

Memorandum 2014-19

Draft Minutes of Meeting on April 10, 2014

The California Law Revision Commission¹ held a meeting on April 10, 2014. A draft of Minutes for that meeting is attached for Commissioners to review.

The attached draft will be deemed final after it is approved by a vote of the Commission. When voting, the Commission may make specific changes to the Minutes. If so, those changes will be memorialized in the Minutes for the meeting at which the vote occurred.

Respectfully submitted,

Brian Hebert
Executive Director

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
APRIL 10, 2014
SACRAMENTO

A meeting of the California Law Revision Commission was held in Sacramento on April 10, 2014.

Commission:

Present: Damian Capozzola, Chairperson
Victor King, Vice Chairperson
Diane F. Boyer-Vine, Legislative Counsel
Xochitl Carrion
Judge Patricia Cowett (Ret.)
Susan Duncan Lee

Absent: Assembly Member Roger Dickinson
Taras Kihiczak
Senator Ted Lieu
Crystal Miller-O'Brien

Staff: Brian Hebert, Executive Director
Barbara Gaal, Chief Deputy Counsel
Kristin Burford, Staff Counsel
Steve Cohen, Staff Counsel

Consultants: None

Other Persons:

Lawrence Doyle, Conference of California Bar Associations
Jim Ewert, California Newspaper Publishers Association
Emily Jeng, King Hall Law School
Ron Kelly
Erin King, California Self Storage Association
Jacqueline Kinney, Senate Committee on Energy, Utilities, and Communications
Philip Marshall, Los Angeles District Attorney's Office
Elizabeth Dietzen Olsen, Senate Office of Research
John S. Warnlof, California Dispute Resolution Council

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1 MINUTES OF FEBRUARY 6, 2014, COMMISSION MEETING

2 Memorandum 2014-10 presented a draft of the Minutes of the February 6,
3 2014, Commission meeting. The Commission approved the Minutes, with the
4 correction noted in the First Supplement to Memorandum 2014-10.

5 ADMINISTRATIVE MATTERS

6 **Report of Executive Director**

7 The Executive Director reported on the following matters:

- 8 • It would not be practicable to post digital recordings of
9 Commission meetings on the Commission’s website. Government
10 Code Section 11135(d)(2) requires that state agencies comply with
11 Section 508 of the Federal Rehabilitation Act of 1973 and its
12 implementing regulations. That act requires that a transcript be
13 provided for audio content on a website. The Commission lacks
14 the resources to prepare transcripts of its meetings. Commission
15 audio files will remain available as public records on request.
- 16 • The Commission’s proposed budget was approved, on a vote-only
17 basis, in the relevant Assembly and Senate budget subcommittees.

18 The Executive Director recognized Emily Jeng, a second-year law student at
19 King Hall School of Law, who is serving the Commission as a legal extern.

20 **Open Government Laws**

21 The Commission considered Memorandum 2014-11, confirming that the
22 Commission’s document dissemination practices are in compliance with the
23 Bagley-Keene Open Meeting Act. No Commission action was required or taken.

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2014 LEGISLATIVE PROGRAM

The Commission considered Memorandum 2014-12, reporting on the Commission’s 2014 legislative program.

As described below, the Commission made several decisions relating to Senate Bill 940 (Jackson), which would implement the Commission’s recommendation on the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

Editorial Revisions

The Commission approved the editorial revisions of its recommendation that are discussed at pages 2-3 of Memorandum 2014-12.

Amendment of Probate Code Section 2352

The erroneous reference to “conservatee” in Probate Code Section 2352(e)(3), which is discussed at pages 3-4 of Memorandum 2014-12, should be corrected. The corresponding Comment should be revised accordingly.

With those revisions, the Commission’s proposed amendment of Section 2352 and the corresponding Comment read as follows:

Prob. Code § 2352 (amended). Residence of ward or conservatee

SEC. _____. Section 2352 of the Probate Code is amended to read:

2352. (a) The guardian may establish the residence of the ward at any place within this state without the permission of the court. The guardian shall select the least restrictive appropriate residence that is available and necessary to meet the needs of the ward, and that is in the best interests of the ward.

(b) The conservator may establish the residence of the conservatee at any place within this state without the permission of the court. The conservator shall select the least restrictive appropriate residence, as described in Section 2352.5, that is available and necessary to meet the needs of the conservatee, and that is in the best interests of the conservatee.

(c) If permission of the court is first obtained, a guardian or conservator may establish the residence of a ward or conservatee at a place not within this state. Notice of the hearing on the petition to establish the residence of the ward or conservatee out of state, together with a copy of the petition, shall be given in the manner required by subdivision (a) of Section 1460 to all persons entitled to notice under subdivision (b) of Section 1511 or subdivision (b) of Section 1822.

(d)(1) An order under subdivision (c) relating to a ward shall require the guardian ~~or conservator~~ either to return the ward ~~or~~

1 ~~conservatee~~ to this state, or to cause a guardianship ~~or~~
2 ~~conservatorship~~ proceeding or its equivalent to be commenced in
3 the place of the new residence, when the ward ~~or conservatee~~ has
4 resided in the place of new residence for a period of four months or
5 a longer or shorter period specified in the order.

6 (2) An order under subdivision (c) relating to a conservatee
7 shall require the conservator to do one of the following when the
8 conservatee has resided in the other state for a period of four
9 months or a longer or shorter period specified in the order:

10 (A) Return the conservatee to this state.

11 (B) Petition for transfer of the conservatorship to the other state
12 under Article 3 (commencing with Section 2001) of Chapter 8 of
13 Part 3 and corresponding law of the other state.

14 (C) Cause a conservatorship proceeding or its equivalent to be
15 commenced in the other state.

16 (e)(1) The guardian or conservator shall file a notice of change of
17 residence with the court within 30 days of the date of the change.
18 The guardian or conservator shall include in the notice of change of
19 residence a declaration stating that the ward's or conservatee's
20 change of residence is consistent with the standard described in
21 subdivision (b).

22 (2) The guardian or conservator shall mail a copy of the notice
23 to all persons entitled to notice under subdivision (b) of Section
24 1511 or subdivision (b) of Section 1822 and shall file proof of service
25 of the notice with the court. The court may, for good cause, waive
26 the mailing requirement pursuant to this paragraph in order to
27 prevent harm to the conservatee or ward.

28 (3) If the guardian or conservator proposes to remove the ward
29 or conservatee from his or her personal residence, except as
30 provided by subdivision (c), the guardian or conservator shall mail
31 a notice of his or her intention to change the residence of the ward
32 or conservatee to all persons entitled to notice under subdivision
33 (b) of Section 1511 and subdivision (b) of Section 1822. In the
34 absence of an emergency, that notice shall be mailed at least 15
35 days before the proposed removal of the ward or conservatee from
36 his or her personal residence. If the notice is served less than 15
37 days prior to the proposed removal of the ward or conservatee, the
38 guardian or ~~conservatee~~ conservator shall set forth the basis for the
39 emergency in the notice. The guardian or conservator shall file
40 proof of service of that notice with the court.

41 (f) This section does not apply where the court has made an
42 order under Section 2351 pursuant to which the conservatee retains
43 the right to establish his or her own residence.

44 (g) As used in this section, "guardian" or "conservator"
45 includes a proposed guardian or proposed conservator and "ward"
46 or "conservatee" includes a proposed ward or proposed
47 conservatee.

48 (h) This section does not apply to a person with developmental
49 disabilities for whom the Director of the Department of

1 Developmental Services or a regional center, established pursuant
2 to Chapter 5 (commencing with Section 4620) of Division 4.5 of the
3 Welfare and Institutions Code, acts as the conservator.

4 **Comment.** Subdivision (d) of Section 2352 is amended to reflect
5 the enactment of the California Conservatorship Jurisdiction Act
6 (Section 1980 *et seq.*).

7 Subdivision (e) is amended to replace an erroneous reference to
8 “conservatee” with a reference to “conservator.”

9 **Severability Clause**

10 A severability clause should be added to the bill, along the following lines:

11 SEC. __. If any provision of this act or the application thereof to
12 any person or circumstance is held invalid, the invalidity shall not
13 affect other provisions or applications of this act which can be
14 given effect without the invalid provision or application and to this
15 end, the provisions of this act are severable.

16 STUDY G-300 — STATE AND LOCAL AGENCY ACCESS TO CUSTOMER 17 INFORMATION FROM COMMUNICATION SERVICES PROVIDERS

18 The Commission considered Memorandum 2014-13, discussing the search
19 and seizure provisions of the United States and California Constitutions. No
20 Commission action was required or taken.

21 STUDY J-1314 — TRIAL COURT UNIFICATION: PUBLICATION OF LEGAL NOTICE

22 The Commission considered Memorandum 2014-15, discussing alternative
23 approaches to provisions that require judicial district notice publication. The
24 Commission decided against recommending that the status quo be preserved.

25 As background for this study, Jim Ewert of the California Newspaper
26 Publishers Association submitted a document entitled “California Court
27 Directory and Fee Schedule (1984 Edition).” See First Supplement to
28 Memorandum 2014-15.

29 STUDY K-402 — RELATIONSHIP BETWEEN MEDIATION CONFIDENTIALITY AND 30 ATTORNEY MALPRACTICE AND OTHER MISCONDUCT

31 The Commission considered Memorandum 2014-14 and its First Supplement,
32 relating to the Uniform Mediation Act. No Commission action was required or
33 taken.

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STUDY R-100 — FISH AND GAME LAW

The Commission considered Memoranda 2014-16, 2014-17, and 2014-18, discussing the Commission’s study of fish and game law. The Commission approved all of the staff proposals in Memoranda 2014-16 and 2014-17. The Commission made no decisions regarding the staff draft attached to Memorandum 2014-18.

<input type="checkbox"/> APPROVED AS SUBMITTED	_____	Date
<input type="checkbox"/> APPROVED AS CORRECTED (for corrections, see Minutes of next meeting)	_____	Chairperson
	_____	Executive Director