

Minutes

August 21, 2015

Memorandum 2015-29

Minutes of Meeting on August 7, 2015 (Draft)

The California Law Revision Commission¹ held a meeting on August 7, 2015. 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.

DRAFT MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
AUGUST 7, 2015
LOS ANGELES

A meeting of the California Law Revision Commission was held in Los Angeles on August 7, 2015.

Commission:

Present: Victor King, Chairperson
Crystal Miller-O'Brien, Vice Chairperson
Diane F. Boyer-Vine, Legislative Counsel
Assembly Member Ed Chau
Taras Kihiczak
Susan Duncan Lee
Senator Richard D. Roth

Absent: Damian Capozzola
Judge Patricia Cowett (Ret.)

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

Consultants: None

Other Persons:

Patrick J. Evans
Bonnie Harris
Christine Harwell
Ron Kelly
Jeff Kichaven
John Lake
Deborah Blair Porter

CONTENTS

Approval of Actions Taken2
Minutes of June 4, 2015, Commission Meeting2
Administrative Matters.....2
 Report of Executive Director.....2
 Meeting Schedule2
 Election of Officers3
2015 Legislative Program.....3
Study D-1200 — Recognition of Tribal and Foreign Court Money Judgments.....3
Study G-300 — State and Local Agency Access to Customer Information from Communication Service Providers.....3
Study G-301 — Government Interruption of Communication Service4
Study K-402 — Relationship Between Mediation Confidentiality and Attorney Malpractice and Other Misconduct.....4
Study M-301 — Deadly Weapons: Minor Clean-Up Issues6
Study R-100 — Fish and Game Law7

1

APPROVAL OF ACTIONS TAKEN

2

Unless otherwise indicated, the Commission decisions noted in these Minutes were approved by all members present at the meeting. If a member who was present at the meeting voted against a particular decision, abstained from voting, or was not present when the decision was made, that fact will be noted in connection with the affected decision.

7

MINUTES OF JUNE 4, 2015, COMMISSION MEETING

8

Memorandum 2015-21 presented a draft of the Minutes of the June 4, 2015, Commission meeting. The Commission approved the Minutes, without change. *(Commissioners Chau and Kihiczak were not present when this decision was made.)*

11

ADMINISTRATIVE MATTERS

12

Report of Executive Director

13

The Executive Director reported that law student assistants will be assigned various kinds of minor reform projects.

15

Meeting Schedule

16

The Commission considered Memorandum 2015-25, discussing the Commission’s meeting schedule. The Commission approved the schedule

17

1 proposed in that memorandum. (*Commissioners Chau and Kihiczak were not present*
2 *when this decision was made.*)

3 **Election of Officers**

4 The Commission postponed consideration of Memorandum 2015-26,
5 discussing the election of officers. That memorandum will be presented at the
6 October 2015 meeting. The existing officers will continue to serve at the
7 beginning of that meeting, until new officers are elected. (*Commissioners Chau and*
8 *Kihiczak were not present when this decision was made.*)

9 2015 LEGISLATIVE PROGRAM

10 The Commission considered Memorandum 2015-27 and its First Supplement,
11 reporting on the Commission's 2015 legislative program.

12 Regarding Assembly Bill 139 (Gatto), the Commission assented to the
13 amendments described in Memorandum 2015-27 and approved the Comment
14 revisions attached to the memorandum.

15 Regarding Assembly Bill 1527 (Committee on Water, Parks, and Wildlife), the
16 Commission approved the Comment revision set out in the First Supplement to
17 Memorandum 2015-27.

18 (*Commissioner Kihiczak was not present when those decisions were made.*)

19 STUDY D-1200 — RECOGNITION OF TRIBAL AND FOREIGN COURT MONEY JUDGMENTS

20 The Commission considered Memorandum 2015-28, discussing adjustments
21 that other states have made in their enactments of the 2005 Uniform Foreign-
22 Country Money Judgments Recognition Act and the 1962 Uniform Foreign
23 Money-Judgments Recognition Act.

24 No Commission action was required or taken.

25 STUDY G-300 — STATE AND LOCAL AGENCY ACCESS TO CUSTOMER INFORMATION
26 FROM COMMUNICATION SERVICE PROVIDERS

27 The Commission considered Memorandum 2015-31, discussing public
28 comment and providing a draft of a final report on *Constitutional and Statutory*
29 *Requirements*. The Commission approved the draft as its final report, with the
30 revisions recommended by the staff.

1 **General Concept**

2 The Commission directed the staff to begin the process of preparing a draft of
3 a tentative recommendation that would propose an exception to the mediation
4 confidentiality statutes (Evid. Code §§ 1115-1128) to address “attorney
5 malpractice and other misconduct.” (*Commissioner King voted against this decision.*)

6 **Types of Misconduct to Cover**

7 The proposed new exception should apply to alleged misconduct of an
8 attorney or an attorney-mediator.

9 The proposed new exception should only apply to alleged misconduct in a
10 professional capacity.

11 The proposed new exception should apply regardless of whether the alleged
12 misconduct occurred during a mediation.

13 **Types of Proceedings in Which the Exception Would Apply**

14 The proposed new exception should apply in the following types of
15 proceedings:

- 16 (1) A disciplinary proceeding against an attorney for alleged
17 misconduct while acting as an attorney.
- 18 (2) A disciplinary proceeding against an attorney for alleged
19 misconduct while acting as an attorney-mediator.
- 20 (3) A malpractice case against an attorney for conduct in the role of an
21 attorney.
- 22 (4) A malpractice case against an attorney for conduct in the role of
23 attorney-mediator.

24 (*Commissioner Miller-O’Brien abstained from this decision.*)

25 **Purpose for Invoking the Exception**

26 The proposed new exception should apply evenhandedly, permitting use of
27 mediation evidence to prove or disprove a claim.

28 **In Camera Screening Process**

29 The proposed new exception should utilize an in camera screening process.
30 The Commission discussed but did not resolve whether an in camera hearing
31 should be mandatory whenever a person invokes the exception. The
32 Commission did not discuss or resolve any other details regarding the nature of
33 the in camera screening process.

1 **Limitation on Extent of Disclosure of Mediation Communications**

2 The proposed new exception should only permit disclosure of mediation
3 evidence that is relevant to the malpractice case or disciplinary proceeding in
4 which it is sought or proffered.

5 **Code Placement**

6 The proposed new exception should be placed in the Evidence Code.
7 (*Commissioner Lee abstained from this decision.*)

8 **Further Details**

9 The Commission discussed but did not resolve whether the proposed new
10 exception should apply while the underlying mediated dispute is still pending.

11 The staff mentioned the issue, but the Commission did not discuss or resolve
12 whether there should be any special rule relating to mediator testimony.

13 The Commission will consider those and other details at a future meeting.

14 **STUDY M-301 — DEADLY WEAPONS: MINOR CLEAN-UP ISSUES**

15 The Commission considered Memorandum 2015-37 discussing minor clean-
16 up of various Penal Code provisions relating to deadly weapons.

17 The Commission approved the preparation of a tentative recommendation
18 that will include all of the reforms described in the memorandum. In preparing
19 the tentative recommendation, the staff will do both of the following:

- 20 • Look more closely at the distinction between “family violence”
21 and “domestic violence.”
22 • Adjust the proposed revision to Penal Code Section 18255 to
23 request a *residential* address.

1

STUDY R-100 — FISH AND GAME LAW

2

The Commission considered Memorandum 2015-30, presenting a draft of sport fishing provisions. The Commission provisionally approved the draft for inclusion in a draft tentative recommendation.

3

4

APPROVED AS SUBMITTED _____ Date

APPROVED AS CORRECTED _____ Chairperson

(for corrections, see Minutes of next meeting) _____ Executive Director