  
18 limitations for legal malpractice. As recommended in the memorandum, the  
19 Commission directed the staff to prepare a draft revising Code of Civil Procedure  
20 Section 340.6 to expressly incorporate equitable tolling. The staff should attempt  
21 to assess the likelihood that an attorney notified of a potential malpractice claim  
22 would refuse to enter into a tolling agreement. The staff should also consider  
23 tolling the limitations period during an ongoing deal, not just during ongoing  
24 litigation.

25 The Supreme Court's recent decision in *Samuels v. Mix*, 2 Cal. 4th 1, 989 P.2d  
26 701, 91 Cal. Rptr. 2d 273 (1999), addresses a different issue: allocation of the  
27 burden of proving when the client discovered, or through the use of reasonable  
28 diligence should have discovered, the facts constituting the alleged malpractice.  
29 The staff should review and analyze this decision for the Commission.

1                                   STUDY J-901 – AWARD OF COSTS AND CONTRACTUAL  
2                                   ATTORNEY’S FEES TO PREVAILING PARTY

3           The Commission considered Memorandum 2000-13, concerning costs and  
4 contractual attorney’s fees. The Commission directed the staff to prepare a new  
5 draft along the following lines:

6   **Determination of prevailing party**

7           Proposed Code of Civil Procedure Section 1032.5 should be revised as  
8 follows:

- 9           • The presumptions for determining the prevailing party (proposed  
10 Section 1032.5(b)(1)-(b)(6) in the draft attached to Memorandum  
11 2000-13) should be stated first, then the general standard for  
12 determining the prevailing party (proposed Section 1032.5(a) in the  
13 draft attached to Memorandum 2000-13).
- 14           • In claiming costs and fees, the claimant should be required to  
15 specify the basis on which it claims to be the prevailing party (e.g.,  
16 a particular presumption applies). The burden then shifts to the  
17 other party (the party from whom costs and fees are sought) to file  
18 a motion to tax costs, challenging the assertion that the claimant is  
19 the prevailing party.
- 20           • In ruling on the motion to tax, the court is to apply the general  
21 standard for determining the prevailing party (proposed Section  
22 1032.5(a) in the draft attached to Memorandum 2000-13).
- 23           • The staff should consider whether to include any requirements  
24 regarding the content of the motion to tax costs.
- 25           • Proposed Section 1032.5(b)(4) should be revised along the following  
26 lines: “In a multi-party action where the court finds that a  
27 particular defendant is not liable to a particular plaintiff, that  
28 defendant is the prevailing party as to that plaintiff.”
- 29           • Another presumption should be added to the list: In a bench trial,  
30 where the court’s decision specifies who prevailed, that party is the  
31 prevailing party for purposes of awarding costs and attorney’s fees.
- 32           • The statute should expressly authorize the court to assess the  
33 reasonableness of the fees charged and adjust the award  
34 accordingly.
- 35           • The statute should address what happens where a contract includes  
36 a definition of prevailing party.

1 **Reciprocity**

2 The reciprocity requirement of Civil Code Section 1717 should be extended to  
3 apply where (1) a unilateral attorney's fee clause covers nonstatutory litigation  
4 expenses and (2) where a unilateral attorney's fee clause covers attorney's fees  
5 for noncontract claims.

6 **Nonstatutory Litigation Expenses**

7 The draft should expressly permit parties to contractually agree to shift  
8 reasonable nonstatutory litigation expenses to the loser. The draft should also  
9 allow a party to recover nonstatutory litigation expenses in a costs award, rather  
10 than having to plead and prove those expenses at trial. The same rules for  
11 determining the prevailing party for purposes of awarding contractual attorney's  
12 fees should apply for purposes of awarding nonstatutory litigation expenses. The  
13 statute should not attempt to specify particular language ("magic language") for  
14 covering nonstatutory litigation expenses in an attorney's fee clause. Means of  
15 including such expenses should be discussed in a Comment.

16 **STUDY J-1302 – AUTHORITY TO APPOINT A RECEIVER**

17 The Commission considered Memorandum 2000-15, concerning the draft  
18 tentative recommendation on *Authority to Appoint a Receiver*. The Commission  
19 approved the draft as a final recommendation, for printing and submission to the  
20 Legislature.

21 **STUDY J-1309 – EXPIRED PILOT PROJECTS**

22 The Commission considered Memorandum 2000-3, reporting on the status of  
23 the staff's efforts to identify obsolete provisions relating to expired pilot projects  
24 that should be repealed. No Commission action was required or taken.

25 **STUDY J-1320 – TRIAL COURT UNIFICATION: REVIEW OF CIVIL PROCEDURES**

26 The Commission considered Memorandum 2000-8, concerning its joint study  
27 with the Judicial Council. No Commission action was required or taken.

28 **STUDY K-410 – SETTLEMENT NEGOTIATIONS**

29 In connection with the Legislative Program, the Commission considered the  
30 First Supplement to Memorandum 2000-19. The Commission revised the  
31 proposed amendment of Government Code Section 11415.60 in SB 1370 (Ortiz) to  
32 read as follows:

1           11415.60. (a) An agency may formulate and issue a decision by  
2 settlement, pursuant to an agreement of the parties, without  
3 conducting an adjudicative proceeding. Subject to subdivision (c),  
4 the settlement may be on any terms the parties determine are  
5 appropriate. ~~Notwithstanding any other provision of law, no~~  
6 ~~evidence of an offer of compromise or settlement made in~~  
7 ~~settlement negotiations is admissible in an adjudicative proceeding~~  
8 ~~or civil action, whether as affirmative evidence, by way of~~  
9 ~~impeachment, or for any other purpose, and no evidence of~~  
10 ~~conduct or statements made in settlement negotiations is~~  
11 ~~admissible to prove liability for any loss or damage except to the~~  
12 ~~extent provided in Section 1152 of the Evidence Code. Nothing in~~  
13 ~~this subdivision makes inadmissible any public document created~~  
14 ~~by a public agency.~~

15           ....

16           (d) Sections 1152 and 1154 of, and Chapter 3 (commencing with  
17 Section 1130) of Division 9 of, the Evidence Code apply to  
18 settlement negotiations pursuant to this section. Nothing in this  
19 subdivision makes inadmissible any public document created by a  
20 public agency.

21           STUDY L-911 – ESTATE PLANNING DURING DISSOLUTION OF MARRIAGE

22           See entry in these Minutes under Study F-911.

23           STUDY L-3059 – REVOCABLE TRUST ACCOUNTING

24           The Commission considered Memorandum 2000-6 concerning comments  
25 received on the tentative recommendation on *Revocable Trust Accounting* (October  
26 1999). The Commission decided not to make a final recommendation at this time  
27 on the limited issues addressed by the tentative recommendation, which focused  
28 on correcting the statutory interpretation in *Evangelho v. Presoto*, 67 Cal. App. 4th  
29 615, 79 Cal. Rptr. 2d 146 (1998). The problems addressed in the tentative  
30 recommendation should be combined with the broader study of rights and  
31 duties under revocable trusts (see entry in these Minutes under Study L-3060 ).

32           STUDY L-3060 – DUTIES WHERE SETTLOR OF REVOCABLE TRUST IS INCOMPETENT

33           The Commission considered Memorandum 2000-7 concerning rights and  
34 duties under a revocable trust where the settlor is incapacitated. The Commission  
35 approved the staff recommendation that we continue to work with the State Bar  
36 Estate Planning, Trust and Probate Law Section Executive Committee and other  
37 interested persons to address the emerging issues involving revocable trusts.

1 This study will include matters considered earlier in Study L-3059 (see above).  
2 The goal will be to develop a recommendation in time for the 2001 legislative  
3 session.

4           STUDY L-4003 – FAMILY CONSENT IN HEALTH CARE DECISIONMAKING

5           The Commission considered Memorandum 2000-5 and its First Supplement,  
6 concerning family consent in health care decisionmaking for adults.

7           Eric Carlson, Bet Tzedek Legal Services, presented a supplement to his draft  
8 proposal (attached to the memorandum), that would permit the supervising  
9 health care provider to refuse to accept the authority of a statutory surrogate if  
10 the physician determines and documents in the patient's health care record that  
11 the surrogate proposes a course of action (1) that is clearly not in the best interest  
12 of the patient and (2) that is either the result of the surrogate's lack of mental  
13 capacity or motivated by the surrogate's financial interests. Mr. Carlson stated  
14 that this would permit the physician to veto a decision that is clearly wrong,  
15 while preserving the principle that the family should be the surrogate  
16 decisionmaker. He suggested that it might also be possible to permit the family  
17 to select the surrogate, in place of the statutory priority list.

18           The Commission also heard the views of a number of health care  
19 professionals in attendance. It was generally agreed that as a practical matter, in  
20 most cases, people do not go to court over the surrogate decisionmaking issues,  
21 and that a statutory framework should aim at a set of rules that would avoid  
22 court proceedings except where a controversy arises that cannot be otherwise  
23 resolved. An issue that needs to be given further consideration is how to  
24 distinguish in the statute between the choice of a surrogate and the choice of a  
25 treatment. The Commission's family consent proposals have been directed at the  
26 manner of choosing the surrogate, who then is authorized to make health care  
27 decisions according to the statutory standards. It has been argued that the two  
28 types of decisions overlap, so that there is a significant risk that the authority to  
29 choose a surrogate can result in making the health care decision. The statute  
30 needs to address this problem.

31           Commissioners expressed concern that legislating a hierarchy, particularly if  
32 the hierarchy is less flexible, could have the unintended consequence of  
33 rigidifying the surrogate determination against the interests of patients.  
34 Similarly, the statute should not have the effect of disrupting selection of a  
35 surrogate by family consensus, and the next draft should recognize a priority for

1 surrogates selected or decisions made through family consensus. Concern was  
2 also expressed that the standard for rejecting a surrogate based on questionable  
3 motives or other negative factors could expose the physician to liability for  
4 defamation.

5 The Commission recognized that it was too late in the legislative year to be  
6 able to resolve these complex issues in time to present a bill in 2000. In view of  
7 the continuing vacancies in Commission membership, but in the hope that  
8 additional members might be appointed before too long, the Commission  
9 decided to revisit the family consent topic at the July meeting. The staff will  
10 continue to work with interested parties and present a revised draft, perhaps  
11 including alternative approaches, for consideration at the July meeting. The staff  
12 should also prepare an overview of the issues and alternatives to assist new  
13 Commission members and interested persons. Even if the Commission does not  
14 have new members by July, work will need to continue so that any further  
15 Commission recommendation could be ready for the 2001 legislative year.

16 **STUDY N-300 – ADMINISTRATIVE RULEMAKING**

17 The Commission considered Memorandum 2000-4 reviewing public  
18 comments on the tentative recommendation relating to *Improving Access to*  
19 *Rulemaking Information Under the Administrative Procedure Act*. The Commission  
20 approved the tentative recommendation as its final recommendation, subject to  
21 the following changes:

22 **Gov't Code § 11340.8. Electronic communication**

23 Proposed Section 11340.8 should be revised as follows:

24 11340.8. (a) As used in this section, "electronic communication"  
25 includes electronic transmission of written or graphical material by  
26 electronic mail, facsimile, or other means, but does not include  
27 voice communication.

28 (b) Notwithstanding any other provision of this chapter that  
29 refers to mailing or to oral or written communication:

30 (1) An agency may permit and encourage use of electronic  
31 communication, but may not require use of electronic  
32 communication.

33 (2) An agency may make available in electronic form a  
34 document required by this chapter, but shall not make that the  
35 exclusive means by which the document or a copy of a document is  
36 made available.

1           (3) A communication notice required or authorized by this  
2 chapter including a notice, public comment, request, or petition, or  
3 by a regulation implementing this chapter may be made  
4 electronically with the consent of the recipient delivered to a person  
5 by means of electronic communication if the person has expressly  
6 indicated a willingness to receive the notice by means of electronic  
7 communication.

8           (4) A comment or petition regarding a regulation may be  
9 delivered to an agency by means of electronic communication if the  
10 agency has expressly indicated a willingness to receive a comment  
11 or petition by means of electronic communication.

12           (c) An agency that maintains an Internet website or other similar  
13 forum for the electronic publication or distribution of written  
14 material shall publish the following materials on that website or  
15 other forum:

16           (1) Any public notice required by this chapter or by a regulation  
17 implementing this chapter. For the purpose of this paragraph,  
18 “public notice” means a notice that is required to be given by an  
19 agency to persons who have requested notice of the agency’s  
20 rulemaking actions.

21           (2) The initial statement of reasons prepared pursuant to  
22 subdivision (b) of Section 11346.2.

23           (3) The final statement of reasons prepared pursuant to  
24 subdivision (a) of Section 11346.9.

25           (4) Notice of a decision not to proceed prepared pursuant to  
26 Section 11347.

27           (5) The text of a proposed regulation or instructions on how to  
28 obtain a copy of the text.

29           (d) Publication under subdivision (c) is in addition to  
30 supplements any other required form of publication or distribution.  
31 Subdivision (c) does not require an agency to establish or maintain  
32 a website or other forum for the electronic publication or  
33 distribution of written material. Failure to comply with subdivision  
34 (c) is not ground for disapproval of a proposed regulation.

35           (e) Nothing in this section precludes the office from requiring  
36 that the text of a proposed regulation material submitted to the  
37 office for publication in the California Code of Regulations or the  
38 California Regulatory Notice Register be submitted in electronic  
39 form.

40           **Comment.** Section 11340.8 is new. Subdivision (b) authorizes  
41 the use of electronic communications in adopting a regulation  
42 under this chapter.

43           Subdivision (c) requires electronic publication of certain  
44 rulemaking documents by an agency that maintains a website or  
45 similar electronic communication forum. Provisions requiring a  
46 “public notice” as defined in paragraph (1) include Sections 11346.4

1 (notice of proposed action), 11346.8(a) (notice of hearing),  
2 11346.8(b) (notice of continuance or postponement of hearing). See  
3 also Section 11342(b) (“office” means Office of Administrative  
4 Law).

5 Use of electronic communications pursuant to this section  
6 supplements other required forms of publication or distribution.  
7 See subdivisions (b)(2) & (d).

8 **§ 11344.1. Publication in California Regulatory Notice Register**

9 Section 11344.1(a)(3) should be amended as follows:

10 11344.1. The Office shall do all of the following:

11 (a) Provide for the publication of the California Regulatory  
12 Notice Register, which shall be an official publication of the State of  
13 California and which shall contain the following:

14 ...

15 (3) All Summaries of all regulation decisions issued in the  
16 previous week detailing the reasons for disapproval of a regulation,  
17 the reasons for not filing an emergency regulation, and the reasons  
18 for repealing an emergency regulation. The California Regulatory  
19 Notice Register shall also include a quarterly index of regulation  
20 decisions.

21 Comment. Subdivision (a)(3) of Section 11344.1 is amended to  
22 ratify the existing practice of publishing detailed summaries of  
23 regulation decisions, rather than the decisions themselves. The  
24 complete decisions are public documents and can be obtained from  
25 the Office of Administrative Law.

26 **§ 11347. Notice of decision not to proceed with proposed rulemaking**

27 Proposed Section 11347 and its Comment should be revised as follows:

28 11347. (a) If, after publication of a notice of proposed action  
29 pursuant to Section 11346.4, but before the notice of proposed  
30 action becomes ineffective pursuant to subdivision (b) of Section  
31 11346.4, an agency decides not to proceed with a proposed  
32 rulemaking action, it shall deliver notice of its decision to the office  
33 for publication in the California Regulatory Notice Register.

34 (b) Publication of a notice under this section terminates the  
35 effect of the notice of proposed action referred to in the notice.  
36 Nothing in this section precludes an agency from proposing a new  
37 rulemaking action that is similar or identical to a rulemaking action  
38 that was previously the subject of a notice published under this  
39 section.

40 Comment. Section 11347 is new. The purpose of this section is  
41 to require notice where an agency decides to completely abandon a

1        proposed rulemaking action. A decision not to proceed with part of  
2        a proposed rulemaking action, while proceeding with the  
3        remainder, would not require notice under this section. See also  
4        Section 11342(b) (“office” means Office of Administrative Law”).

5        The legislation proposed in the tentative recommendation will be amended  
6        into the pending Commission bill on administrative rulemaking procedures —  
7        Assembly Bill 1822 (Wayne).

APPROVED AS SUBMITTED

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Chairperson

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