

Admin.

August 14, 2017

Memorandum 2017-39

Minutes of Meeting on August 4, 2017 (Draft)

The California Law Revision Commission¹ held a meeting on August 4, 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

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
AUGUST 4, 2017
Los Angeles

A meeting of the California Law Revision Commission was held in Los Angeles on August 4, 2017.

Commission:

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

Absent: Victor King
Senator Richard D. Roth

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

Other Persons:

Nikki Moore, California News Publishers Association
Mark S. Poochigian, Executive Committee, State Bar Trusts and Estates Section
Gary Tokumori, Parker Milliken

1 He also plans to postpone consideration of the 2018 meeting schedule until
2 December, so that new Commissioners will have an opportunity to participate in
3 setting that schedule.

4 *Commemoration of Professor Miguel Méndez*

5 The Executive Director reported the sad news that the Commission's former
6 consultant on evidence law studies, Professor Miguel Méndez, recently passed
7 away. Professor Méndez taught at Stanford Law School and later at UC Davis
8 School of Law.

9 The Executive Director read the following statement written by the Chief
10 Deputy Counsel, who was a student of Prof. Méndez and worked with him on
11 several Commission studies:

12 Prof. Miguel Méndez prepared a 9-part background study for
13 the Law Revision Commission comparing the California Evidence
14 Code to the Federal Rules of Evidence, which was published as a
15 series of law review articles. Over the years, he also provided
16 valuable comments on several other Commission studies involving
17 evidence issues. He was incredibly knowledgeable about such
18 issues, analyzing them passionately and methodically, always
19 looking for the approach that would best serve the public interest.

20 Prof. Méndez was also kind-hearted and generous with his
21 time, great at explaining complicated legal principles and talking
22 through challenging questions. He freely shared his expertise in
23 evidence and criminal law and wide range of practical experience.

24 The citizens of California are fortunate to have had the benefit
25 of his good counsel in shaping the laws of their state. He was a
26 mentor and role model for many people. His lifetime of dedicated
27 teaching and public service will have an enduring positive impact.

28 **Commissioner Suggestions**

29 Chairperson Lee suggested that the Commission examine the possibility of
30 revising the format for its agendas. For consideration in this regard, she will
31 provide the staff with an agenda template prepared by the Attorney General's
32 office.

33 Vice Chairperson Hallinan plans to make a suggestion relating to a motion to
34 quash an order for examination. He will put his suggestion in writing, for the
35 Commission to consider in its annual review of new topics and priorities.

1 **Public Records Practices**

2 The Commission considered Memorandum 2017-21 and its First Supplement,
3 relating to the California Supreme Court's decision in *City of San Jose v. Superior*
4 *Court*, 2 Cal. 5th 608 (2017).

5 The Commission decided to adopt the following policies, which supplement
6 the policies on staff communications described at pages 4-5 of Memorandum
7 2017-21:

- 8 • Commissioners and staff should not use text messaging or social
9 media to conduct substantive Commission business.
- 10 • Commissioners should segregate any email messages they send or
11 receive relating to Commission business (other than messages
12 from the staff), by placing such messages into a separate folder.
- 13 • Within a reasonable time after a Commissioner's term ends, the
14 Commissioner shall forward that email folder to the staff for
15 safekeeping.
- 16 • The staff should continue to prepare an annual memorandum on
17 open government laws, for training purposes.

18 The staff will draft language to implement these decisions in the
19 Commission's *Handbook of Practices and Procedures*, and present that language to
20 the Commission for review and approval at a future meeting.

21 *(Commissioner Chau was not present for these decisions.)*

22 **Election of Officers**

23 The Commission considered Memorandum 2017-33, relating to the election of
24 Commission officers. The Commission elected Thomas Hallinan as Chairperson
25 and Jane McAllister as Vice Chairperson, for terms commencing September 1,
26 2017, and ending August 31, 2018.

27 *(Commissioner Chau was not present for these decisions.)*

28 2017 LEGISLATIVE PROGRAM

29 The Commission considered Memorandum 2017-34, discussing the
30 Commission's 2017 Legislative Program. No Commission action was required or
31 taken.

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

2 The Commission considered Memorandum 2017-37, relating to stakeholder
3 outreach. At the Chair’s suggestion, the Commission directed the staff to contact
4 the Peace Officers Research Association of California (“PORAC”) about
5 participating in this study.

6 The Commission also considered Memorandum 2017-24, which presents a
7 draft of a tentative outline for reorganizing the California Public Records Act
8 (“CPRA”). The Commission made a number of decisions regarding that outline,
9 as described below.

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

11 **Location of the CPRA Within the Government Code**

12 The Commission approved the concept of relocating the CPRA to a new
13 division (“Division 10. Inspection of Records” of “Title 1. General” of the
14 Government Code. The Commission decided against relocating the content of the
15 nearby chapters relating to public records (Chapters 3, 3.01, 3.1, 3.2, and 3.3).
16 Instead, the staff should:

- 17 (1) Cross-refer to Chapters 3, 3.01, 3.1, 3.2, and 3.3 (or material in those
18 chapters) where appropriate in the Commission’s Comments to
19 code sections in the recodified CPRA.
- 20 (2) Include one or more “signpost provisions” within the recodified
21 CPRA, which would direct readers to the other chapters relating to
22 public records.

23 **Constitutional Right of Access**

24 On behalf of the California News Publishers Association, Nikki Moore
25 pointed out that overlying the CPRA is the right of access established in Article I,
26 Section 3(b) of the California Constitution. Ms. Moore asked whether the
27 Commission’s proposed legislation would refer to that constitutional provision.

28 The Commission decided to refer to Article I, Section 3(b) at appropriate
29 places in its Comments to the proposed legislation, but not in the proposed
30 legislation itself. That will help alert readers to the constitutional provision, while
31 maintaining the nonsubstantive character of the Commission’s proposal.

32 **Retention of Records**

33 Ms. Moore suggested that the recodified CPRA should refer to or incorporate
34 the provisions governing retention of public records. To alert readers to those

1 provisions, the Commission decided to refer to them at appropriate places in its
2 Comments to the proposed legislation.

3 **Nonsubstantive Reform**

4 As previously decided, the proposed CPRA recodification should include
5 provisions modeled on Penal Code Sections 16005, 16020, and 16025 (shown at
6 pp. 6-7 of Memorandum 2017-24). In addition, the recodification should include
7 statutory language that specifically refers to Attorney General opinions
8 interpreting the CPRA or determining its constitutionality. The staff should draft
9 language to implement this decision and provide it to the Commissioners and
10 interested persons to review.

11 **Definition of “Prompt”**

12 Ms. Moore suggested including a definition of “prompt” in “Chapter 2.
13 Definitions” of the recodification outline. The Commission declined to do so,
14 because the CPRA does not currently define “prompt.”

15 **Government Code Section 6253**

16 Ms. Moore pointed out that subdivisions (a) and (b) of Government Code
17 Section 6253 are redundant to some extent, and there is also some overlap
18 between subdivisions (b) and (c). She asked how the Commission planned to
19 handle that situation in its proposed recodification.

20 The staff explained that the Legislature’s resolution on this study (2016 Cal.
21 Stat. res. ch. 150) instructs the Commission to eliminate duplicative provisions.
22 The staff will take Ms. Moore’s comments into account in preparing a
23 recodification of Section 6253 for the Commission to consider.

24 **Government Code Section 6254.16**

25 The tentative outline would place the substance of Government Code Section
26 6254.16 in “Chapter 10. Personal Information.” Ms. Moore pointed out that
27 Section 6254.16 applies to both residential and commercial users, so it may not
28 belong in a chapter on “personal information.” The Commission directed the
29 staff to look into this point and bring it back to the Commission for further
30 consideration.

1 **Government Code Section 6255**

2 The tentative outline would place the entire substance of Government Code
3 Section 6255 in proposed “Part 3. Inspection Procedures.” Ms. Moore suggested
4 placing Section 6255’s catchall exemption elsewhere. The Commission directed
5 the staff to look into this point and bring it back to the Commission for further
6 consideration.

7 **Enforcement**

8 The tentative outline includes “Part 4. Enforcement of the Right to Inspect or
9 Receive a Public Record.” Ms. Moore explained that the right to “inspect or
10 receive” a public record is not the only aspect of the CPRA that people may seek
11 to enforce. She pointed out that Government Code Sections 6258 and 6259 could
12 be more clear about that point.

13 In light of her comments, the Commission decided that “Part 4. Enforcement”
14 would be a better name to use. Due to the nonsubstantive nature of this study,
15 however, the Commission will not attempt to clarify the language used in
16 Sections 6258 and 6259.

17 **Article 2 of the CPRA**

18 The Commission deferred decision on the best means of handling the
19 material that is now in Article 2 of the CPRA (Gov’t Code §§ 6275-6276.48).

20 **STUDY J-507 — CIVIL DISCOVERY IMPROVEMENTS**

21 The Commission considered Memorandum 2017-26, relating to disputes over
22 whether a party deponent will attend and testify pursuant to a notice of
23 deposition. The Commission discussed various possible approaches but opted to
24 defer decision-making and further consideration of civil discovery until its
25 December meeting, when the fate of AB 383 (Chau) will be more clear.

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

27 The Commission considered Memorandum 2017-35, which discusses a letter
28 from the Executive Committee of the Trusts and Estates Section of the State Bar
29 (“TEXCOM”) that raises some concerns relating to use of a revocable transfer on
30 death deed (“RTODD”). The Commission will consider most of those concerns
31 later in this study, after there has been more practical experience under the
32 RTODD statute.

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STUDY R-100 — FISH AND GAME LAW

The Commission considered Memorandum 2017-38, presenting a draft of a third tentative recommendation (“Part 3”) on recodification of the Fish and Game Code. The Commission also considered the First Supplement to Memorandum 2017-38, which presents a letter from John Laird (Secretary for Natural Resources) requesting that the Commission readjust the sequence of its work on this study.

The Commission decided to take the following steps:

- Temporarily suspend further work on Parts 2 and 3 of the tentative recommendation.
- Complete an informational report on the funding specified in the Fish and Game Code (including the identification of mandates for which there is no dedicated funding source).
- Review public comments on Part 1 of the tentative recommendation.
- After the end of the 2017-2018 fiscal year, prepare a new tentative recommendation that includes the entirety of the proposed Fish and Wildlife Code. This tentative recommendation should incorporate any changes made pursuant to public comment on Part 1 and any statutory changes made in the budget process.

The Commission also approved the draft attached to Memorandum 2017-38 as a preliminary draft for eventual incorporation into the new tentative recommendation.

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

<input type="checkbox"/> APPROVED AS SUBMITTED	_____
	Date
<input type="checkbox"/> APPROVED AS CORRECTED (for corrections, see Minutes of next meeting)	_____
	Chairperson

	Executive Director