

## Memorandum 2017-32

**Minutes of Meeting on June 8, 2017 (Draft)**

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The California Law Revision Commission<sup>1</sup> held a meeting on June 8, 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**  
**JUNE 8, 2017**  
**SACRAMENTO**

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A meeting of the California Law Revision Commission was held in Sacramento on June 8, 2017.

**Commission:**

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

*Absent:* Assembly Member Ed Chau  
Senator Richard D. Roth  
Damian Capozzola  
Crystal Miller-O'Brien

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

**Consultant:** Nathaniel Sterling

**Other Persons:**

Lawrence Doyle, Conference of California Bar Associations  
Ron Kelly  
David G. Knitter, Executive Committee, Trusts and Estates Section of the State Bar  
Hon. David W. Long (ret.), California Judges Association  
Nikki Moore, California Newspaper Publishers Association  
Ana Sambold, National Conflict Resolution Center  
Hon. Brian R. Van Camp (ret.), California Judges Association  
John S. Warnlof, California Dispute Resolution Council



- 1 • Provide enough meeting time to get through the material  
2 scheduled for consideration.
- 3 • To the extent compatible with the prior goals, avoid unduly late  
4 return flights.

5 The Commission directed the staff to continue those practices without  
6 change.

7 *(Commissioner Hallinan was not present when this decision was made.*  
8 *Commissioner King abstained.)*

### 9 **Commissioner Suggestions**

10 No new Commissioner suggestions were made.

### 11 **Public Records Practices**

12 The Commission considered Memorandum 2017-21, discussing whether to  
13 adjust the Commission's practices to accommodate the holding in *City of San Jose*  
14 *v. Superior Court*, 2 Cal. 5th 608 (2017). The Commission decided to postpone  
15 making any final decision on that topic until its August 2017 meeting.  
16 Memorandum 2017-21 will be placed on the agenda for that meeting, along with  
17 a supplemental memorandum discussing records held by former commissioners.

18 *(Commissioner Hallinan was not present when this decision was made.*  
19 *Commissioner King abstained.)*

## 20 2017 LEGISLATIVE PROGRAM

21 The Commission considered Memorandum 2017-22, discussing the  
22 Commission's 2017 Legislative Program. The Commission made the following  
23 decisions:

- 24 • The Commission accepted the amendment to AB 1034 (Chau) that  
25 was set out in the memorandum. The Commission will revise its  
26 recommendation to use the amended language. *(Commissioner*  
27 *Hallinan was not present when this decision was made.)*
- 28 • The Commission approved the Comment revisions proposed by  
29 staff to reflect the March 13, 2017, amendment of AB 905  
30 (Maienschein). *(Commissioner Hallinan was not present when this*  
31 *decision was made. Commissioner Boyer-Vine abstained.)*

1                   STUDY D-1300 — HOMESTEAD EXEMPTION: DWELLING

2           The Commission considered Memorandum 2017-25, presenting a draft  
3 tentative recommendation relating to the procedure used to approve the sale of a  
4 dwelling to satisfy a judgment creditor. The Commission approved the draft for  
5 circulation as a tentative recommendation.

6           *(Commissioner Hallinan was not present when this decision was made.)*

7                   STUDY EM-560 — EMINENT DOMAIN: PRE-CONDEMNATION ACTIVITIES

8           The Commission considered Memorandum 2017-27, relating to the statutory  
9 procedure for compensation of a property owner in connection with pre-  
10 condemnation activity. The Commission approved the draft for circulation as a  
11 tentative recommendation.

12           *(Commissioner Hallinan was not present when this decision was made.)*

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

15           The Commission considered Memorandum 2017-30 (draft tentative  
16 recommendation) and its First and Second Supplements. The Commission also  
17 considered Memorandum 2017-31 (public comment).

18           The Commission made the following decisions:

19           **Implementation of April Decisions on Mediator Testimony and Other**  
20           **Requests for Evidence From a Mediator**

21           The Commission approved the staff’s implementation of the decisions that  
22 the Commission made in April relating to mediator testimony and other requests  
23 for evidence from a mediator (see First Supplement to Memorandum 2017-30,  
24 pp. 1-3).

25           **Access to Mediator Communications**

26           Proposed Evidence Code Section 1120.5 should be revised as shown in  
27 ~~strikeout~~ and underscore below:

28                   1120.5. (a) A communication or a writing that is made or  
29 prepared for the purpose of, or in the course of, or pursuant to, a  
30 mediation or a mediation consultation, is not made inadmissible, or  
31 protected from disclosure, by provisions of this chapter if ~~both~~ all  
32 of the following requirements are satisfied:

1 (1) The evidence is relevant to prove or disprove an allegation  
2 that a lawyer breached a professional requirement when  
3 representing a client in the context of a mediation or a mediation  
4 consultation.

5 (2) The evidence is sought or proffered in connection with, and  
6 is used pursuant to this section solely in resolving, one or more of  
7 the following:

8 (A) ....

9 (3) The evidence does not constitute or disclose a writing of the  
10 mediator relating to a mediation conducted by the mediator.

11 ....

12 *(Commissioner King voted against this decision.)*

13 The tentative recommendation should include a Note that specifically solicits  
14 comment on the content and wording of proposed Section 1120.5(a)(3).

15 In addition, the Comment to proposed Section 1120.5 should be revised as  
16 shown in underscore below:

17 Under subdivision (e), a mediator generally cannot testify or  
18 produce documents pursuant to this section, whether voluntarily  
19 or under compulsion of process, regarding a mediation that the  
20 mediator conducted. That general rule is subject to the same  
21 exceptions stated in Section 703.5, which does not expressly refer to  
22 documentary evidence.

23 For restrictions on obtaining a mediator's electronic records  
24 from the mediator's service provider, see 18 U.S.C. § 2702(a);  
25 O'Grady v. Superior Court, 139 Cal. App. 4th 1423, 44 Cal. Rptr. 3d  
26 72 (2006).

27 Subdivision (f) ....

28 The staff should make conforming revisions throughout the proposal as  
29 necessary to reflect these decisions.

### 30 **Other Issues**

31 The drafting issues described at pages 12-14 of the First Supplement to  
32 Memorandum 2017-30 should be handled as shown on those pages.

### 33 **Approval of a Tentative Recommendation**

34 Subject to the revisions described above, the Commission approved the draft  
35 attached to Memorandum 2017-30 as a tentative recommendation, to be posted  
36 to the Commission's website and broadly circulated for comment.

37 *(Commissioner King voted against this decision. Commissioner Boyer-Vine*  
38 *abstained.)*

1                                   STUDY L-4100 — NONPROBATE TRANSFERS:  
2                                   CREDITOR CLAIMS AND FAMILY PROTECTIONS

3           The Commission considered Memorandum 2017-23 and its First Supplement,  
4 discussing the Commission’s study of the liability of nonprobate transfers for  
5 creditor claims and family protections.

6           The Commission made the following decisions:

- 7           • The Commission will consider whether to recommend the  
8 enactment of Section 102 of the Uniform Nonprobate Transfers on  
9 Death Act (regarding the liability of nonprobate transfers for  
10 creditor claims and family protections). (*Commissioner Hallinan was*  
11 *not present when this decision was made. Commissioner King abstained.*)
- 12          • The Commission will consider whether to recommend any  
13 statutory reforms to address *Kircher v. Kircher*, 189 Cal. App. 4th  
14 1105 (2010). (*Commissioner Hallinan was not present when this decision*  
15 *was made. Commissioner King abstained.*)
- 16          • Any liability rule for nonprobate transfers should expressly  
17 exclude matters preempted by federal law and Medi-Cal Estate  
18 Recovery. (*Commissioners Boyer-Vine and Hallinan were not present*  
19 *when this decision was made. Commissioner King abstained.*)

20                                   STUDY R-100 — FISH AND GAME LAW

21           The Commission considered Memoranda 2017-28 and 2017-29, relating to the  
22 Commission’s proposed recodification of the Fish and Game Code. The  
23 Commission made the following decisions:

- 24          • The Commission approved the draft attached to Memorandum  
25 2017-28 for circulation as a tentative recommendation.  
26 (*Commissioner Hallinan was not present when this decision was made;*  
27 *Commissioner Boyer-Vine abstained.*)
- 28          • The Commission approved the preliminary staff draft attached to  
29 Memorandum 2017-29, for inclusion in a future tentative  
30 recommendation.
- 31          • The Commission directed the staff to include the remainder of the  
32 Fish and Game Code in a draft of a “Part 3” tentative  
33 recommendation, rather than presenting that material first as a  
34 preliminary staff draft.

APPROVED AS SUBMITTED

\_\_\_\_\_  
Date

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

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Chairperson

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Executive Director