

Admin.

December 13, 2018

Memorandum 2019-1

Minutes of Meeting on December 7, 2018 (Draft)

The California Law Revision Commission¹ held a meeting on December 7, 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.

1 **DRAFT MINUTES OF MEETING**
2 **CALIFORNIA LAW REVISION COMMISSION**
3 **DECEMBER 7, 2018**
4 **Burbank**

5 A meeting of the California Law Revision Commission was held in Burbank
6 on December 7, 2018.

7 **Commission:**

8 *Present:* Jane McAllister, Chairperson
9 Thomas Hallinan
10 Susan Duncan Lee
11 Olga Mack
12 Crystal Miller-O'Brien

13
14 *Absent:* Assembly Member Ed Chau
15 Senator Richard D. Roth
16 Diane F. Boyer-Vine, Legislative Counsel
17 Victor King, Vice-Chairperson

18 **Staff:**

19 *Present:* Brian Hebert, Executive Director
20 Barbara Gaal, Chief Deputy Counsel
21 Kristin Burford, Staff Counsel
22 Steve Cohen, Staff Counsel

23 **Other Persons:**

24 John Andersen, Executive Committee of the Trusts and Estates Section, California
25 Lawyers Association
26 Sandra Levin, Council of California County Law Librarians
27 Charles Martel, Judicial Council of California
28 Paul Siman

1	CONTENTS	
2	Approval of Actions Taken.....	2
3	Minutes	2
4	Administrative Matters	2
5	Report of Executive Director	2
6	Commissioner Suggestions	2
7	Annual Report	3
8	New Topics and Priorities	3
9	Study E-200 — Recodification of Toxic Substance Statutes	3
10	Study G-400 — California Public Records Act Clean-Up	4
11	Study J-1405 — Statutes Made Obsolete by Trial Court Restructuring: Part 6	5
12	Study L-3032.1 — Revocable Transfer on Death Deed: Follow-Up Study	7
13	Study L-4100 — Nonprobate Transfers: Creditor Claims and Family Protections	8
14	Study L-4130 — Disposition of Estate Without Administration	9
15	Study R-100 — Fish and Game Law	10

16 APPROVAL OF ACTIONS TAKEN

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

21 MINUTES

22 The Commission considered Memorandum 2018-55, presenting draft Minutes
23 for the October 11, 2018 meeting and proposing a revision to the Minutes for the
24 August 17, 2018 meeting.

25 The Commission approved the Minutes for the October meeting without
26 change and approved the revision of the Minutes for the August meeting.
27 *(Commissioner Miller-O'Brien was not present for these decisions.)*

28 ADMINISTRATIVE MATTERS

29 **Report of Executive Director**

30 The Executive Director had nothing to report.

31 **Commissioner Suggestions**

32 No Commissioner suggestions were made.

1 **Annual Report**

2 The Commission considered Memorandum 2018-56, presenting a staff draft
3 of the body of the Commission’s 2018-2019 Annual Report, and the appendix
4 containing Commissioner biographies.

5 The Commission approved the report for publication and distribution to the
6 Legislature and the Governor, subject to the following decisions:

- 7 • Under the heading “Recommendations to the 2019 Legislature” on
8 pages 3 and 10, the report should include the Commission’s 2017
9 recommendation on *Homestead Exemption: Dwelling*.
- 10 • The report should incorporate the conforming revisions described
11 in the memorandum.

12 **New Topics and Priorities**

13 The Commission considered Memorandum 2018-57 and its First Supplement,
14 discussing the status of the Commission’s current program of work, the new
15 topics suggestions received in 2018, and work priorities for 2019.

16 The Commission heard comments from Mr. Paul Siman. Individual
17 commissioners offered to provide referrals to Mr. Siman to persons who might
18 be able to assist him.

19 The Commission made the following decisions:

- 20 • The Commission accepted the staff-recommended 2019 work
21 priorities listed on page 50 of the memorandum.
- 22 • The Commission will carry over the suggested study topic
23 regarding “Paid Sick Leave,” discussed on pages 43-45 of the
24 memorandum.

25 STUDY E-200 — RECODIFICATION OF TOXIC SUBSTANCE STATUTES

26 The Commission considered Memorandum 2018-69 and its First Supplement,
27 discussing organizational issues.

28 The Commission decided to place the recodified law in a new division
29 located between Divisions 39 and 101. The staff will use three heading levels
30 (Part, Chapter, and Article) in the new Division.

31 *(Commissioner Mack was not present when those decisions were made.)*

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

2 **Updated Version of Tentative Outline (Memorandum 2018-64)**

3 The Commission considered Memorandum 2018-64, which presents an
4 updated version of the Commission’s tentative outline for recodification of the
5 California Public Records Act (“CPRA”).

6 The Commission decided that newly enacted Government Code Section
7 6270.6 (requiring each independent special district to maintain an Internet
8 website) should be recodified in “Chapter 15. Public Entity Spending, Finances,
9 and Oversight” of “Part 5. Specific Types of Public Records” of proposed new
10 “Division 10. Access to Public Records,” as suggested by the staff.

11 The Commission approved the updated outline attached to Memorandum
12 2018-64.

13 *(Commissioner Miller-O’Brien was not present for these decisions.)*

14 **Cumulative Draft (Memorandum 2018-65)**

15 The Commission considered Memorandum 2018-65, which presents a
16 cumulative draft of the CPRA recodification that incorporates legislation enacted
17 in 2018.

18 For purposes of a tentative recommendation, the Commission approved the
19 cumulative draft attached to Memorandum 2018-65.

20 *(Commissioner Miller-O’Brien was not present for this decision.)*

21 **Part 5, Chapters 6-13 (Memorandum 2018-66)**

22 The Commission considered Memorandum 2018-66, presenting a draft of
23 Chapters 6-13 of Part 5 of proposed new Division 10 of Title 1 of the Government
24 Code. The Commission made the following decisions relating to that draft:

- 25 • Chapter 6 should be renamed “Historically or Culturally
26 Significant Matters,” as shown in the draft attached to
27 Memorandum 2018-66.

28 *(Commissioner Miller-O’Brien was not present for this decision.)*

- 29 • Proposed Government Code Section 7927.105(a) (recodifying the
30 definition of “patron use record” in existing Government Code
31 Section 6267) is acceptable for purposes of a tentative
32 recommendation.

33 *(Commissioner Miller-O’Brien was not present for this decision.)*

- 34 • Proposed Government Code Section 7927.205 (recodifying existing
35 Government Code Section 6254.25, with revisions to update the

cross-reference to Government Code Section 11126) is acceptable for purposes of a tentative recommendation. The staff should add this cross-reference correction to the list of “Corrected Cross-References” at the end of the Commission’s proposed recodification. When the staff prepares the conforming revisions and repeals for the CPRA recodification, it should include a technical amendment of Section 11126, along the lines discussed at pages 11-16 of Memorandum 2017-50.

- Proposed Government Code Section 7927.300(a) (recodifying the definition of “computer software” in existing Government Code Section 6254.9) is acceptable for purposes of a tentative recommendation.
- The Comment to proposed Government Code Section 7927.700 (personnel, medical, and similarly private files) should refer to the Health Insurance Portability and Accountability Act (Pub. Law 104-191 or “HIPAA”) and the Public Safety Officers Procedural Bill of Rights Act (Gov’t Code §§ 3300-3312 or “POBAR”). The Commission welcomes further suggestions regarding bodies of law to mention in the Comment to proposed Section 7927.700 or any of the other Comments in its proposed CPRA recodification.
- Subject to the above decisions, the draft of Chapters 6-9 of Part 5 is acceptable for purposes of a tentative recommendation.

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

The Commission considered Memorandum 2018-63 and its First Supplement, relating to court facilities. For purposes of a tentative recommendation, the Commission made the decisions reported below.

Articles 1-8 of the Trial Court Facilities Act (Gov’t Code §§ 70301-70403)

In general, it appears premature to attempt to update Articles 1-8 of the Trial Court Facilities Act to remove material made obsolete by trial court restructuring (see Memorandum 2018-63, pp. 6-9). The Commission might revisit this matter in the future, if a stakeholder informs the Commission that the matter is ripe for attention, or it otherwise appears ready for reform.

References to the Administrative Office of the Courts in the Trial Court Facilities Act (Gov’t Code §§ 70303, 70321, 70357, 70361, 70362, 70363, 70374, 70379, 70392, 70394)

Some or all of the references to the Administrative Office of the Courts (“AOC”) in the Trial Court Facilities Act might be obsolete, but the Judicial Council’s decision to rename the AOC is unrelated to trial court restructuring.

1 The Judicial Council appears better-suited to address this matter than the
2 Commission.

3 **Task Force on County Law Libraries (Gov't Code § 70394)**

4 The tentative recommendation on court facilities should propose to repeal
5 Government Code Section 70394, which established a task force on county law
6 libraries that no longer exists. The narrative portion of the tentative
7 recommendation should include language along the lines suggested by the
8 Council of California Law Librarians (see First Supplement to Memorandum
9 2018-63, Exhibit p. 4), but not necessarily the exact language that the Council
10 suggests.

11 **Provisions that Cross-Refer to Government Code Section 68073 (Gov't Code §§**
12 **77201, 77201.3, 77655)**

13 The previously-approved amendment of Government Code Section 77655
14 should be modified to fix the outdated cross-reference to Government Code
15 Section 68073, like so:

16 **§ 77655 (amended). Inadmissibility of task force findings**

17 SEC. _____. Section 77655 of the Government Code is amended to
18 read:

19 77655. Notwithstanding any other provision of law, including
20 Section 68073 70311, the findings of the task force Task Force on
21 Court Facilities created by Section 48 of Chapter 850 of the Statutes
22 of 1997 shall not be considered or entered into evidence in any
23 action brought by trial courts to compel a county to provide
24 facilities that the trial court contends are necessary and suitable.

25 **Comment.** Section 77655 is amended to make it read clearly as a
26 stand-alone section and reflect the renumbering of former Section
27 68073 (see 2002 Cal. Stat. ch. 1082, § 3). This is not a substantive
28 change.

29 Government Code Section 77201.3 should also be amended to fix an outdated
30 cross-reference to Section 68073:

31 **§ 77201.3 (amended). County remittances commencing on July 1,**
32 **2006**

33 SEC. _____. Section 77201.3 of the Government Code is amended
34 to read:

35 77201.3....

36 (e) Nothing in this section is intended to relieve a county of the
37 responsibility to provide necessary and suitable court facilities
38 pursuant to Section 68073 70311.

1

2 **Comment.** Section 77201.3 is amended to reflect the
3 renumbering of former Section 68073 (see 2002 Cal. Stat. ch. 1082, §
4 3). This is not a substantive change.

5 Because Government Code Section 77201 only applied until June 30, 1998,
6 and Section 68073 was not renumbered until January 1, 2003, it appears
7 inappropriate to amend Section 77201 to reflect the renumbering of Section
8 68073.

9 **“Article 3. State Finance Provisions” of Chapter 13 of Title 8 (Gov’t Code §§**
10 **77200-77212)**

11 Aside from the amendment of Section 77201.3 discussed above, the tentative
12 recommendation on court facilities should not propose any revisions to “Article
13 3. State Finance Provisions” of Chapter 13 of Title 8 of the Government Code. The
14 research on court facilities appears to be complete and the staff should prepare a
15 draft of the tentative recommendation for the Commission to review.

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

17 The Commission considered Memorandum 2018-58, Memorandum 2018-59,
18 and the First and Second Supplements to Memorandum 2018-59, discussing the
19 Revocable Transfer on Death Deed (“RTODD”). The Commission made the
20 following decisions:

- 21 • The RTODD statute should include a procedure along the lines of
22 the language set out on pages 5 and 6 of Memorandum 2018-58.
23 The RTODD beneficiary will bear the cost of proceeding under the
24 proposed procedure.
- 25 • The law should allow an RTODD beneficiary to elect to return
26 RTODD property to the decedent’s estate for use in paying the
27 obligations of the estate. The staff will investigate whether existing
28 law already provides this option. The Commission asks for input
29 on that point from the Executive Committee of the Trusts and
30 Estates Section of the California Lawyers Association
31 (“TEXCOM”).
- 32 • Probate Code Section 5674(b) should be revised to delete the
33 language on net income and interest.
- 34 • The law should expressly exclude stock cooperatives from the
35 definition of “real property” in Probate Code Section 5610 (which
36 governs the kinds of property that can be transferred by RTODD).

- 1 • The Commission will conduct a separate study of whether existing
2 law allowing the transfer of securities by TOD registration could
3 be adapted to provide a means of transferring an ownership
4 interest in a stock cooperative.
- 5 • Planned developments and community apartment projects should
6 be included in the definition of “real property” in Probate Code
7 Section 5610.
- 8 • The Commission will conduct a separate study of how to resolve a
9 conflict between an at-death transfer of real property and an
10 enforceable restriction that requires third-party approval of any
11 transfer of the property. The study will include consideration of a
12 reform that would validate the transfer of title in such a situation,
13 but restrict the transferee’s occupation of the property unless it is
14 approved by the third-party. The study will include an analysis of
15 whether retroactive application of such a rule would
16 unconstitutionally violate vested property rights or impair the
17 obligations of contracts. The study will not be limited to RTODDs.
- 18 • The Commission postponed making a decision on whether an
19 RTODD should be able to transfer property to a trust.
- 20 • The law should permit an RTODD to be used to transfer property
21 to a public entity.
- 22 • Government Code Section 27281 should be revised to allow
23 recordation of an RTODD that transfers property to a public entity.
24 However, the transfer should not be effective until the public
25 entity’s acceptance of the transfer is also recorded.
- 26 • The law should permit an RTODD to be used to transfer property
27 to a nonprofit corporation.
- 28 • If the transfer of property to a nonprofit corporation by RTODD
29 fails, the property should be returned to the transferor’s probate
30 estate for the application of *cy pres*.
- 31 • TEXCOM was asked to provide input on whether existing time
32 limits on the disclaimer of a testamentary gift would cause any
33 problems for the operation of an RTODD (in light of the fact that
34 there could be a significant delay between a transferor’s death and
35 the discovery of an RTODD).

36 STUDY L-4100 — NONPROBATE TRANSFERS: CREDITOR CLAIMS
37 AND FAMILY PROTECTIONS

38 The Commission considered Memorandum 2018-60, presenting a draft
39 tentative recommendation to clarify the liability rule in Probate Code Sections
40 13550 and 13551, which imposes liability on a surviving spouse for a decedent’s
41 debts. The draft would also make a conforming change to Civil Code Section
42 682.1.

1 The Commission approved the draft as a tentative recommendation to be
2 circulated for public comment.

3 STUDY L-4130 — DISPOSITION OF ESTATE WITHOUT ADMINISTRATION

4 The Commission considered Memorandum 2018-61 and Memorandum 2018-
5 62, discussing the liability of a person who takes property under existing
6 procedures for the disposition of a decedent's estate without administration (the
7 "successor"). The Commission made the following decisions:

- 8 • The "property return provisions" should be supplemented with a
9 provision along the lines set out on page 3 of Memorandum 2018-
10 61, with the changes listed below.
- 11 • Subdivision (a) of the provision should include the successor's
12 "inaction."
- 13 • Subdivision (b) of the provision should not include a reference to
14 waste.
- 15 • Subdivision (d) of the provision should permit the personal
16 representative to petition the court.
- 17 • The Commission asked the Executive Committee of the Trusts and
18 Estates Section of the California Lawyers Association
19 ("TEXCOM") for input on whether there is an existing procedure
20 on petitioning the court that could be incorporated by reference in
21 subdivision (d) of the provision.
- 22 • The conforming revisions shown on pages 7 and 8 of
23 Memorandum 2018-61 should be made. The staff will determine
24 whether any other conforming revisions are required. If such
25 revisions are straightforward, they should be incorporated into a
26 draft tentative recommendation. If they are more complex or
27 present a policy question, they should be brought back to the
28 Commission in a future memorandum.
- 29 • In the statutes that govern disposition of a small estate and
30 disposition of real property of small value, the "property return
31 provisions" should not apply to creditor claims.
- 32 • Instead, those statutes should be revised to include a provision
33 along the lines of the provision set out on pages 4 and 5 of
34 Memorandum 2018-62. The successor will bear the cost of
35 proceeding under the proposed procedure.
- 36 • The law should allow the successor to elect to return property to
37 the decedent's estate for use in paying the obligations of the estate.
38 The staff will investigate whether existing law already provides
39 this option. The Commission requests input from TEXCOM on
40 that point.

- 5 STUDY R-100 — FISH AND GAME LAW

12 The Commission also considered Memorandum 2018-68, discussing revisions
13 in other codes that would need to be made to conform to the proposed
14 recodification of the Fish and Game Code. A draft tentative recommendation
15 setting out those conforming revisions will be presented at a future meeting.

Date _____

Chairperson

Executive Director