

Admin.

May 16, 2018

Memorandum 2018-28

Minutes of Meeting on May 4, 2018 (Draft)

The California Law Revision Commission¹ held a meeting on May 4, 2018. 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.

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DRAFT MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
MAY 4, 2018
Sacramento

A meeting of the California Law Revision Commission was held in Sacramento on May 4, 2018.

Commission:

Present: Thomas Hallinan, Chairperson
Jane McAllister, Vice-Chairperson
Victor King
Susan Duncan Lee
Crystal Miller-O'Brien

Absent: Assembly Member Ed Chau
Senator Richard D. Roth
Diane F. Boyer-Vine, Legislative Counsel
Olga Mack

Staff:

Present: Brian Hebert, Executive Director
Kristin Burford, Staff Counsel
Steve Cohen, Staff Counsel

Absent: Barbara Gaal, Chief Deputy Counsel

Other Persons:

Charles Martel, Judicial Council of California
Nikki Moore, California News Publishers Association

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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

7 The Commission considered Memorandum 2018-12 and its First Supplement,
8 presenting draft Minutes for the February 8, 2018 meeting, and Memorandum
9 2018-27, presenting draft Minutes for the April 12, 2018 meeting.

10 The Commission approved the Minutes for the February meeting with two
11 revisions:

- 12 • The change proposed in the First Supplement to Memorandum
13 2018-12 was made.
- 14 • The list of Commissioners attending the meeting was revised to
15 place Susan Duncan Lee's name after Victor King's.

16 The Commission approved the Minutes for the April meeting without
17 change.

18 ADMINISTRATIVE MATTERS

19 **Report of Executive Director**

20 The Executive Director reported that Chief Deputy Counsel Gaal is on
21 planned medical leave and would likely be unable to attend the June 2018
22 meeting.

23 **Commissioner Suggestions**

24 Commissioner Miller-O'Brien offered to provide assistance with new
25 Commissioner orientation and related matters.

26 **Handbook of Practices and Procedures**

27 The Commission considered Memorandum 2018-13, discussing possible
28 revisions of the Commission's *Handbook of Practices and Procedures*. The
29 Commission made the following decisions:

- 1 • The staff should prepare a draft of a comprehensive restatement of
2 the *Handbook*.
- 3 • The restated *Handbook* should not include the substance of
4 Appendix D (publication distribution policy), Appendix E
5 (Commission consultants), or Appendix F (office addresses).
- 6 • The substance of Rule 1.4.1 (Photo Identification Cards) will be
7 continued, but will be revised to make the production of such
8 cards optional, on request of the individual Commissioner or staff
9 member.

10 The first two of these decisions are consistent with provisional decisions made at
11 the Commission's April meeting. See Minutes (April 2018), p. 3.

12 2018 LEGISLATIVE PROGRAM

13 The Commission considered Memorandum 2018-14 and its First and Second
14 Supplements, discussing the Commission's 2018 Legislative Program.

15 The Commission decided to revise its recommendation on *Revocable Transfer*
16 *on Death Deed: Recordation* (April 2017)) to conform to the amendment of
17 Assembly Bill 1739 (Chau), as proposed on pages 2-3 of the First Supplement to
18 Memorandum 2018-14. This decision is consistent with a provisional decision
19 made at the Commission's April meeting. See Minutes (April 2018), pp. 2-3.

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

21 Unless otherwise specified, all statutory references below are to the
22 Government Code.

23 **Current Version of Tentative Outline**

24 The Commission considered Memorandum 2018-23, presenting a tentative
25 outline of the Commission's proposed recodification of the CPRA. No
26 Commission action was required or taken.

27 **Cumulative Draft of Material Previously Reviewed**

28 The Commission considered Memorandum 2018-24, presenting a cumulative
29 draft of Parts 1 through 3 of the proposed recodification.

30 The Commission made the following decisions relating to that draft:

1 *General Approval of Article 3 of Chapter 2 of Part 2*

2 The Commission generally approved the content of Article 3 of Chapter 2 of
3 Part 2 of the proposed recodification, governing disclosure of records to a District
4 Attorney and related matters, and the placement of those provisions in that
5 location.

6 *Reference to “Court of Competent Jurisdiction” in Proposed Section 7921.705*

7 The Commission approved the continuation in proposed Section 7921.705 of a
8 reference to a “court of competent jurisdiction” in existing Section 6264.

9 *Placement of Proposed Sections 7922.700 and 7922.705*

10 The Commission approved the content of proposed Sections 7922.700 and
11 7922.705, respectively defining the terms “enterprise system” and “system of
12 record,” and the placement of those provisions in Article 3 of Chapter 2 of Part 3
13 of the proposed recodification.

14 *Placement of Proposed Section 7923.650*

15 The Commission approved the placement of proposed Section 7923.650,
16 continuing existing Section 6262 and governing a District Attorney’s request to
17 inspect licensing records, in Article 2 of Chapter 1 of Part 5 of the proposed
18 recodification.

19 **Part 4. Enforcement**

20 The Commission considered Memorandum 2018-25, presenting a draft of
21 “Part 4. Enforcement” of the proposed recodification. The Commission made the
22 following decisions relating to that draft:

23 *General Approval of Placement and Content*

24 The Commission generally approved the content and placement in the
25 proposed recodification of the provisions in the draft.

26 *Reference to “Court of Competent Jurisdiction” in Proposed Section 7923.000*

27 The Commission approved the continuation in proposed Section 7923.000 of a
28 reference to a “court of competent jurisdiction.”

1 **Part 5. Specific Types of Public Records (Chapter 1. Crimes, Weapons, and Law**
2 **Enforcement)**

3 The Commission considered Memorandum 2018-26 and its First Supplement,
4 presenting a draft of “Part 5. Specific Types of Public Records (Chapter 1.
5 Crimes, Weapons, and Law Enforcement)” of the proposed recodification. The
6 Commission made the following decisions relating to that draft:

7 *General Approval of Placement and Content*

8 The Commission generally approved the content and placement in the
9 proposed recodification of the provisions in the draft.

10 *Authority to Conduct Follow-up Study of Existing Section 6254(f)*

11 The Commission decided it does not wish to seek additional authority from
12 the Legislature to conduct a substantive follow-up study of existing Section
13 6254(f).

14 *Solicitation of Comment from Law Enforcement Organizations*

15 The Commission directed the staff to solicit additional comment from law
16 enforcement organizations relating to the proposed recodification of existing
17 Section 6254(f).

18 STUDY J-1405 — STATUTES MADE OBSOLETE BY
19 TRIAL COURT RESTRUCTURING: PART 6

20 The Commission considered Memorandum 2018-18 (Stakeholder Outreach),
21 Memorandum 2018-19 (Projects to Consider Deleting From “To Do” List),
22 Memorandum 2018-20 and its First Supplement (Obsolete “Constable”
23 References), and Memorandum 2018-21 and its First Supplement (Court
24 Facilities).

25 The Commission’s decisions on these matters are described below.

26 **Stakeholder Outreach**

27 The Commission approved the outreach approach described in
28 Memorandum 2018-18.

29 **Projects to Consider Deleting From “To Do” List**

30 The Commission decided to drop the following matters from its “to do” list
31 for this study:

- 1 • Appellate and writ review under trial court unification.
- 2 • Statutory references to “jurisdiction.”
- 3 • “Unlimited civil case” terminology.
- 4 • Reexamination of the concept of a limited civil case.

5 **Obsolete “Constable” References**

6 The Commission approved the draft attached to Memorandum 2018-20, with
7 the revision proposed in the First Supplement to Memorandum 2018-20, for
8 circulation as a tentative recommendation.

9 **Court Facilities**

10 The Commission made the following decisions regarding Chapter 10
11 (commencing with Section 73301) of Title 8 of the Government Code, for the
12 purposes of preparing a tentative recommendation:

- 13 • The chapter’s heading will be revised as proposed on pages 2-3 of
14 Memorandum 2018-21.
- 15 • Article 1 will be repealed. The uncodified savings clause set out on
16 page 4 of Memorandum 2018-21 will be included in the proposed
17 law.
- 18 • The “typical articles” (Articles 3, 7, 9.5, 10.5, 11.5, 12, 12.2, 12.3, 28,
19 29.6, 30.1, 35.5, 37, 38, and 39) will be repealed.
- 20 • In Article 11.6, Government Code Sections 73750 and 73756 will be
21 repealed.
- 22 • The staff will review Government Code Sections 69920-69927 to
23 determine whether they have any effect on the proper treatment of
24 Article 12.5 and will bring the issue back to the Commission at a
25 future meeting.
- 26 • Article 27 will be repealed.
- 27 • Government Code Section 73956 will be repealed.
- 28 • The heading of Article 32.3 will be revised as proposed on page 23
29 of Memorandum 2018-21.
- 30 • Government Code Section 74820.1 will be revised as proposed on
31 page 23 of Memorandum 2018-21.

32 **STUDY L-4100 — NONPROBATE TRANSFERS**

33 The Commission considered Memorandum 2018-15 and its First Supplement,
34 discussing the Commission’s study of the liability of nonprobate transfers for
35 creditor claims and family protections.

36 The Commission made the following decisions:

- 1 • It should suspend work on a general reform of the law on
2 nonprobate transfer liability for decedent debts. Instead, the
3 Commission should focus on narrow issues relating to the topic,
4 including a study of the decision in *Kircher v. Kircher*, 189 Cal. App.
5 4th 1105, 117 Cal. Rptr. 3d 254 (2010), *rev. denied*, 2011 Cal. LEXIS
6 1437.
- 7 • The staff should prepare a memorandum discussing the possible
8 application of probate family protections to nonprobate transfers,
9 including trusts. That memorandum would help the Commission
10 decide whether to study that topic.

11 These decisions are consistent with provisional decisions made at the
12 Commission's April meeting. See Minutes (April 2018), p. 3.

13 STUDY L-4130 — DISPOSITION OF ESTATE WITHOUT ADMINISTRATION

14 **Interest Rate**

15 The Commission considered Memorandum 2018-16, presenting a draft
16 tentative recommendation on changes to the liability for interest under the
17 Probate Code's provisions for disposition without administration.

18 The Commission made the following decisions:

- 19 • The Commission approved the change of the interest rate in the
20 relevant provisions to "seven percent per annum." (*Commissioner*
21 *Miller-O'Brien* voted against this decision.)
- 22 • The Commission approved the proposed omission of an interest
23 accrual date reform from the tentative recommendation.
- 24 • The Commission approved the proposed language granting a
25 court discretion to waive liability for interest in appropriate
26 circumstances.
- 27 • The Commission approved the proposed technical and
28 organizational changes to Probate Code Section 13112.

29 The Commission approved the draft for circulation as a tentative
30 recommendation and granted the staff discretion to adjust the public comment
31 deadline.

32 **Dollar Amounts**

33 The Commission considered Memorandum 2018-17, presenting a draft
34 tentative recommendation on adjustments to the dollar amounts limiting the use
35 of procedures in the Probate Code for disposition of an estate without probate
36 administration.

1 The Commission made the following decisions:

- 2 • The Commission approved the proposed approach of referring to
3 the dollar amounts subject to adjustment by reference to the
4 chapter and division containing the sections that include those
5 dollar amounts.
- 6 • The Commission approved the proposal to sync up the timing of
7 future adjustments to the triennial cycle used for adjustment of the
8 values for exemptions from the enforcement of money judgments.
- 9 • The Commission approved the proposed inclusion of cross-
10 references to proposed Probate Code Section 890 in statutes
11 containing dollar amounts subject to adjustment.
- 12 • The Commission approved the proposed approach for updating
13 statutory provisions prescribing the content of forms, described on
14 pages 8 and 9 of the memorandum.
- 15 • The Commission approved the proposal to require the attachment
16 of the published, adjusted dollar amounts to the relevant affidavits
17 and petitions, as described on page 9 of the memorandum.
- 18 • The Commission approved the proposed revisions to the statutes
19 regarding the collection of unpaid compensation by a surviving
20 spouse of a decedent firefighter or peace officer, described in
21 Government Code Section 22820(a).
- 22 • The Commission approved the technical changes to the statutes
23 described in the bulleted list on page 12 of the memorandum.
- 24 • The Commission approved the inclusion of a Note requesting
25 comment on a potentially erroneous cross-reference in Probate
26 Code Section 13602.

27 The Commission approved the draft for circulation as a tentative
28 recommendation and granted the staff discretion to adjust the public comment
29 deadline.

30 *(Commissioner King was not present when these decisions were made.)*

31 STUDY R-100 — FISH AND GAME LAW

32 The Commission considered Memorandum 2018-22 and its First and Second
33 Supplements, discussing public comment on the tentative recommendation on
34 *Fish and Wildlife Code Part 1 (Divisions 1-4)* (April 2017). References to “proposed”
35 provisions are to provisions of the proposed Fish and Wildlife Code set out in the
36 tentative recommendation.

1 **Proposed Law Generally**

2 The Commission made the following decisions about the proposed law
3 generally:

- 4 • The Commission reaffirmed its prior decision that it will prepare a
5 tentative recommendation that sets out the entire proposed Fish
6 and Wildlife Code, after the next state budget is approved.
- 7 • The proposed law will include a one-year deferred operation
8 provision.
- 9 • The staff will prepare an informal draft of regulation revisions
10 required to conform to the numbering and organization of the
11 proposed law, to assist the Fish and Game Commission and
12 Department of Fish and Wildlife in making such amendments to
13 their regulations.
- 14 • The Commission's Comments were revised to replace any use of
15 the words "without change" with the words "without substantive
16 change." The Comment to proposed Section 10 was revised to
17 delete the material after the third paragraph (discussing the
18 terminology used in Comments).
- 19 • The staff will request assistance from the Fish and Game
20 Commission and Department of Fish and Wildlife in identifying
21 all provisions of the Fish and Game Code that were added or
22 amended by initiative.
- 23 • The staff will correct the miscellaneous technical errors listed in
24 footnote 28 on page 18 of the First Supplement to Memorandum
25 2018-22.

26 **General Provisions**

27 The Commission made the following decisions regarding Division 1 of the
28 proposed law:

- 29 • Proposed Section 10 will be revised to include express language
30 stating that a failure to amend a regulation to conform to the
31 numbering and organization of the proposed law does not affect
32 the validity of the regulation.
- 33 • Proposed Section 10(c) will be continued without change.
- 34 • The Comments to proposed Sections 15(c) and 20(c) will be revised
35 to further emphasize that those provisions only affect the act that
36 enacts the proposed Fish and Wildlife Code; they do not have any
37 effect on the use of prior or subsequent enactments in construing
38 statutes.
- 39 • Proposed Section 25 (retroactivity) was deleted. Language from
40 existing Section 3, providing that enactment of the code does not
41 impair existing privileges and rights, will be included in the

- 1 proposed law. (*Commissioners Hallinan and King were not present*
2 *when these decisions were made.*)
- 3 • The Comment to Section 50 (use of English) will be revised to
4 conform to current law. (*Commissioners Hallinan and King were not*
5 *present when this decision was made.*)
 - 6 • The existing limited application of the “Marine Life” definitions
7 will be restored, as recommended on page 27 of Memorandum
8 2018-22. (*Commissioner Hallinan was not present when this decision*
9 *was made.*)
 - 10 • The special definition of “adaptive management” provided in Fish
11 and Game Code Section 90.1 will be continued in the proposed
12 law.
 - 13 • The commercial fishing definitions discussed on pages 28 and 29
14 of Memorandum 2018-22 will not be generalized. They will be
15 moved to a location in closer proximity to the provisions that they
16 govern.
 - 17 • Proposed Section 100, set out on page 9 of Memorandum 2018-22,
18 was added to the proposed law.
 - 19 • As discussed on pages 30-33 of Memorandum 2018-22, the
20 approach used in the proposed law, of defining “commercial
21 fisherman” and other kinds of fish business persons as a person
22 who is required to hold a particular license, rather than a person
23 who actually holds such a license, will be reversed. All revisions
24 made in reliance on that approach will be revised to restore the
25 language of existing law.
 - 26 • Proposed Sections 445 (“game amphibian”), 455 (“game fish”), and
27 465 (“game reptile”) were deleted. Provisions that currently use
28 the term “game fish” were continued without change.
 - 29 • Proposed Section 715 (“sport fishing”) will be relocated and
30 revised as proposed on page 3 of the First Supplement to
31 Memorandum 2018-22.
 - 32 • Proposed Sections 450 (“game bird”), 545 (“migratory game bird”),
33 and 665 (“resident game bird”) were not combined.
 - 34 • Proposed Sections 430 (“fully protected mammal”) and 460 (“game
35 mammal”) will be revised to use the language of existing law in
36 the provisions that govern bighorn sheep.
 - 37 • No change was made to the provisions of proposed Section 460
38 (“game mammal”) that govern mountain lions.
 - 39 • Proposed Section 535 (“master”) was deleted. The substance of
40 that section will be located with the provisions that it governs.
 - 41 • Proposed Section 570 (“nongame bird”) was revised as
42 recommended on page 10 of the First Supplement to
43 Memorandum 2018-22.
 - 44 • Proposed Section 590 (“ocean ranching”) was deleted.

- 1 • An introductory application clause will be added to proposed
2 Section 640 (“project”), to preserve its existing application.
- 3 • Proposed Sections 705 (“spike buck”) and 720 (“spotted fawn”)
4 were deleted. The substance of those sections will instead be
5 located with the provision that they govern.
- 6 • No change was made to proposed Sections 740 (“state waters”)
7 and 790 (“waters of the State”).

8 **Administration**

9 The Commission made the following decisions regarding Division 2 of the
10 proposed law:

- 11 • Proposed Section 1020 (existing Section 203.1) will be revised so
12 that it does not apply to proposed Section 1015 (existing Section
13 205).
- 14 • The heading of proposed Section 1530 was revised as proposed on
15 page 19 of the First Supplement to Memorandum 2018-22.
- 16 • Proposed Section 1605(b) (“person”) was deleted.
- 17 • Proposed Section 1610(f) (survey of private land) was revised as
18 set out on page 14 of the First Supplement to Memorandum 2018-
19 22.
- 20 • Proposed Section 2000(a) (“department-managed lands”) was
21 revised as proposed on pages 4-5 of the First Supplement to
22 Memorandum 2018-22.
- 23 • Proposed Section 2025 (penalty for failure to obtain required use
24 permit) was revised as recommended on pages 17 and 18 of the
25 First Supplement to Memorandum 2018-22.
- 26 • The heading of proposed Title 7 (“Unlawful Acts”) was continued
27 without change.
- 28 • Proposed Section 2800 (“license” defined) was deleted. Sections
29 that had been revised in reliance on that definition will instead use
30 the language of existing law.
- 31 • Proposed Section 2805 (form of license) and its Comment were
32 continued without change.
- 33 • The Commission Notes asking for public comment on how to
34 address erroneous district references were continued.
- 35 • Proposed Section 3105 (administrative civil penalties) was revised
36 to delete superfluous references to specific sections, as proposed
37 on page 2 of the Second Supplement to Memorandum 2018-22.
38 That section will be relocated to the part of the proposed law that
39 contains general penalty provisions.
- 40 • The heading of proposed Section 3205 was revised as proposed on
41 page 11 of the Second Supplement to Memorandum 2018-22.

- 1 • The Note following proposed Section 3250 (ALDS) was continued.
- 2 • As discussed on page 10 of the Second Supplement to
- 3 Memorandum 2018-22, references to the “Colorado River special
- 4 use validation” will be deleted, with Notes added to ask for
- 5 comment on those changes.
- 6 • Proposed Sections 3515 and 3525 (accounting system) were revised
- 7 as recommended on page 3 of the Second Supplement to
- 8 Memorandum 2018-22.
- 9 • The heading of the proposed article on “Gifts, Grants, and
- 10 Donations” was revised as proposed on page 4 of the Second
- 11 Supplement to Memorandum 2018-22.
- 12 • Proposed Section 3670 (wildlife officer stamp) was revised as
- 13 proposed on page 4 of the Second Supplement to Memorandum
- 14 2018-22.

15 **Law Enforcement**

16 The Commission made the following decisions regarding Division 3 of the
17 proposed law:

- 18 • Rather than distribute penalty provisions so that they are located
- 19 near the offense provisions that they govern, penalty provisions
- 20 will be consolidated in one part of the code. That part will be
- 21 further subdivided in a way that mirrors the subject matter
- 22 organization of the code.
- 23 • The content of Sections 12000 and 12025 will not be broken up as it
- 24 is in the proposed law.
- 25 • Proposed Sections 4100 through 4120 (law enforcement personnel)
- 26 were reorganized as proposed on page 5 of the Second
- 27 Supplement to Memorandum 2018-22.
- 28 • The location of proposed Section 4320 (dashcam) was continued.
- 29 • The introductory clause language used in proposed Sections
- 30 4400(a) & (b) (misdemeanor) was continued.
- 31 • Proposed Section 4420 (failure to appear) was revised to limit its
- 32 application to a violation of the code or regulations enacted
- 33 pursuant to the code. A note following the provision will ask for
- 34 further comment on that approach.
- 35 • Proposed Section 4910 (in lieu payments) was revised to delete the
- 36 words “pursuant to the provisions of law.”
- 37 • Proposed Section 5960 (per diem) was continued.

38 **Inter-Jurisdictional Compacts**

39 The Commission made the following decision regarding Division 4 of the
40 proposed law:

- 1 • The proposed revisions to provisions that would implement
2 interstate compacts were continued without change.

APPROVED AS SUBMITTED _____ Date

APPROVED AS CORRECTED _____ Chairperson

(for corrections, see Minutes of next meeting) _____ Executive Director