

Memorandum 2016-51

Minutes of Meeting on September 22, 2016 (Draft)

The California Law Revision Commission¹ held a meeting on September 22, 2016. 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
SEPTEMBER 22, 2016
SACRAMENTO

A meeting of the California Law Revision Commission was held in Sacramento on September 22, 2016.

Commission:

Present: Susan Duncan Lee, Chairperson
Thomas Hallinan, Vice Chairperson
Diane F. Boyer-Vine, Legislative Counsel
Damian Capozzola
Taras Kihiczak
Jane McAllister
Crystal Miller-O'Brien

Absent: Assembly Member Ed Chau
Senator Richard D. Roth
Victor King

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

Other Persons:

James Acres, Acres Bonusing
Allison Andersen, Community Associations Institute, California Legislative Action Committee
Jacqueline Serna Anguiano, Consumer Attorneys of California
David Bess, California Department of Fish and Wildlife
Charlie Born, Frontier Communications
Lawrence Doyle, Conference of California Bar Associations
Paul Dubow, California Dispute Resolution Council
Daniel Felizzatto, Los Angeles District Attorney's Office
Robert Flack
Cassandra Glanville, Herring Law Group
Donn Hoffman, Los Angeles District Attorney's Office
Ron Kelly
Jeff Kichaven
David Miller, ADR Services

Elizabeth Dietzen Olsen, Senate Office of Research
Ken Von Helmolt, Los Angeles District Attorney’s Office
John S. Warnlof, California Dispute Resolution Council
Stephanie L. Williams

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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 below.

MINUTES OF JULY 22, 2016, COMMISSION MEETING

Memorandum 2016-40 presented a draft of the Minutes of the July 22, 2016, Commission meeting. The Commission approved the Minutes as submitted. *(Commissioners Hallinan and Kihiczak were not present when this decision was made.)*

ADMINISTRATIVE MATTERS

Report of Executive Director

The Executive Director reported that the reappointment of Commissioners Hallinan, King, Lee, and McAllister was approved by the Senate.

Commissioner Suggestions

No new Commissioner suggestions were made.

1 **Election of Officers**

2 The Commission considered Memorandum 2016-41, relating to the election of
3 Commission officers. The Commission elected Susan Duncan Lee as Chairperson
4 and Thomas Hallinan as Vice Chairperson, for terms commencing immediately
5 and ending August 31, 2017.

6 **Tribal Consultation Policy**

7 The Commission considered Memorandum 2016-42 and its First Supplement,
8 proposing the adoption of a tribal consultation policy. The Commission
9 approved the following policy, for inclusion in its Handbook of Practices and
10 Procedures and transmission to the Governor's Office of the Tribal Advisor:

11 **Tribal Consultation Policy**

12 Consistent with Executive Order B-10-11, the Commission shall
13 take all practicable steps to encourage early and frequent
14 communication and consultation with California Native American
15 Tribes, including all of the following:

- 16 (1) Before the Commission begins a new study, it shall send
17 notice to Tribes explaining the scope and nature of the study,
18 inviting consultation regarding the study, and offering to
19 add Tribes to the distribution list for materials prepared as
20 part of the study. This notice shall be sent by the
21 Commission's Chair or Executive Director.
- 22 (2) If an official of a Tribe wishes to address the Commission at
23 one of its public meetings, the Commission shall set aside
24 time for that purpose.
- 25 (3) The Executive Director shall be available for consultation
26 with representatives of Tribes on their request.

27 In addition, the Commission directed the staff to send notice to Tribes
28 advising them of the Commission's currently active studies and inviting
29 consultation regarding those studies.

30 *(Commissioners Hallinan and Kihiczak were not present when these decisions were*
31 *made.)*

32 2016 LEGISLATIVE PROGRAM

33 The Commission considered Memorandum 2016-43, discussing the status of
34 its 2016 Legislative Program. No Commission action was required or taken.

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

2 The Commission considered Memorandum 2016-44, presenting a draft
3 recommendation and public comment on the tentative recommendation.

4 The Commission approved the draft as a final recommendation for printing
5 and submission to the Governor and Legislature. (*Commissioner Boyer-Vine was*
6 *not present when this decision was made.*)

7 STUDY G-301 — GOVERNMENT INTERRUPTION OF COMMUNICATION SERVICES

8 The Commission considered Memorandum 2016-46 and its First Supplement,
9 presenting a draft recommendation regarding government interruption of
10 communication services.

11 The Commission directed the staff to prepare a revised draft
12 recommendation, for presentation at the December meeting, with the following
13 changes:

- 14 • Delete the definitions of “electronic communication” and
15 “communication service” in proposed Penal Code Section 11470(a)
16 and (b), and replace them with the existing definition of
17 “communication service” provided in Public Utilities Code Section
18 7908(a)(1).
- 19 • Delete the proposed reforms of Business and Professions Code
20 Sections 149 and 7099.10 and Public Utilities Code Sections 5322
21 and 5371.6.
- 22 • Delete the definitions of “general interruption of communication
23 service” and “specific interruption of communication service” in
24 proposed Penal Code Section 11470(c) and (h), and make
25 conforming revisions to the proposed provisions that used those
26 terms. To the extent practicable, the conforming revisions should
27 use language drawn from Public Utilities Code Section 7908.
- 28 • Delete the exception for “incidental interruption” in proposed
29 Penal Code Section 11481(a)(7) and replace it with an exception for
30 an interruption caused by the execution of a search warrant.
- 31 • Standardize the use of the plural and singular with regard to the
32 term “communication service” and similar terms.

1 STUDY H-859 — COMMON INTEREST DEVELOPMENTS:
2 MECHANICS LIENS AND COMMON AREA

3 The Commission considered Memorandum 2016-45, presenting a draft
4 recommendation relating to the application of mechanics lien law to common
5 interest developments.

6 The Commission directed the staff to prepare a revised draft
7 recommendation, for presentation at the December meeting, with the following
8 changes:

- 9 • Require that an association use “individual delivery” methods
10 when giving members notice of receipt of a claim of lien.
- 11 • Expressly authorize the use of a lien release bond in Civil Code
12 Section 4615(c).

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

15 The Commission considered Memorandum 2016-49 and its First Supplement,
16 relating to specialist certificates of merit. The Commission also considered
17 Memorandum 2016-50 and its First Supplement, relating to public comment on
18 this study.

19 The Commission made the following decisions:

- 20 (1) The Commission will not further pursue the idea of requiring a
21 specialist certificate of merit for a legal malpractice case that
22 alleges mediation misconduct.
- 23 (2) The Commission will not further pursue self-certification or any
24 other mechanism for preliminary filtering of a legal malpractice
25 case that alleges mediation misconduct.
- 26 (3) The staff should begin drafting the proposed legislation for the
27 Commission’s tentative recommendation, along the lines
28 previously decided.
- 29 (4) The staff should also prepare a memorandum that discusses the
30 possibility of including additional reforms in the tentative
31 recommendation, either as complements to the proposed new
32 mediation confidentiality exception or as possible alternatives.

33 *(Commissioner Kihiczak was not present for any of the decisions relating to this study.)*

1 The Commission also generally indicated that the approach described above
2 should probably be used in any future technical clean-up project.

3 **“Game” as a Modifier**

4 The Commission considered the Second, Third, and Fifth Supplements to
5 Memorandum 2016-47, discussing the use of the term “game” as a modifier.

6 For the purposes of a tentative recommendation, the Commission made the
7 following decisions:

- 8 • No changes should be made to a use of the term “game” that is
9 unambiguous on its face.
- 10 • Provisions that govern “domesticated game breeders” should be
11 revised to use the term “game” consistently.
- 12 • The tentative recommendation should include proposed revisions
13 along the following lines, with Commission Notes inviting public
14 comment on the merits of the revisions:

15 **Fish & Game Code § 307. Population decline**

16 307. (a) Whenever after due investigation the commission finds
17 that game fish, resident ~~or~~ game birds, migratory game birds, game
18 mammals, ~~or~~ fur-bearing mammals, game amphibians, or game
19 reptiles have decreased in numbers in an area, district, or portion of
20 an area or district to the extent that a scarcity exists, the commission
21 may reduce the daily bag limit and the possession limit on those
22 ~~game~~ fish, birds, mammals, amphibians, or reptiles that are in
23 danger of depletion, for a period of time that the commission may
24 specify, or until new legislation addressing the scarcity becomes
25 effective.

26 ...

27 **Fish & Game Code § 2003. Contests**

28 2003. (a) Except as specified in subdivisions (b), (c), and (d), it is
29 unlawful to offer a prize or other inducement as a reward for the
30 taking of a game bird, or the taking of any mammal, fish, reptile, or
31 amphibian in an individual contest, tournament, or derby.

32 (b) The department may issue a permit to a person authorizing
33 that person to offer a prize or other inducement as a reward for the
34 taking of a game fish, as defined by the commission by regulation,
35 if it finds that there would be no detriment to the resource. The
36 permit is subject to regulations adopted by the commission. The
37 application for the permit shall be accompanied by a fee in the
38 amount determined by the department as necessary to cover the
39 reasonable administrative costs incurred by the department in
40 issuing the permit. However, the department may waive the permit
41 fee if the contest, tournament, or derby is for persons who are
42 under 16 years of age or have a physical or mental disability, and

1 the primary purpose of the contest, tournament, or derby is to
2 introduce those anglers to or educate them about fishing. All
3 permits for which the fee is waived pursuant to this subdivision
4 shall comply with all other requirements set forth in this section.

5 (c) This section does not apply to a person conducting what is
6 generally known as a frog-jumping contest, or, in waters of the
7 Pacific Ocean, what is generally known as a fish contest.

8 (d) This section does not apply to a person conducting an
9 individual contest, tournament, or derby for the taking of a game
10 bird or game mammal, if the total value of all prizes or other
11 inducements is less than five hundred dollars (\$500) for the
12 individual contest, tournament, or derby.

13 **Fish & Game Code § 3080. Donations**

14 3080. (a) For the purposes of this section, “donor intermediary”
15 means a recipient who receives a game bird, ~~or game mammal~~, or
16 fur-bearing mammal from a donor to give to a charitable
17 organization or charitable entity.

18 (b) A person may possess a game bird, ~~or game mammal~~, or fur-
19 bearing mammal during a period other than the open season for
20 that ~~game~~ bird or mammal, up to the possession limit allowed for
21 that ~~game~~ bird or mammal during the open season, in any of the
22 following circumstances:

23 (1) The person possesses a hunting license and a validated tag
24 or tags for the species possessed, or a copy of the license and tag or
25 tags. The license and tag or tags shall have been issued to that
26 person for the current or immediate past license year.

27 (2) The person is a donor intermediary who received the game
28 bird, ~~or game mammal~~, or fur-bearing mammal from a donor
29 described in paragraph (1), and has a written confirmation of the
30 donation that is signed and dated by the donor, and a photocopy of
31 the donor’s hunting license and the applicable validated tag or tags
32 from the current or immediate past license year.

33 (3) The person is a donor intermediary who received the game
34 bird, ~~or game mammal~~, or fur-bearing mammal from a donor
35 described in paragraph (1), and has a written confirmation of the
36 donation signed and dated by the donor, which includes the
37 donor’s name, address, hunting license number, and applicable tag
38 numbers for the species possessed. The license and tag or tags shall
39 be for the current or immediate past license year.

40 (c) The documentation required by subdivision (b) shall be
41 made available to the department as described in Section 2012.
42 There is no required format for the documentation. Any written
43 documentation containing the required information shall be
44 deemed to comply with this section. A charitable organization or
45 charitable entity receiving and distributing a game bird, ~~or game~~
46 mammal, or fur-bearing mammal for a charitable or humane
47 purpose shall maintain the documentation described in paragraph
48 (2) or (3) of subdivision (b) for one year from the date of disposal.

1 (d) This section does not authorize the possession of a game
2 bird contrary to regulations adopted pursuant to the federal
3 Migratory Bird Treaty Act (16 U.S.C. Sec. 703 et seq.).

4 (e) On or before January 1, 2015, and subject to the requirements
5 of subdivision (d), the commission shall recommend legislation or
6 adopt regulations to clarify when a possession limit is not violated
7 by processing into food lawfully taken game birds, ~~or game~~
8 mammals, or fur-bearing mammals.

9 **Fish & Game Code § 3086. Stored game**

10 3086. Cold storage plants and frozen food locker plants shall
11 make and keep a complete detailed record of all game birds, ~~or~~
12 game mammals, or fur-bearing mammals stored in such plants. A
13 record of each game bird ~~or game mammal, or fur-bearing mammal~~
14 shall be made at the time it is received at the plant for storage.

15 The record shall be open for inspection at all times by wardens
16 of the department.

- 17 • The tentative recommendation should propose no changes to the
18 use of the term “game” in Fish and Game Code Sections 1502 and
19 3003. Commission Notes following those sections should ask for
20 public comment on whether revisions should be made.
- 21 • A definition of “game fish, amphibian, and reptile” should be
22 included in the tentative recommendation, along the lines
23 proposed on pages 12 and 13 of the Second Supplement to
24 Memorandum 2016-47.

25 **Tribal Fishing and Hunting**

26 The Commission considered Memorandum 2016-48, discussing a request that
27 the Commission defer action on tribal fishing and hunting issues. The staff
28 reported that the Commission had just received a letter from Cher-Ae Heights
29 Indian Community of the Trinidad Rancheria, which is attached to the First
30 Supplement to Memorandum 2016-48.

31 The Commission will postpone consideration of those issues, to provide
32 additional time for public comment and discussions between interested groups.

APPROVED AS SUBMITTED

Date

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

Chairperson

Executive Director