

Minutes

February 10, 2017

## Memorandum 2017-10

**Minutes of Meeting on February 2, 2017 (Draft)**

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The California Law Revision Commission<sup>1</sup> held a meeting on February 2, 2017. 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](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.

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**DRAFT** MINUTES OF MEETING  
CALIFORNIA LAW REVISION COMMISSION  
FEBRUARY 2, 2017  
SACRAMENTO

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A meeting of the California Law Revision Commission was held in Sacramento on February 2, 2017.

**Commission:**

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

*Absent:* Assembly Member Ed Chau  
Senator Richard D. Roth  
Damian Capozzola

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

**Other Persons:**

Heather Anderson, Judicial Council of California  
Lawrence Doyle, Conference of California Bar Associations  
J. Felix De La Torre, PERB  
Robert Flack  
Greg Gonzalez, CLRC law student extern  
Ron Kelly  
Jeff Kichaven  
Hon. David W. Long (ret.), California Judges Association  
Phyllis G. Pollack, PGP Mediation  
Fern Topas Salka  
Elisa Shieh, CLRC law student extern  
Heidi S. Tuffias  
Loretta Van Der Pol, PERB/SMCS  
John S. Warnlof, California Dispute Resolution Council  
Stephanie L. Williams, ACFLS

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1                                   APPROVAL OF ACTIONS TAKEN

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

6                                   MINUTES OF DECEMBER 1, 2016, COMMISSION MEETING

7           Memorandum 2017-1 presented a draft of the Minutes of the December 1,  
8 2016, Commission meeting. The Commission approved the Minutes as  
9 submitted.

10          (*Commissioners Kihiczak and Miller-O’Brien were not present when this decision*  
11 *was made.*)

12                                   ADMINISTRATIVE MATTERS

13    **Report of Executive Director**

14          The Executive Director introduced the Commission’s current externs,  
15 Gregory Gonzalez and Elisa Shieh, both students at the U.C. Davis School of  
16 Law.

17    **Commissioner Suggestions**

18          No new Commissioner suggestions were made.

1 **Open Government Laws**

2 The Commission considered Memorandum 2017-2, summarizing “open  
3 government” laws applicable to the Commission. No Commission action was  
4 required or taken.

5 2017 LEGISLATIVE PROGRAM

6 The Commission considered Memorandum 2017-3, discussing the  
7 Commission’s 2017 Legislative Program. No Commission action was required or  
8 taken.

9 STUDY G-400 — CALIFORNIA PUBLIC RECORDS ACT CLEAN-UP

10 The Commission considered Memorandum 2017-5, introducing the study of a  
11 nonsubstantive recodification of the California Public Records Act (Gov’t Code  
12 §§ 6250-6276.48, also known as the “CPRA”) and related provisions.

13 The Commission made the following decisions:

- 14 • This study is strictly nonsubstantive; the proposed recodification  
15 should consist of clarifying clean-up only. In preparing drafts for  
16 the Commission to consider, the staff should stick closely to the  
17 existing language of the CPRA. The staff should also use the  
18 Commission’s other traditional techniques for ensuring that a  
19 recodification effects no substantive change.
- 20 • In addition, the staff should apply the same prudential  
21 considerations as in other recent studies of this type. Any  
22 proposed statutory change must meet all three of the following  
23 criteria:
  - 24 (1) It is plainly beneficial.
  - 25 (2) It does not present a significant risk of unintended  
26 consequences (i.e., its effects seem straightforward and  
27 circumscribed).
  - 28 (3) It is not likely to be controversial.
- 29 • For now, the Commission will focus only on statutory provisions  
30 that are within the CPRA, or that cross-refer to the CPRA. The  
31 Commission deferred decision on whether to examine any other  
32 statutory provisions, such as those comprising the Richard McKee  
33 Transparency Act (Educ. Code §§ 89913-89919).
- 34 • To ease the transition to a new numbering scheme, the proposed  
35 recodification should include a provision substantially similar to

1 Penal Code Section 16010, which is shown on page 13 of  
2 Memorandum 2017-5.

- 3 • As a next step in the study, the staff should prepare and present a  
4 tentative outline proposing a reorganization of the CPRA.

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

7 The Commission discussed two aspects of its study of the relationship  
8 between mediation confidentiality and attorney malpractice and other  
9 misconduct:

- 10 (1) Possible additional reforms to include in the tentative  
11 recommendation.  
12 (2) Further work on the draft tentative recommendation.

13 **Possible Additional Reforms to Include in the Tentative Recommendation**

14 The Commission considered Memorandum 2016-59 (Possible Additional  
15 Reforms to Include in the Tentative Recommendation) and its First Supplement.  
16 The Commission also considered the material pertaining to that topic in the First  
17 and Second Supplements to Memorandum 2017-9.

18 The Commission made the following decisions regarding inclusion of  
19 additional reforms in its tentative recommendation for this study.

20 *Disclosure Requirements*

21 The tentative recommendation should not propose any statutory disclosure  
22 requirement (see Memorandum 2016-59, pp. 6-18).

23 *(Commissioner Boyer-Vine was not present for this decision.)*

24 *Revise the Law on Waiving Mediation Confidentiality*

25 The tentative recommendation should not propose any revision of the rules  
26 for waiving mediation confidentiality (see Memorandum 2016-59, pp. 18-21).

27 *Revise the Law on Modifying Mediation Confidentiality By Agreement*

28 The tentative recommendation should not propose any reform relating to  
29 modifying mediation confidentiality by agreement (see Memorandum 2016-59,  
30 pp. 21-22).

31 *(Commissioners Boyer-Vine and McAllister abstained from this decision.)*

1 *Cooling-Off Period or Similar Reform*

2 The tentative recommendation should not propose a cooling-off period for a  
3 mediated settlement agreement or a similar reform (see Memorandum 2016-59,  
4 pp. 23-26).

5 *Level of Assistance for Mediation Participants*

6 The tentative recommendation should not propose any reform relating to the  
7 level of assistance for mediation participants (see Memorandum 2016-59, pp. 26-  
8 27).

9 *Oral or Written Voir Dire Before a Party Signs Mediated Settlement Agreement*

10 The tentative recommendation should not propose a voir dire requirement  
11 for a mediated settlement agreement (see Memorandum 2016-59, pp. 27-28).

12 *Requirements to Ensure that Mediation Participants Effectively Memorialize Key*  
13 *Representations*

14 The tentative recommendation should not propose any requirement relating  
15 to memorializing key representations made in the mediation process (see  
16 Memorandum 2016-59, pp. 28-30).

17 *(Commissioner Boyer-Vine abstained from this decision.)*

18 *Empirical Study*

19 The tentative recommendation should not propose any reform involving an  
20 empirical study (see Memorandum 2016-59, pp. 30-31).

21 *Ron Kelly's "Alternative Compromise Package"*

22 The tentative recommendation should not propose Ron Kelly's "Alternative  
23 Compromise Package" (see Memorandum 2016-59, pp. 31-35 & Exhibit pp. 51-  
24 53).

25 *(Commissioner Boyer-Vine abstained from this decision.)*

26 *Report With No Recommendation or a Recommendation to Leave the Law As Is*

27 The tentative recommendation should not raise the possibility of preparing a  
28 report in which the Commission (1) describes various approaches but makes no  
29 recommendation or (2) recommends leaving existing law on mediation  
30 confidentiality intact (see Memorandum 2016-59, p. 36).

31 Rather, the tentative recommendation should propose and solicit comment on  
32 a single reform: the new mediation confidentiality exception that the

1 Commission has been drafting for the past year. The tentative recommendation  
2 should explain why the Commission is proposing that approach. The tentative  
3 recommendation should also describe the other options that the Commission  
4 considered (without detailing its concerns about those options).

5 **Further Work on Draft Tentative Recommendation**

6 The Commission began to consider Memorandum 2017-8 (Further Work on  
7 Draft Tentative Recommendation) and material pertaining to that topic in the  
8 Memorandum 2017-9 and its First Supplement. In particular, the Commission  
9 heard testimony, raised questions, and expressed thoughts on the issues raised  
10 by the Public Employment Relations Board (“PERB”).

11 The Commission did not resolve PERB’s issues or any of the other drafting  
12 issues. It requested that the staff include them in a memorandum for the April  
13 meeting, which should take the February discussion into account.

14 *(Because her firm does legal work involving PERB, Commissioner Miller-O’Brien left*  
15 *the room during the discussion of PERB’s issues, and did not participate in that*  
16 *discussion.)*

17 **STUDY L-3032.1 — REVOCABLE TRANSFER ON DEATH DEED: FOLLOW-UP STUDY**

18 The Commission considered Memorandum 2017-6, discussing the statutory  
19 requirement that a revocable transfer on death deed be recorded, in order to be  
20 valid. The Commission directed the staff to prepare a draft tentative  
21 recommendation that would do both of the following:

- 22 (1) Expressly provide that failure to record the “common questions”  
23 page of the statutory revocable transfer on death deed form has no  
24 effect on the validity of the deed.  
25 (2) Apply that new rule retroactively.

26 **STUDY L-4100 – NONPROBATE TRANSFERS: CREDITOR CLAIMS**  
27 **AND FAMILY PROTECTION**

28 The Commission considered Memorandum 2017-7, reactivating the  
29 Commission’s study of the liability of nonprobate transfers for creditor claims  
30 and family protections.

31 No Commission action was required or taken.

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STUDY R-100 — FISH AND GAME LAW

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The Commission considered Memorandum 2017-4, discussing the tentative recommendation that is currently being prepared. No Commission action was required or taken.

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APPROVED AS SUBMITTED

\_\_\_\_\_ Date

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

\_\_\_\_\_ Chairperson

\_\_\_\_\_ Executive Director