

Admin.

November 3, 2016

## Memorandum 2016-52

**2016-2017 Annual Report (Staff Draft)**

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Attached to this memorandum is a staff draft of the Commission's *2016-2017 Annual Report*.<sup>1</sup> In the interest of saving photocopying and mailing costs, we have not reproduced some of the recurring appendices to the Annual Report (i.e., the text of Commission's governing statute, its calendar of topics, the cumulative table of legislative action on Commission recommendations, supplemental reports on bills implementing Commission recommendations, and the list of Commission publications).

After approval of the text of the Annual Report, the staff will add these appendices. The draft does include the appendix that contains Commissioner biographies. **Commissioners should review the content of that appendix and let the staff know if any of the content needs to be changed.** Please note that the biographies have been updated to reflect the Commission's current officers.

Much of the content of the Annual Report is routine, and does not change significantly from year to year. A few matters that require special attention are noted below.

The pagination of the draft Annual Report is provisional and is provided for ease of reference.

## CONTINGENT TEXT

Some portions of the draft have been temporarily flagged with light shading. The shaded text is contingent upon decisions that will be made at the Commission's upcoming December meeting:

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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](http://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.

- The Commission will be making decisions on draft recommendations for its studies on *Common Interest Developments*<sup>2</sup> and *Government Interruption of Communication Services*.<sup>3</sup> If the Commission approves these recommendations, the staff will seek implementing legislation in 2017 (as indicated in the shaded text).<sup>4</sup> If the Commission does not approve these recommendations, these studies would be included on the lists of “Commission Activities Planned for 2017” and “Major Studies in Progress.”<sup>5</sup>
- The Commission will be considering its annual New Topics and Priorities memorandum to establish work priorities for 2017. The attached draft includes only the active, ongoing studies as planned Commission Activities for 2017.<sup>6</sup> The passages on planned work in the draft Annual Report will be revised and supplemented to reflect the Commission’s decisions on work priorities for 2017.

#### ACTIVITIES OF COMMISSION MEMBERS AND STAFF

The Annual Report notes any outside activities of Commission members and staff that relate to the Commission’s work.<sup>7</sup> **Please notify the staff if you have any activities of that type to report.**

#### EDITORIAL SUGGESTIONS

If Commissioners have any editorial suggestions relating to the draft Annual Report, please be sure to inform the staff.

#### CONCLUSION

**The Commission needs to decide whether to approve the attached draft report, with or without changes, for publication.**

Respectfully submitted,

Kristin Burford  
Staff Counsel

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2. See Memorandum 2016-55.

3. See Memorandum 2016-56.

4. See shaded text in attached draft, pp. 3, 10.

5. See attached draft, pp. 3, 10-11.

6. See shaded text in attached draft, pp. 3, 10-11.

7. See attached draft, p. 26.

STATE OF CALIFORNIA

# **CALIFORNIA LAW REVISION COMMISSION**

**STAFF DRAFT**

2016-2017 Annual Report

California Law Revision Commission  
c/o King Hall Law School  
Davis, CA 95616  
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Cite this report as *2016-2017 Annual Report*, 44 Cal. L. Revision  
Comm'n Reports \_\_\_\_ (2016).

## SUMMARY OF WORK OF COMMISSION

### **Recommendations to the 2016 Legislature**

In 2016, bills effectuating two Commission recommendations were enacted, relating to the following subjects:

- Trial Court Unification: Publication of Legal Notice
- Fish and Game Law: Technical Revisions and Minor Substantive Improvements: Part 2

### **Recommendations to the 2017 Legislature**

In 2017, the Commission plans to seek the introduction of legislation effectuating Commission recommendations on the following subjects:

- Recognition of Tribal and Foreign Court Money Judgments
- Government Interruption of Communication Services
- Mechanics Liens and Common Area
- Deadly Weapons: Minor Clean-Up Issues

### **Commission Activities Planned for 2017**

During 2017, the Commission intends to work on the following major topics: mediation confidentiality, revision of the Fish and Game Code, and revocable transfer on death deeds.

The Commission will work on other topics as time permits.



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STATE OF CALIFORNIA

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**CALIFORNIA LAW REVISION COMMISSION**

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JANE MCALLISTER  
CRYSTAL MILLER-O'BRIEN  
SENATOR RICHARD ROTH

December 1, 2016

To: The Honorable Edmund G. Brown, Jr.  
*Governor of California*, and  
The Legislature of California

In conformity with Government Code Section 8293, the California Law Revision Commission submits this report of its activities during 2016 and its plans for 2017.

Two Commission recommendations considered by the Legislature in 2016 were enacted into law.

The Commission is grateful to the members of the Legislature who carried Commission-recommended legislation in 2016:

- Assembly Committee on Judiciary (Trial Court Unification: Publication of Legal Notice)
- Senate Committee on Natural Resources and Water (Fish and Game Law: Technical Revisions and Minor Substantive Improvements (Part 2))

The Commission held six one-day meetings in 2016. Meetings were held in Sacramento and Los Angeles.

Respectfully submitted,

Susan Duncan Lee  
*Chairperson*

## 2016-2017 ANNUAL REPORT

**Introduction**

The California Law Revision Commission was created in 1953 and commenced operation in 1954 as the permanent successor to the Code Commission,<sup>1</sup> with responsibility for a continuing substantive review of California statutory and decisional law.<sup>2</sup> The Commission studies the law to discover defects and anachronisms and recommends legislation to make needed reforms.

The Commission ordinarily works on major topics, assigned by the Legislature, that require detailed study and cannot easily be handled in the ordinary legislative process. The Commission's work is independent, nonpartisan, and objective.

The Commission consists of:<sup>3</sup>

- A Member of the Senate appointed by the Rules Committee
- A Member of the Assembly appointed by the Speaker
- Seven members appointed by the Governor with the advice and consent of the Senate
- The Legislative Counsel, who is an ex officio member

The Commission may study only topics that the Legislature has authorized.<sup>4</sup>

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1. See 1953 Cal. Stat. ch. 1445, operative September 9, 1953. The first meeting of the Commission was held on February 23, 1954.

2. See Gov't Code §§ 8280-8298 (statute establishing Law Revision Commission) (Appendix 1 *infra*). See also *1955 Report* [Annual Report for 1954] at 7, 1 Cal. L. Revision Comm'n Reports (1957).

3. For current membership, see "Personnel of Commission" *infra*.

4. Under its general authority, the Commission may study only topics that the Legislature, by concurrent resolution, authorizes for study. See *Calendar of Topics Authorized for Study*, Appendix 2 *infra*. However, the Commission may study and recommend revisions to correct technical or minor substantive defects in state statutes without a prior concurrent resolution. Gov't Code § 8298. Additionally, a concurrent resolution or statute may directly confer authority to study a particular subject. See, e.g., 2014 Cal. Stat. ch. 243 [SB 406] (standards for recognition of tribal and foreign court money judgments); 2013 Cal. Stat. res. ch. 115 [SCR 54] (state and local agency access to customer information

The Commission has submitted 411 recommendations to the Legislature, of which 378 (more than 90%) have been enacted in whole or in substantial part.<sup>5</sup> Commission recommendations have resulted in the enactment of legislation affecting 25,257 sections of California law: 5,205 sections amended, 11,093 sections added, and 8,959 sections repealed.

The Commission's recommendations, reports, and other selected materials are published annually in hardcover volumes. Recent materials are also available through the Internet. A list of past publications and information on obtaining printed or electronic versions of Commission material can be found at the end of this Annual Report.<sup>6</sup>

### **2017 Legislative Program**

In 2017, the Commission plans to seek the introduction of legislation implementing Commission recommendations on the following subjects:

- Recognition of Tribal and Foreign Court Money Judgments
- Government Interruption of Communication Services
- Mechanics Liens and Common Area
- Deadly Weapons: Minor Clean-Up Issues

### **Major Studies in Progress**

During 2017, the Commission intends to work on the following major topics: mediation confidentiality, revision of the Fish and Game Code, and revocable transfer on death deeds.

The Commission will work on other topics as time permits.

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from communications service providers); 2006 Cal. Stat. res. ch. 128 [ACR 73] (nonsubstantive reorganization of weapon statutes); 2006 Cal. Stat. ch. 216 [AB 2034] (donative transfer restrictions).

5. See *Legislative Action on Commission Recommendations*, Appendix 3 *infra*.

6. See *Commission Publications*, Appendix 5 *infra*.

**Mediation Confidentiality**

The Commission will continue to analyze the relationship under current law between mediation confidentiality and attorney malpractice and other misconduct, including the purposes for and impact of mediation confidentiality on public protection, professional ethics, attorney discipline, client rights, the willingness of parties to participate in voluntary and mandatory mediation, the effectiveness of mediation, and other relevant issues.<sup>7</sup>

**Revision of the Fish and Game Code**

The Commission will continue to study the revision of the Fish and Game Code and related statutory law to improve organization, clarify meaning, resolve inconsistencies, eliminate unnecessary or obsolete provisions, standardize terminology, clarify program authority and funding sources, and make other minor improvements, without making any significant substantive change to the effect of the law.<sup>8</sup>

**Revocable Transfer On Death Deeds**

The Commission has been directed to study the effect of California's revocable transfer on death deed.<sup>9</sup> The Commission's report on this matter is due on or before January 1, 2020.

**Other Subjects**

The major studies described above will dominate the Commission's time and resources during 2017. As time permits, the Commission will continue its work on trial court restructuring and consider other subjects authorized for study.

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7. See 2016 Cal. Stat. res. ch. 150.

8. See 2016 Cal. Stat. res. ch. 150.

9. See 2016 Cal. Stat. ch. 179, § 1 (AB 1779 (Gatto)); 2015 Cal. Stat. ch. 293, § 21 (AB 139 (Gatto)).

### Calendar of Topics for Study

The Commission's calendar includes 24 topics authorized by the Legislature for study.<sup>10</sup>

### Function and Procedure of Commission

The principal duties of the Commission are to:<sup>11</sup>

- (1) Examine the common law and statutes for the purpose of discovering defects and anachronisms.
- (2) Receive and consider suggestions and proposed changes in the law from the American Law Institute, the National Conference of Commissioners on Uniform State Laws,<sup>12</sup> bar associations, and other learned bodies, and from judges, public officials, lawyers, and the public generally.
- (3) Recommend such changes in the law as it deems necessary to bring California law into harmony with modern conditions.<sup>13</sup>

The Commission is required to file a report at each regular session of the Legislature containing a calendar of topics selected by it for study, listing both studies in progress and topics intended for future consideration. Under its general authority, the Commission may study only topics that the Legislature, by

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10. See *Calendar of Topics Authorized for Study*, Appendix 2 *infra*.

11. Gov't Code §§ 8280-8298 (statute governing California Law Revision Commission). See Appendix 1 *infra*.

12. The Legislative Counsel, an ex officio member of the Law Revision Commission, serves as a Commissioner of the Commission on Uniform State Laws. See Gov't Code § 8261.

13. Gov't Code § 8289. The Commission is also directed to recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the California Supreme Court or the United States Supreme Court. Gov't Code § 8290. See "Report on Statutes Repealed by Implication or Held Unconstitutional" *infra*.

concurrent resolution, authorizes for study.<sup>14</sup> However, the Commission may study and recommend revisions to correct technical or minor substantive defects in state statutes without a prior concurrent resolution.<sup>15</sup> Additionally, a concurrent resolution<sup>16</sup> or statute<sup>17</sup> may directly confer authority to study a particular subject.

### **Background Studies and Expert Consultants**

The Commission's work on a recommendation typically begins after a background study has been prepared. The background study may be prepared by a member of the Commission's staff or by a specialist in the field who is retained as a consultant. Law professors and practicing attorneys who serve as consultants have already acquired the considerable knowledge necessary to understand the specific problems under consideration, and receive little more than an honorarium for their services.

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14. Gov't Code § 8293. Section 8293 requires a concurrent resolution authorizing the Commission to study topics contained in the calendar of topics set forth in the Commission's regular report to the Legislature. Section 8293 also requires that the Commission study any topic that the Legislature by concurrent resolution or statute refers to the Commission for study.

15. Gov't Code § 8298.

16. For an example of a concurrent resolution referring a specific topic to the Commission for study, see 2013 Cal. Stat. res. ch. 115 [SCR 54] (state and local agency access to customer information from communications service providers).

17. For example, Government Code Section 70219 requires the Commission, in consultation with the Judicial Council, to perform follow-up studies taking into consideration the experience in courts that have unified. For a list of specific studies, see *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51, 82-86 (1998).

Government Code Section 71674 requires the Commission to recommend repeal of provisions made obsolete by the Trial Court Employment Protection and Governance Act (Gov't Code § 71600 *et seq.*), Lockyer-Isenberg Trial Court Funding Act of 1997 (1997 Cal. Stat. ch. 850), and the implementation of trial court unification.

Pursuant to Code of Civil Procedure Section 681.035, the Commission also has continuing authority to study enforcement of judgments.

Statutory authority may be uncodified. See, e.g., 2016 Cal. Stat. ch. 179 (revocable transfer on death deeds).

From time to time, the Commission requests expert assistance from law professors and other legal professionals, who may provide written input or testify at meetings.<sup>18</sup>

### **Recommendations**

After making its preliminary decisions on a subject, the Commission ordinarily distributes a tentative recommendation to interested persons and organizations, including the State Bar, local and specialized bar associations, public interest organizations, and business and professional associations. Notice of the availability of the tentative recommendation is mailed to interested persons on the Commission's mailing list and publicized in legal newspapers and other relevant publications. Notice is also posted on the Commission's website and emailed to interested persons.

Comments received on the tentative recommendation are considered by the Commission in determining what recommendation, if any, will be made to the Legislature.<sup>19</sup> When the Commission has reached a conclusion on the matter,<sup>20</sup> its recommendation to the Legislature (including a draft of any necessary legislation) is published and distributed in printed form and on the Internet. If a background study has been prepared in

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18. In 2016, the Commission received valuable assistance from Professors Ashutosh Bhagwat, William Dodge, Katherine Florey, Edward Imwinkelried, Carlton Larson, and Brian Soucek, all of UC Davis School of Law. The Commission is grateful for their input.

19. For a step-by-step description of the procedure followed by the Commission in preparing the 1963 governmental liability statute, see DeMouly, *Fact Finding for Legislation: A Case Study*, 50 A.B.A. J. 285 (1964). The procedure followed in preparing the Evidence Code is described in 7 Cal. L. Revision Comm'n Reports 3 (1965). See also Gaal, *Evidence Legislation in California*, 36 S.W.U. L. Rev. 561, 563-69 (2008); Quillinan, *The Role and Procedures of the California Law Revision Commission in Probate and Trust Law Changes*, 8 Est. Plan. & Cal. Prob. Rep. 130-31 (Cal. Cont. Ed. Bar 1987).

20. Occasionally, one or more members of the Commission may not join in all or part of a recommendation submitted to the Legislature by the Commission. Dissents are noted in the minutes of the meeting at which the recommendation is approved.

connection with the recommendation, it may be published by the Commission or in a law review.<sup>21</sup>

### **Official Comments**

The Commission ordinarily prepares an official Comment explaining each section it recommends for enactment, amendment, or repeal. The Comments are included in the Commission's published recommendations. A Comment indicates the derivation of a section and often explains its purpose, its relation to other law, and potential issues concerning its meaning or application.<sup>22</sup>

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21. For recent background studies published in law reviews, see Méndez, *California Evidence Code - Federal Rules of Evidence, IX. General Provisions*, 44 U.S.F. L. Rev. 891 (2010); Méndez, *California Evidence Code - Federal Rules of Evidence, VIII. Judicial Notice*, 44 U.S.F. L. Rev. 141 (2009); Méndez, *California Evidence Code - Federal Rules of Evidence, VII. Relevance: Definition and Limitations*, 42 U.S.F. L. Rev. 329 (2007); Méndez, *California Evidence Code - Federal Rules of Evidence, VI. Authentication and the Best and Secondary Evidence Rules*, 41 U.S.F. L. Rev. 1 (2006); Méndez, *California Evidence Code - Federal Rules of Evidence, V. Witnesses: Conforming the California Evidence Code to the Federal Rules of Evidence*, 39 U.S.F. L. Rev. 455 (2005); Alford, *Report to Law Revision Commission Regarding Recommendations for Changes to California Arbitration Law*, 4 Pepp. Disp. Resol. L.J. 1 (2004); Méndez, *California Evidence Code - Federal Rules of Evidence, IV. Presumptions and Burden of Proof: Conforming the California Evidence Code to the Federal Rules of Evidence*, 38 U.S.F. L. Rev. 139 (2003); Méndez, *California Evidence Code - Federal Rules of Evidence, I. Hearsay and Its Exceptions: Conforming the Evidence Code to the Federal Rules*, 37 U.S.F. L. Rev. 351 (2003); Méndez, *California Evidence Code - Federal Rules of Evidence, II. Expert Testimony and the Opinion Rule: Conforming the Evidence Code to the Federal Rules*, 37 U.S.F. L. Rev. 411 (2003); Méndez, *California Evidence Code - Federal Rules of Evidence, III. The Role of Judge and Jury: Conforming the Evidence Code to the Federal Rules*, 37 U.S.F. L. Rev. 1003 (2003).

For a list of background studies published in law reviews before 2003, see 32 Cal. L. Revision Comm'n Reports 585 n.14 (2002); 20 Cal. L. Revision Comm'n Reports 198 n.16 (1990); 19 Cal. L. Revision Comm'n Reports 513 n.22 (1988); 18 Cal. L. Revision Comm'n Reports 212 n.17, 1713 n.20 (1986); 17 Cal. L. Revision Comm'n Reports 819 n.6 (1984); 16 Cal. L. Revision Comm'n Reports 2021 n.6 (1982); 13 Cal. L. Revision Comm'n Reports 1628 n.5 (1976); 11 Cal. L. Revision Comm'n Reports 1008 n.5, 1108 n.5 (1973); 10 Cal. L. Revision Comm'n Reports 1108 n.5 (1971).

22. Commission Comments are published by LexisNexis and Thomson Reuters in their print editions of the annotated codes, and printed in selected

### Commission Materials as Legislative History

Commission recommendations are printed and sent to both houses of the Legislature, as well as to the Legislative Counsel and Governor.<sup>23</sup> Receipt of a recommendation by the Legislature is noted in the legislative journals, and the recommendation is referred to the appropriate policy committee.<sup>24</sup>

The bill introduced to effectuate a Commission recommendation is assigned to legislative committees charged with study of the matter in depth.<sup>25</sup> A copy of the recommendation is provided to legislative committee members and staff before the bill is heard and throughout the legislative process. The legislative committees rely on the recommendation in analyzing the bill and making recommendations to the Legislature concerning it.<sup>26</sup>

If an amendment is made to the bill that renders one of the Commission's original Comments inconsistent, the Commission generally will adopt a revised Comment and provide it to the committee. The Commission also provides this material to the

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codes prepared by other publishers. Comments are also available on Westlaw and LexisNexis.

23. See Gov't Code §§ 8291, 9795, 11094-11099; see also *Reynolds v. Superior Court*, 12 Cal. 3d 834, 847 n.18, 528 P.2d 45, 53 n.18, 117 Cal. Rptr. 437, 445 n.18 (1974) (Commission "submitted to the Governor and the Legislature an elaborate and thoroughly researched study").

24. See, e.g., Senate J. Aug. 18, 2003, at 2031 (noting receipt of 2002-2003 recommendations and their transmittal to the Committee on Judiciary).

25. See, e.g., Office of Chief Clerk, California State Assembly, California's Legislature 126-27 (2000) (discussing purpose and function of legislative committee system).

26. The Commission does not concur with the suggestion of the court in *Conservatorship of Wendland*, 26 Cal. 4th 519, 542, 28 P.3d 151, 166, 110 Cal. Rptr. 2d 412, 430 (2001), that a Commission Comment might be entitled to less weight based on speculation that the Legislature may not have read and endorsed every statement in the Commission's report. That suggestion belies the operation of the committee system in the Legislature. See White, *Sources of Legislative Intent in California*, 3 Pac. L.J. 63, 85 (1972) ("The best evidence of legislative intent must surely be the records of the legislature itself and the reports which the committees relied on in recommending passage of the legislation.").

Governor's office once the bill has passed the Legislature and is before the Governor for action. These materials are a matter of public record.

Until the mid-1980s, a legislative committee, on approving a bill implementing a Commission recommendation, would adopt the Commission's recommendation as indicative of the committee's intent in approving the bill.<sup>27</sup> If a Comment required revision, the revised Comment would be adopted as a legislative committee Comment. The committee's report would be printed in the journal of the relevant house.<sup>28</sup>

The Legislature has discontinued the former practice due to increased committee workloads and an effort to decrease the volume of material reprinted in the legislative journals. Under current practice, a legislative committee relies on Commission materials in its analysis of a bill, but does not separately adopt the materials. Instead, the Commission makes a report detailing the legislative history of the bill, including any revised Comments. Bill reports are published as appendices to the Commission's annual reports.<sup>29</sup>

#### **Use of Commission Materials To Determine Legislative Intent**

Commission materials that have been placed before and considered by the Legislature are legislative history, are

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27. See, e.g., *Baldwin v. State*, 6 Cal. 3d 424, 433, 491 P.2d 1121, 1126, 99 Cal. Rptr. 145, 150 (1972). For a description of legislative committee reports adopted in connection with the bill that became the Evidence Code, see *Arellano v. Moreno*, 33 Cal. App. 3d 877, 884, 109 Cal. Rptr. 421, 426 (1973).

28. For an example of such a report, see *Report of Senate Committee on Judiciary on Assembly Bill 3472*, Senate J. June 14, 1984, reprinted in 18 Cal. L. Revision Comm'n Reports 1, 115 (1986).

29. Commission reports have in the past been published as well in the legislative journals. See, e.g., *In re Marriage of Neal*, 153 Cal. App. 3d 117, 124, 200 Cal. Rptr. 341, 345 (1984) (noting that Chairman of Senate Judiciary Committee, when reporting on AB 26 on Senate floor, moved that revised Commission report be printed in Senate Journal as evidence of legislative intent).

declarative of legislative intent,<sup>30</sup> and are entitled to great weight in construing statutes.<sup>31</sup> The materials are a key interpretive aid for practitioners as well as courts,<sup>32</sup> and courts may judicially notice and rely on them.<sup>33</sup> Courts at all levels of the state<sup>34</sup> and federal<sup>35</sup>

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30. See, e.g., *Fair v. Bakhtiari*, 40 Cal. 4th 189, 195, 147 P.3d 653, 657, 51 Cal. Rptr. 3d 871, 875 (2006) (“The Commission’s official comments are deemed to express the Legislature’s intent.”); *People v. Williams*, 16 Cal. 3d 663, 667-68, 547 P.2d 1000, 128 Cal. Rptr. 888 (1976) (“The official comments of the California Law Revision Commission on the various sections of the Evidence Code are declarative of the intent not only of the draft[ers] of the code but also of the legislators who subsequently enacted it.”).

31. See, e.g., *Dep’t of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.*, 40 Cal. 4th 1, 12-13 n.9, 145 P.3d 462, 469 n.9, 50 Cal. Rptr. 3d 585, 593 n.9 (2006) (Commission’s official comments are persuasive evidence of Legislature’s intent); *Hale v. S. Cal. IPA Med. Group, Inc.*, 86 Cal. App. 4th 919, 927, 103 Cal. Rptr. 2d 773, 778 (2001):

In an effort to discern legislative intent, an appellate court is entitled to take judicial notice of the various legislative materials, including committee reports, underlying the enactment of a statute. (*Kern v. County of Imperial* (1990) 226 Cal. App. 3d 391, 400, fn. 8 [276 Cal. Rptr. 524]; *Coopers & Lybrand v. Superior Court* (1989) 212 Cal. App. 3d 524, 535, fn. 7 [260 Cal. Rptr. 713].) In particular, reports and interpretive opinions of the Law Revision Commission are entitled to great weight. (*Schmidt v. Southern Cal. Rapid Transit Dist.* (1993) 14 Cal. App. 4th 23, 30, fn. 10 [17 Cal. Rptr. 2d 340].)

32. *Cf.* 7 B. Witkin, *Summary of California Law Constitutional Law* § 123, at 230 (10th ed. 2005) (Commission reports as aid to construction); Gaylord, *An Approach to Statutory Construction*, 5 Sw. U. L. Rev. 349, 384 (1973).

33. See, e.g., *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.*, 133 Cal. App. 4th 26, 34 Cal. Rptr. 3d 520 (2005) (providing overview of materials that may be judicially noticed in determining legislative intent); *Hale*, 86 Cal. App. 4th at 927; *Barkley v. City of Blue Lake*, 18 Cal. App. 4th 1745, 1751 n.3, 23 Cal. Rptr. 2d 315, 318-19 n.3 (1993).

34. See, e.g., *Sullivan v. Delta Air Lines, Inc.*, 15 Cal. 4th 288, 298, 935 P.2d 781, 63 Cal. Rptr. 2d 74 (1997) (California Supreme Court); *Admin. Mgmt. Services, Inc. v. Fid. Deposit Co. of Md.*, 129 Cal. App. 3d 484, 488, 181 Cal. Rptr. 141 (1982) (court of appeal); *Rossetto v. Barross*, 90 Cal. App. 4th Supp. 1, 110 Cal. Rptr. 2d 255 (2001) (appellate division of superior court).

35. See, e.g., *California v. Green*, 399 U.S. 149, 154 n.3 (1970) (United States Supreme Court); *S. Cal. Bank v. Zimmerman (In re Hilde)*, 120 F.3d 950, 953 (9th Cir. 1997) (federal court of appeals); *Williams v. Townsend*, 283 F. Supp. 580, 582 (C.D. Cal. 1968) (federal district court); *Ford Consumer Fin. Co.*

judicial systems depend on Commission materials to construe statutes enacted on Commission recommendation.<sup>36</sup> Appellate courts have cited Commission materials in more than a thousand published opinions.<sup>37</sup>

Commission materials have been used as direct support for a court's interpretation of a statute,<sup>38</sup> as one of several indicia of legislative intent,<sup>39</sup> to explain the public policy behind a statute,<sup>40</sup> and on occasion to demonstrate (by their silence) the Legislature's intention not to change the law.<sup>41</sup> The Legislature's failure to adopt

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v. McDonell (*In re McDonell*), 204 B.R. 976, 978-79 (B.A.P. 9th Cir. 1996) (bankruptcy appellate panel); *In re Garrido*, 43 B.R. 289, 292-93 (Bankr. S.D. Cal. 1984) (bankruptcy court).

36. See, e.g., *Jevne v. Superior Court*, 35 Cal. 4th 935, 947, 111 P.3d 954, 962, 28 Cal. Rptr. 3d 685, 694-95 (2005) (Commission report entitled to substantial weight in construing statute); *Collection Bureau of San Jose v. Rumsey*, 24 Cal. 4th 301, 308 & n.6, 6 P.3d 713, 718 & n.6, 99 Cal. Rptr. 2d 792, 797 & n.6 (2000) (Comments to reenacted statute reiterate the clear understanding and intent of original enactment); *Brian W. v. Superior Court*, 20 Cal. 3d 618, 623, 574 P.2d 788, 791, 143 Cal. Rptr. 717, 720 (1978) (Comments persuasive evidence of Legislature's intent); *Volkswagen Pac., Inc. v. City of Los Angeles*, 7 Cal. 3d 48, 61-63, 496 P.2d 1237, 1247-48, 101 Cal. Rptr. 869, 879-80 (1972) (Comments evidence clear legislative intent of law); *Van Arsdale v. Hollinger*, 68 Cal. 2d 245, 249-50, 437 P.2d 508, 511, 66 Cal. Rptr. 20, 23 (1968) (Comments entitled to substantial weight), overruled on other grounds by *Privette v. Superior Court*, 5 Cal. 4th 689, 854 P.2d 721, 21 Cal. Rptr. 2d 72 (1993); *County of Los Angeles v. Superior Court*, 62 Cal. 2d 839, 843-44, 402 P.2d 868, 870-71, 44 Cal. Rptr. 796, 798-99 (1965) (statutes reflect policy recommended by Commission).

37. It should be noted that the Law Revision Commission should not be cited as the "Law Revision Committee" or as the "Law Review Commission." See, e.g., *Venerable v. City of Sacramento*, 185 F. Supp. 2d 1128, 1132 (E.D. Cal. 2002) (Law Revision "Committee"); *Ryan v. Garcia*, 27 Cal. App. 4th 1006, 1010 n.2, 33 Cal. Rptr. 2d 158, 160 n.2 (1994) (Law "Review" Commission).

38. See, e.g., *People v. Ainsworth*, 45 Cal. 3d 984, 1015, 755 P.2d 1017, 1036, 248 Cal. Rptr. 568, 586 (1988).

39. See, e.g., *Heieck & Moran v. City of Modesto*, 64 Cal. 2d 229, 233 n.3, 411 P.2d 105, 108 n.3, 49 Cal. Rptr. 377, 380 n.3 (1966).

40. See, e.g., *Southern Cal. Gas Co. v. Public Utils. Comm'n*, 50 Cal. 3d 31, 38 n.8, 784 P.2d 1373, 1376 n.8, 265 Cal. Rptr. 801, 804 n.8 (1990).

41. See, e.g., *State ex rel. State Pub. Works Bd. v. Stevenson*, 5 Cal. App. 3d 60, 64-65, 84 Cal. Rptr. 742, 745-46 (1970) (finding that Legislature had no

a Commission recommendation may be used as evidence of legislative intent to reject the proposed rule.<sup>42</sup>

Commission materials are entitled to great weight, but they are not conclusive.<sup>43</sup> While the Commission endeavors in Comments to explain any changes in the law made by a section, the Commission does not claim that every consistent or inconsistent case is noted in the Comments,<sup>44</sup> nor can it anticipate judicial conclusions as to the significance of existing case authorities.<sup>45</sup> Hence, failure of the Comment to note every change the recommendation would make in prior law, or to refer to a consistent or inconsistent judicial decision, is not intended to, and should not, influence the construction of a clearly stated statutory provision.<sup>46</sup>

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intention of changing existing law where “not a word” in Commission’s reports indicated intent to abolish or emasculate well-settled rule).

42. See, e.g., *McWilliams v. City of Long Beach*, 56 Cal. 4th 613, 623-24, 300 P.3d 886, 155 Cal. Rptr. 3d 817 (2013); *Nestle v. City of Santa Monica*, 6 Cal. 3d 920, 935-36, 496 P.2d 480, 490, 101 Cal. Rptr. 568, 578 (1972).

43. See, e.g., *Redevelopment Agency v. Metropolitan Theatres Corp.*, 215 Cal. App. 3d 808, 812, 263 Cal. Rptr. 637, 639 (1989) (Comment does not override clear and unambiguous statute). Commission materials are but one indicium of legislative intent. See, e.g., *Estate of Joseph*, 17 Cal. 4th 203, 216, 949 P.2d 472, 480, 70 Cal. Rptr. 2d 619, 627 (1998). The accuracy of a Comment may also be questioned. See, e.g., *Buzgheia v. Leasco Sierra Grove*, 30 Cal. App. 4th 766, 774, 36 Cal. Rptr. 2d 144, 149 (1994); *In re Thomas*, 102 B.R. 199, 202 (Bankr. E.D. Cal. 1989).

44. *Cf. People v. Coleman*, 8 Cal. App. 3d 722, 731, 87 Cal. Rptr. 554, 559 (1970) (Comments make clear intent to reflect existing law even if not all supporting cases are cited).

45. See, e.g., *Arellano v. Moreno*, 33 Cal. App. 3d 877, 885, 109 Cal. Rptr. 421, 426-27 (1973) (noting that decisional law cited in Comment was distinguished by the California Supreme Court in a case decided after enactment of the Commission recommendation).

46. The Commission does not concur in the *Kaplan* approach to statutory construction. See *Kaplan v. Superior Court*, 6 Cal. 3d 150, 158-59, 491 P.2d 1, 5-6, 98 Cal. Rptr. 649, 653-54 (1971). For a reaction to the problem created by the *Kaplan* approach, see *Recommendation Relating to Erroneously Ordered Disclosure of Privileged Information*, 11 Cal. L. Revision Comm’n Reports 1163 (1973); 1974 Cal. Stat. ch. 227.

Some types of Commission materials are not properly relied on as evidence of legislative intent. On occasion, courts have cited preliminary Commission materials such as tentative recommendations, correspondence, and staff memoranda and drafts in support of their construction of a statute.<sup>47</sup> While these materials may be indicative of the Commission's intent in proposing the legislation, only the Legislature's intent in adopting the legislation is entitled to weight in construing the statute.<sup>48</sup> Unless preliminary Commission materials were before the Legislature during its consideration of the legislation, those materials are not legislative history and are not relevant in determining the Legislature's intention in adopting the legislation.<sup>49</sup>

A Commission study prepared after enactment of a statute that analyzes the statute is not part of the legislative history of the statute.<sup>50</sup> However, documents prepared by or for the Commission

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47. See, e.g., *Rojas v. Superior Court*, 33 Cal. 4th 407, 93 P.3d 260, 15 Cal. Rptr. 3d 643 (2005) (tentative recommendation, correspondence, and staff memorandum and draft); *Yamaha Corp. v. State Bd. of Equalization*, 19 Cal. 4th 1, 12-13, 960 P.2d 1031, 1037, 78 Cal. Rptr. 2d 1, 7 (1998) (tentative recommendation). However, in some cases, proposed legislation will be based on a tentative, rather than final, Commission recommendation. See, e.g., *Estate of Archer*, 193 Cal. App. 3d 238, 243, 239 Cal. Rptr. 137, 140 (1987). In that event, reliance on the tentative recommendation is proper.

See also *Ilkhchooyi v. Best*, 37 Cal. App. 4th 395, 406, 45 Cal. Rptr. 2d 766, 772-73 (1995) (letter responding to tentative recommendation); D. Henke, *California Legal Research Handbook* § 3.51 (1971) (background studies).

48. *Cf. Rittenhouse v. Superior Court*, 235 Cal. App. 3d 1584, 1589, 1 Cal. Rptr. 2d 595, 598 (1991) (linking Commission's intent and Legislature's intent); *Guthman v. Moss*, 150 Cal. App. 3d 501, 508, 198 Cal. Rptr. 54, 58 (1984) (determination of Commission's intent used to infer Legislature's intent).

49. The Commission concurs with the opinion of the court in *Juran v. Epstein*, 23 Cal. App. 4th 882, 894 n.5, 28 Cal. Rptr. 2d 588, 594 n.5 (1994), that staff memoranda to the Commission should generally not be considered as legislative history.

50. See, e.g., *Duarte v. Chino Community Hosp.*, 72 Cal. App. 4th 849, 856 n.3, 85 Cal. Rptr. 2d 521, 525 n.3 (1999).

may be used by the courts for their analytical value, apart from their role in statutory construction.<sup>51</sup>

### **Publications**

Commission publications are distributed to the Governor, the Secretary of the Senate, the Chief Clerk of the Assembly, and the Legislative Counsel.<sup>52</sup> Commission materials are also distributed to interest groups, lawyers, law professors, courts, district attorneys, law libraries, and other individuals requesting materials.

The Commission's reports, recommendations, and studies are published in hardcover volumes that serve as a permanent record of the Commission's work and, it is believed, are a valuable contribution to the legal literature of California. These volumes are available at many county law libraries and at some other libraries. About half of the hardcover volumes are out of print, but others are available for purchase.<sup>53</sup> Publications that are out of print are available as electronic files.<sup>54</sup>

### **Electronic Publication and Internet Access**

Since 1995, the Commission has provided a variety of information on the Internet, including online material and downloadable files.<sup>55</sup> Interested persons with Internet access can find the current agenda, meeting minutes, background studies,

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51. See, e.g., *Sierra Club v. San Joaquin Local Agency Formation Comm'n*, 21 Cal. 4th 489, 502-03, 981 P.2d 543, 551-52, 87 Cal. Rptr. 2d 702, 712 (1999) (unenacted Commission recommendation useful as "opinion of a learned panel"); *Hall v. Hall*, 222 Cal. App. 3d 578, 585, 271 Cal. Rptr. 773, 777 (1990) (Commission staff report most detailed analysis of statute available); *W.E.J. v. Superior Court*, 100 Cal. App. 3d 303, 309-10, 160 Cal. Rptr. 862, 866 (1979) (law review article prepared for Commission provides insight into development of law); *Schonfeld v. City of Vallejo*, 50 Cal. App. 3d 401, 407 n.4, 123 Cal. Rptr. 669, 673 n.4 (1975) (court indebted to many studies of Commission for analytical materials).

52. See Gov't Code § 8291. For limitations on Section 8291, see Gov't Code §§ 9795, 11094-11099.

53. See *Commission Publications*, Appendix 5 *infra*.

54. See "Electronic Publication and Internet Access" *infra*.

55. The URL for the Commission's website is <<http://www.clrc.ca.gov>>.

tentative and final recommendations, staff memoranda, and general background information.

Since 2002, all Commission publications and staff memoranda are available as electronic files. Recent publications and memoranda may be downloaded from the Commission's website. Files that are not on the website are available on request.<sup>56</sup>

#### **Electronic Mail**

Email commenting on Commission proposals or suggesting issues for study is given the same consideration as letter correspondence. Email to the Commission may be sent to *commission@clrc.ca.gov*.

The Commission distributes the majority of its meeting agendas, staff memoranda, and other written materials electronically, by means of its website and email distribution lists. The Commission encourages use of email as an inexpensive and expedient means of communication with the Commission.

#### **MCLE Credit**

The Commission is approved by the State Bar of California as a minimum continuing legal education provider. Participants and attendees at Commission meetings may be eligible to receive MCLE credit. To receive credit for participation or attendance at a meeting, a person must register at the meeting. Meeting materials are available free of charge on the Internet<sup>57</sup> or may be purchased in advance from the Commission.

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56. See *Commission Publications*, Appendix 5 *infra*.

57. See "Electronic Publication and Internet Access" *supra*.

### Personnel of Commission<sup>58</sup>

As of December 1, 2016, the following persons were members of the Law Revision Commission:

#### Legislative Members<sup>59</sup>

Assembly Member Ed Chau  
 Senator Richard Roth

#### Members Appointed by Governor<sup>60</sup>

	<i>Term Expires</i>
Susan Duncan Lee, San Francisco <i>Chairperson</i>	October 1, 2019
Tom Hallinan, Ceres <i>Vice-Chairperson</i>	October 1, 2019
Damian Capozzola, Palos Verdes	October 1, 2017
Taras Kihiczak, Pacific Palisades	October 1, 2017
Victor King, La Crescenta	October 1, 2019
Jane McAllister, Hilmar	October 1, 2019
Crystal Miller-O'Brien, Los Angeles	October 1, 2017

#### Legislative Counsel<sup>61</sup>

Diane F. Boyer-Vine, Sacramento

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58. See also *Biographies of 2016 Commissioners*, Appendix 4 *infra*.

59. The Senate and Assembly members of the Commission serve at the pleasure of their respective appointing powers, the Senate Committee on Rules and the Speaker of the Assembly. Gov't Code § 8281.

60. Seven Commission members are appointed by the Governor with the advice and consent of the Senate. Gov't Code § 8281. These Commissioners serve staggered four-year terms. *Id.* The provision in Government Code Section 8281 to the effect that Commission members appointed by the Governor hold office until the appointment and qualification of their successors has been superseded by the rule in Government Code Section 1774 declaring a vacancy if there is no reappointment 60 days following expiration of the term of office. See also Gov't Code § 1774.7 (Section 1774 overrides contrary special rules unless specifically excepted).

61. The Legislative Counsel serves on the Commission by virtue of office. Gov't Code § 8281.

The following persons are on the Commission's staff:

*Legal*

BRIAN HEBERT  
*Executive Director*

BARBARA S. GAAL  
*Chief Deputy Counsel*

KRISTIN BURFORD  
*Staff Counsel*

STEVE COHEN  
*Staff Counsel*

*Administrative-Secretarial*

DEBORA LARRABEE  
*Associate Governmental  
Program Analyst*

VICTORIA V. MATIAS  
*Secretary*

In addition, Meredith Hankins, Michel Wigney, and Steven Sok all from the University of California, Davis, School of Law, worked for the Commission in 2016.

**Commission Budget**

The Commission's operations for the 2016-17 fiscal year have been funded through a reimbursement from the California Office of Legislative Counsel, in the amount of \$872,000.

That reimbursement is supplemented by monies budgeted for income generated from the sale of documents to the public, to recover the cost of the documents.

The Commission also receives substantial donations of necessary library materials from the legal publishing community, especially California Continuing Education of the Bar, LexisNexis, and Thomson Reuters. In addition, the Commission receives benchbooks from the California Center for Judicial Education and Research (CJER). The Commission also receives a copy of the McGeorge Law Review, annually. The Commission receives additional library materials from other legal publishers and from other law reform agencies on an exchange basis, and has full access to the law libraries at the University of California, Davis,

School of Law and at Stanford Law School. The Commission is grateful for these contributions.

### **Other Activities**

The Commission is directed by statute to cooperate with bar associations and other learned, professional, or scientific associations, institutions, or foundations in any manner suitable for the fulfillment of the purposes of the Commission.<sup>62</sup>

#### **National Conference of Commissioners on Uniform State Laws**

The Commission is directed by statute to receive and consider proposed changes in the law recommended by the National Conference of Commissioners on Uniform State Laws.<sup>63</sup> Legislative Counsel and Commission member Diane F. Boyer-Vine is a member of the California Commission on Uniform State Laws and the National Conference. The Commission's Executive Director, Brian Hebert, is an associate member of the National Conference.

#### **Other Commissioner and Staff Activities**

On June 9, 2016, Executive Director Brian Hebert participated in a meeting of the Judicial Council's Tribal Court-State Court Forum in Los Angeles to discuss the Commission's study of the Recognition of Tribal and Foreign Court Money Judgments.

On September 14, 2016, Executive Director Brian Hebert participated in a panel discussion at the University of California, Davis, School of Law, on law student opportunities in the legislative process, with a focus on the work of the Law Revision Commission.

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62. Gov't Code § 8296.

63. Gov't Code § 8289.

### **Legislative History of Recommendations in the 2016 Legislative Session**

In 2016, bills to effectuate two Commission recommendations were introduced. Both proposals were enacted.

#### **Trial Court Unification: Publication of Legal Notice**

Assembly Bill 2881 (2016 Cal. Stat. ch. 703) was introduced in 2016 by the Assembly Committee on the Judiciary. The bill effectuated the Commission's recommendation on *Trial Court Unification: Publication of Legal Notice*, 44 Cal. L. Revision Comm'n Reports \_\_ (2015).

#### **Fish and Game Law: Technical Revisions and Minor Substantive Improvements: Part 2**

Senate Bill 1473 (2016 Cal. Stat. ch. 546) was introduced in 2016 by the Senate Committee on Natural Resources and Water. The bill effectuated the Commission's recommendation on *Fish and Game Law: Technical Revisions and Minor Substantive Improvements: Part 2*, 44 Cal. L. Revision Comm'n Reports \_\_ (2015).

### **Report on Statutes Repealed by Implication or Held Unconstitutional**

Government Code Section 8290 provides:

The commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the state or the Supreme Court of the United States.

Pursuant to this directive, the Commission has reviewed the decisions of the United States Supreme Court and the California Supreme Court published since the Commission's last Annual Report was prepared<sup>64</sup> and has the following to report:

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64. This study has been carried through opinions published on or before November 2, 2016.

- No decision holding a state statute repealed by implication has been found.
- No decision of the United States Supreme Court holding a state statute unconstitutional has been found.
- One decision of the California Supreme Court holding a state statute unconstitutional has been found.

In *Property Reserve, Inc. v. Superior Court*, 1 Cal. 5th 151, 375 P.3d 887, 204 Cal. Rptr. 3d 770 (2016), the California Supreme Court concluded that the lack of an option for a jury trial on damages under Code of Civil Procedure Section 1245.060(c) is unconstitutional. The Court held that the takings clause of the California Constitution<sup>65</sup> requires a jury trial option on the issue of damages in a precondemnation entry and testing proceeding. The Court concluded that the appropriate remedy for this flaw is to reform the statutes to provide a jury trial option.

### Recommendations

The Commission respectfully recommends that the Legislature authorize the Commission to continue its study of the topics previously authorized.<sup>66</sup>

Pursuant to the mandate imposed by Government Code Section 8290, the Commission recommends the repeal of the provisions referred to under “Report on Statutes Repealed by Implication or Held Unconstitutional,” *supra*, to the extent they have been held unconstitutional and have not been amended, reformed, or repealed.

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65. Cal. Const. art. I, § 19.

66. See discussion under “Calendar of Topics for Study” *supra*; *Calendar of Topics Authorized for Study*, Appendix 2 *infra*.

## APPENDIX 4

### BIOGRAPHIES OF 2016 COMMISSIONERS

Susan Duncan Lee, of San Francisco, serves as Chairperson of the Commission, and has been a deputy attorney general and thereafter a supervising deputy attorney general with the California Department of Justice since 1989. Commissioner Lee received a Juris Doctor degree from the University of California, Hastings College of the Law.

Tom Hallinan, of Ceres, serves as the Vice-Chairperson of the Commission, and has been a partner with Churchwell White LLP since 2012. He was previously a partner with Bush, Ackley, Milich and Hallinan from 1994 to 2012, a law clerk at the United States Attorney's Office from 1991 to 1993, and a law clerk at the Judicial Council of California from 1990 to 1992. He has also served on the 38th District Agricultural Association, Stanislaus County Fair Board of Directors. Commissioner Hallinan received a Juris Doctor degree from Lincoln Law School.

Diane Boyer-Vine, of Sacramento, has been Legislative Counsel for the State of California since 2002. She was previously a deputy and thereafter a chief deputy in the Legislative Counsel's office from 1988 to 2002, and before that an associate with the law firm of Martorana and Stockman. She also serves as a member of the California Commission on Uniform State Laws. Commissioner Boyer-Vine received a Juris Doctor degree from the University of California, Davis School of Law.

Damian Capozzola, of Palos Verdes, is the founder of the Law Offices of Damian D. Capozzola. He was previously a partner with the law firm of Crowell and Moring LLP from 2011 to 2013, an attorney with the law firm of Epstein Becker and Green P.C. from 2007 to 2011, and an attorney with the law firm of Kirkland and Ellis LLP from 1996 to 2007. He is the current West Region Vice President for the National Italian-American Bar Association and has previously served as a President of the Italian-American

Lawyers Association of Los Angeles. Commissioner Capozzola received a Juris Doctor degree from the University of Virginia School of Law.

Assembly Member Ed Chau, of Monterey Park, has been a member of the Assembly since 2012. He previously was a general law practitioner in the Law Office of Edwin Chau, a small business owner for over 20 years, an engineer for IBM, and a programmer for Unisys Corporation. He has also previously served as a board member of the Montebello Unified School District, where he acted as Board President three times, and has served as Judge Pro Tem for the Los Angeles Superior Court. Commissioner Chau received a Juris Doctor degree from Southwestern University.

Taras Peter Kihiczak, of Pacific Palisades, has been a lawyer with and shareholder of The Kick Law Firm APC since 1991. He was previously a lawyer with the law firm of Thelen Marrin Johnson and Bridges from 1989 to 1990. Commissioner Kihiczak received a Juris Doctor degree from the University of Pennsylvania Law School.

Victor King, of La Crescenta, has been university legal counsel for California State University, Los Angeles since 2002. He was previously a partner with the law firm of Lewis Brisbois Bisgaard and Smith LLP from 2001 to 2002, an associate with the law firm of Lewis Brisbois Bisgaard and Smith LLP from 1999 to 2001, an associate with the law firm of Bottum and Feliton from 1996 to 1999, and an associate with the law firm of Ochoa and Sillas from 1991 to 1995. He was also a trustee of the Glendale Community College District from 1997 to 2009. Commissioner King received a Juris Doctor degree from the University of Michigan Law School.

Jane McAllister, of Hilmar, has been a partner with McAllister and McAllister, Inc. since 1996. She was previously an associate attorney with Damrell, Nelson, Schrimp, Pallios, Pacher and Silva from 1988 to 1996. Commissioner McAllister received a Juris Doctor degree from Humphreys College School of Law.

Crystal Miller-O'Brien, of Los Angeles, is general counsel for the All City Employee Benefits Services Association, Inc., since 2016. She was previously corporate counsel for Medical Management Consultants, Inc. from 2006 to 2015, an associate with the law firm of Anderson McPharlin and Connors LLP from 2005 to 2006, an associate with the law firm of Robie and Matthai PC from 2003 to 2004, an associate with the law firm of Bullivant Houser Bailey PC from 2002 to 2003, and a judicial clerk to the Washington State Supreme Court from 2001 to 2002. She also served on the board of directors of the Conference of California Bar Associations from 2009 to 2012, and is a member of Corporate Counsel Women of Color, the Black Women Lawyers Association of Los Angeles, and the National Association of Women Business Owners. Commissioner Miller-O'Brien received a Juris Doctor degree and a Joint Certificate in Alternative Dispute Resolution from Willamette University College of Law.

Senator Richard Roth, of Riverside, has been a member of the Senate since 2012. He previously was a managing partner in the law firm of Roth Carney APC, engaged in the practice of labor and employment law with other Riverside-based firms for over 30 years, an attorney with the National Labor Relations Board, an adjunct instructor at the University of California at Riverside's Anderson School of Management and in the University's extension division, a Legal Advisor to the Airlift/Tanker Association, and a Lawyer Representative to the Ninth Circuit Court of Appeals Judicial Conference. He has also served in the United States Air Force, and was a member of the JAG Corps, including service in the Pentagon as Mobilization Assistant to the Judge Advocate General of the U.S. Air Force, retiring with the rank of major general. He has also previously served as Chairman of the Board for the Greater Riverside Chambers of Commerce, president of the Monday Morning Group vice-chairperson of the Parkview Community Hospital Board, and trustee of the March Field Museum. He is a member of the Raincross Club, the Riverside Community Hospital Advisory Board, the Thomas W. Wathen Foundation Board (Flabob Airport), the Riverside County Bar

Association Board of Directors, the Path of Life Ministries Advisory Board, the Air Force Judge Advocate General's School Foundation Board, and the La Sierra University Foundation Board, and a past member of the Riverside Public Library Foundation Board, and the Riverside Art Museum Board. Commissioner Roth received a Juris Doctor degree from Emory University.

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