Memorandum 2015-29

Minutes of Meeting on August 7, 2015 (Draft)

The California Law Revision Commission\(^1\) 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

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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.
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
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APPROVAL OF ACTIONS TAKEN

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.

MINUTES OF JUNE 4, 2015, COMMISSION MEETING

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.)

ADMINISTRATIVE MATTERS

Report of Executive Director

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

Meeting Schedule

The Commission considered Memorandum 2015-25, discussing the Commission’s meeting schedule. The Commission approved the schedule...
proposed in that memorandum. (Commissioners Chau and Kihiczak were not present when this decision was made.)

Election of Officers

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

2015 Legislative Program


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

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

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

Study D-1200 — Recognition of Tribal and Foreign Court Money Judgments


No Commission action was required or taken.

Study G-300 — State and Local Agency Access to Customer Information from Communication Service Providers

The Commission considered Memorandum 2015-31, discussing public comment and providing a draft of a final report on Constitutional and Statutory Requirements. The Commission approved the draft as its final report, with the revisions recommended by the staff.
STUDY G-301 — GOVERNMENT INTERRUPTION OF COMMUNICATION SERVICE

The Commission considered Memorandum 2015-32, discussing government interruption of area communications to protect public safety, for a purpose that is not directly related to free expression.

The Commission made the following decisions:

• It should be made clear that state and local government may interrupt communications to protect public “welfare,” which can include the protection of property.
• No substantive change should be made to the “extreme emergency” provisions of Public Utilities Code Section 7908.
• It should be made clear that Public Utilities Code Section 7908 is not intended to preclude any existing remedy for an injury that results from government interruption of communications under that section. In preparing draft language, the staff should exercise discretion as to phrasing and whether the clarifying language is included in a statute or a Commission Comment.
• The staff should consult with the office of the Homeland Security Advisor on whether Public Utilities Code Section 7908 should be revised to better coordinate with the federal Emergency Wireless Protocol.
• State and local officials should have discretion to decide whether the benefit of interrupting communications outweighs any harm that could result from disrupting emergency communications.

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

The Commission considered Memorandum 2015-33 (compilation of possible approaches), Memorandum 2015-34 (scope of study), Memorandum 2015-35 (scholarly commentary), and Memorandum 2015-36 (public comment) and its First Supplement. The staff distributed a 2-page chart that summarizes the longer chart attached to Memorandum 2015-33. The Commission received written materials from Bonnie Harris and Deborah Blair Porter.

(Commissioner Chau was not present for the discussion of this topic. Commissioner Boyer-Vine was only present at the beginning of the discussion. She was not present for any of the decisions.)

The Commission made the following decisions:
General Concept

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

Types of Misconduct to Cover

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

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

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

Types of Proceedings in Which the Exception Would Apply

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

1. A disciplinary proceeding against an attorney for alleged misconduct while acting as an attorney.
2. A disciplinary proceeding against an attorney for alleged misconduct while acting as an attorney-mediator.
3. A malpractice case against an attorney for conduct in the role of an attorney.
4. A malpractice case against an attorney for conduct in the role of attorney-mediator.

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

Purpose for Invoking the Exception

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

In Camera Screening Process

The proposed new exception should utilize an in camera screening process. The Commission discussed but did not resolve whether an in camera hearing should be mandatory whenever a person invokes the exception. The Commission did not discuss or resolve any other details regarding the nature of the in camera screening process.
Limitation on Extent of Disclosure of Mediation Communications

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

Code Placement

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

Further Details

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

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

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

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

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

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

- Look more closely at the distinction between “family violence” and “domestic violence.”
- Adjust the proposed revision to Penal Code Section 18255 to request a residential address.
STUDY R-100 — FISH AND GAME LAW

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.

☐ APPROVED AS SUBMITTED

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

__________________________________ Date

__________________________________ Chairperson

__________________________________ Executive Director