

Admin.

August 8, 2019

Memorandum 2019-42

Minutes of Meeting on July 26, 2019 (Draft)

The California Law Revision Commission¹ held a meeting on July 26, 2019. 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
JULY 26, 2019
Sacramento

A meeting of the California Law Revision Commission was held in Sacramento on July 26, 2019.

Commission:

- Present:* Jane McAllister, Chairperson
Victor King, Vice-Chairperson
Thomas Hallinan
Susan Duncan Lee
Crystal Miller-O'Brien
- Absent:* Assembly Member Ed Chau
Senator Richard D. Roth
Diane F. Boyer-Vine, Legislative Counsel

Staff:

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

Other Persons:

None

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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 2019-29, presenting draft Minutes
8 for the May 30, 2019, meeting.

9 The Commission approved the Minutes without change.

10 ADMINISTRATIVE MATTERS

11 **Report of Executive Director**

12 The Executive Director reported on the following matters:

- 13 • Video of the meeting was live-streamed by the Assembly's
14 television office.
- 15 • The Executive Director requested additional office space on the
16 University of California Davis campus, to accommodate
17 anticipated additions to the Commission's staff.

18 **Commissioner Suggestions**

19 The Commission suggested that the staff make greater use of "consent"
20 procedures to streamline consideration of purely technical and uncontroversial
21 matters.

22 **Election of Officers**

23 The Commission considered Memorandum 2019-32, relating to the election of
24 Commission officers.

25 The Commission elected Victor King as Chairperson and Crystal Miller-
26 O'Brien as Vice Chairperson, with terms commencing on September 1, 2019, and
27 ending on August 31, 2020.

28 If Commissioner King is not reappointed to the Commission, the office of
29 Chairperson will be vacated when he leaves the Commission. In that event, the
30 Vice-Chairperson will serve as acting Chairperson until the Commission has an
31 opportunity to decide how to fill the vacancy.

1 **Closed Session**

2 The Commission met in closed session to discuss personnel matters, pursuant
3 to Government Code Section 11126.

4 While in closed session, the Commission made the following decision: In
5 order to avoid salary compaction that would result from the intended hiring of
6 an Attorney IV, the Commission approved increasing the salaries of the
7 Executive Director and Chief Deputy Counsel. The Commission approved a 5%
8 compaction buffer, which would be applied using the Commission's existing
9 reporting structure (i.e., the Chief Deputy Counsel's maximum salary would be
10 increased to 5% above that of an Attorney IV and the Executive Director's
11 maximum salary would be increased to 5% above the adjusted maximum salary
12 of the Chief Deputy Counsel).

13 **2019 LEGISLATIVE PROGRAM**

14 The Commission considered Memorandum 2019-35, discussing the
15 Commission's 2019 Legislative Program. No Commission decisions were
16 required or made.

17 **STUDY E-200 — RECODIFICATION OF TOXIC SUBSTANCE STATUTES**

18 **Cumulative Draft**

19 The Commission considered Memorandum 2019-40, presenting a cumulative
20 draft of the proposed legislation that the Commission has considered to date.

21 The Commission decided to restate proposed Section 68200, as proposed on
22 the bottom of page 2 of the memorandum, and include a note requesting
23 comment on the proposed restatement. (*Commissioner Miller-O'Brien voted against*
24 *this decision.*)

25 **Site Clean-up**

26 The Commission considered Memorandum 2019-41, presenting a draft of
27 Chapters 5, 6, and 7 of Part 2 of the proposed new Division 45 of the Health and
28 Safety Code. The Commission provisionally approved that draft for inclusion in
29 a tentative recommendation.

30 The Commission added the following item to the list of issues for future
31 study: Is the use of the undefined term "remediation" problematic, in light of its
32 similarity to the defined terms, "remedy" and "remedial action?"

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

2 The Commission considered Memorandum 2019-38 and its First Supplement,
3 which present and discuss a staff draft of a tentative recommendation comprised
4 of the conforming revisions for its proposed recodification of the California
5 Public Records Act (“CPRA”). Subject to the following decisions, the
6 Commission approved that draft as a tentative recommendation, to be broadly
7 circulated for comment:

- 8 • The staff’s suggested approach to the two different versions of
9 Revenue and Taxation Code Section 7284.10 is acceptable.
- 10 • The cross-references to “Section 6270” in Government Code
11 Sections 15820.907 and 15820.917 appear problematic (as discussed
12 at pages 4-6 of Memorandum 2019-38), but it does not seem
13 advisable to address that matter in this study. The staff should
14 bring it to the attention of the Assembly Public Safety Committee
15 and/or the Senate Public Safety Committee, for possible inclusion
16 in a public safety omnibus bill.
- 17 • For purposes of a tentative recommendation, the contingent
18 operation clause and the subordination clause are acceptable as
19 drafted. The staff may make adjustments if necessary as the
20 recodification proposal proceeds.
- 21 • The conforming revision of Health and Safety Code Section
22 125290.30 should be accompanied by the Note shown on pages 3-4
23 of the First Supplement to Memorandum 2019-38. The conforming
24 revision of Health and Safety Code Section 125290.50 should be
25 accompanied by a similar Note.
- 26 • The conforming revision of Health and Safety Code Section
27 125290.30 should update the cross-reference to the CPRA without
28 making any other changes (even grammatical corrections) in the
29 existing statutory text.
- 30 • Due to the possibility of triggering special vote requirements (see
31 pages 4-6 of the First Supplement to Memorandum 2019-38), the
32 conforming revision of Welfare and Institutions Code Section
33 14165 should not be included in the tentative recommendation.
- 34 • The staff should make the minor corrections described on page 6
35 of the First Supplement to Memorandum 2019-38, as well as any
36 similar corrections that come to its attention before the tentative
37 recommendation is released for comment.

38 STUDY L-4130.3 — DISPOSITION OF ESTATE WITHOUT ADMINISTRATION

39 The Commission considered Memorandum 2019-39 and its First and Second
40 Supplements, presenting a staff draft tentative recommendation regarding the

1 liability of a person who receives a decedent’s property without administration
2 (hereafter, a “transferee”), under certain statutory procedures.

3 Subject to the decisions described below, the Commission approved the staff
4 draft as a tentative recommendation to be circulated for public comment:

- 5 • The tentative recommendation should request public comment on
6 whether a transferee should be liable for any estate obligations
7 other than the decedent’s unsecured debts (e.g., funeral expenses,
8 expenses of last illness, wage claims, costs of administration).
- 9 • The tentative recommendation should request public comment on
10 whether the second sentences of Probate Code Sections 13111(d)
11 and 13206(e) should be deleted as superfluous.
- 12 • Probate Code Sections 13110(b), 13111(b), 13205(b), and 13206(b)
13 should be revised to make clear that treble damages are only
14 imposed once for each incident of fraud.
- 15 • The tentative recommendation should request public comment on
16 who should receive any treble damages awarded under Probate
17 Code Sections 13110(b), 13111(b), 13205(b), and 13206(b), the
18 person with a superior right to the transferred property or the
19 decedent’s estate.
- 20 • The tentative recommendation should be revised as described on
21 page 11 of the First Supplement to Memorandum 2019-39.
- 22 • The tentative recommendation should request public comment on
23 the application of Probate Code Section 13562. Specifically, which
24 kinds of an estate’s obligations can be satisfied with property
25 returned under that provision?
- 26 • Language to implement the decisions listed above shall be
27 submitted to the Chair for approval, before releasing the tentative
28 recommendation.

29 The question of whether a transferee should be liable for any of an estate’s
30 obligations other than the decedent’s unsecured debts should also be considered
31 in the Commission’s current study of the revocable transfer on death deed.

APPROVED AS SUBMITTED

Date

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

Chairperson

Executive Director