

Memorandum 2019-44

New Topics and Priorities

Annually, the Commission¹ reviews its current program of work, determines what its priorities will be for the next year, and decides whether to request that topics be added to or deleted from its legislatively-enacted Calendar of Topics Authorized for Study (“Calendar of Topics”). The Commission generally undertakes this analysis after the Legislature has adjourned for the year.²

To assist the Commission in that process, this memorandum summarizes the status of the topics that the Legislature has directed the Commission to study, the other topics that the Commission is actively studying, the topics that the Commission has previously expressed an interest in studying, and the new topics suggestions made or received in the last year. The memorandum concludes with staff recommendations for allocation of the Commission’s resources during the coming year.

At the Commission meeting, the staff does not plan to discuss each of the many topics described in this memorandum. A Commissioner or other interested person who believes a topic warrants discussion should be prepared to raise it at the meeting. Absent discussion, the staff will handle the topic as recommended in this memorandum.

The following communications and other materials are attached to and discussed in this memorandum:

Exhibit p.

- Angela Donlan, Dep’t of Fish and Wildlife..... 1
- Trial Court Restructuring: Remaining Projects (as of Sept. 23, 2019)..... 3

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.

2. This year, the Legislature adjourned on September 13 for its Interim Study Recess. The last day for the Governor to act on bills is October 13. See https://www.senate.ca.gov/sites/senate.ca.gov/files/2019_senate_legislative_deadlines.pdf.

PREFATORY NOTE

In reviewing this memorandum, Commissioners and other persons should bear in mind that the Commission's resources are very limited and its existing workload is substantial. The coming year will also be a transitional one for the Commission, due to the creation of the Committee on Revision of the Penal Code (hereafter, the "PCR Committee") within the Commission, commencing on January 1, 2020.³

At present, the Commission's staff consists of four attorneys (two of whom work part-time) and an administrative analyst. The Commission also receives some assistance from externs and other law students, particularly from UC Davis School of Law. The law students are typically assigned "relatively modest and uncontroversial law reform projects, within the Commission's study authority,"⁴ with the objective of providing opportunities for students to assist with implementing legislation.⁵

The PCR Committee will operate as a separate decision-making body. To undertake the responsibilities assigned to the PCR Committee, the Commission will soon hire two more attorneys and a secretary. Although the total size of the staff will increase, the staff resources available to conduct the Commission's work (as opposed to the duties of the PCR Committee) will stay about the same:

- Two staff attorneys will work *exclusively* on studies for the Commission.
- The Executive Director and the Chief Deputy Counsel will supervise and work on studies for the Commission, *as well as* studies for the PCR Committee.
- The administrative assistant and the secretary will serve *both* the Commission and the PCR Committee.
- The other two staff attorneys will work *exclusively* on studies for the PCR Committee.

If anything, the staffing for the Commission's studies will be more limited than in the past, because the Executive Director and the Chief Deputy Counsel may have to spend a significant amount of their time getting the PCR Committee off to a good start.

3. See 2019 Cal. Stat. ch. 25, § 2.

4. Minutes (Apr. 2015), p. 3.

5. *Id.*

While its staff resources are quite limited, the Commission must nonetheless continue to demonstrate its value to the state by producing high quality reports that significantly improve the law and benefit the citizens of California. To accomplish this goal, **the Commission must use its resources wisely, focusing on projects that serve the Legislature’s needs or appear likely to lead to helpful changes in the law.**

Similarly, the Legislature has made clear that it wants the Commission to focus its efforts on such projects. For example, it has directed the Commission to notify the judiciary committees upon commencing a new study. A 2014 committee analysis explains the purpose of that requirement:

Given the limited resources of the commission ..., early communication to the Legislature of proposed topics of study would allow legislative input on whether a particular proposed topic would likely be controversial and thus perhaps avoided by the commission so that it may devote its limited resources to other, more productive studies.⁶

SCOPE OF MEMORANDUM

The purpose of this memorandum is to help the Commission decide what it wants to work on in the coming year. The memorandum does not address the work priorities of the PCR Committee. Those decisions will be made later, by the PCR Committee, not by the Commission.

COMMISSION AUTHORITY

The Commission’s enabling statute recognizes two types of topics the Commission is authorized to study: (1) those that the Commission identifies for study and lists in the Calendar of Topics that it reports to the Legislature, and (2) those that the Legislature assigns to the Commission directly, by statute or concurrent resolution.⁷

In the past, the bulk of the Commission’s study topics have come through the first route — matters identified by the Commission and approved by the Legislature. Once the Commission identifies a topic for study, it cannot begin to

6. Assembly Committee on Judiciary Analysis of SCR 83 (Jun. 6, 2014), p. 3 (emphasis added).

7. Gov’t Code § 8293.

work on the topic until the Legislature, by concurrent resolution, authorizes the Commission to conduct the study.

Direct legislative assignments have become much more common in recent years. Currently, the majority of the Commission's active studies are direct assignments from the Legislature.

CURRENT LEGISLATIVE ASSIGNMENTS

Several topics have been specifically assigned to the Commission by statute or resolution. The Commission did not receive any new assignments during the 2019 legislative session. All of the current legislative assignments are described below.

Recodification of Toxic Substance Statutes

In August 2018, the Legislature approved Senate Concurrent Resolution 91 (Roth).⁸ This resolution includes the following assignment from the Legislature:

[T]he Legislature authorizes and requests that the California Law Revision Commission study, report on, and prepare recommended legislation to revise Chapter 6.5 (commencing with Section 25100) and Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code, and related provisions, to improve the organization and expression of the law. Such revisions may include, but are not limited to, grouping similar provisions together, reducing the length and complexity of sections, eliminating obsolete or redundant provisions, and correcting technical errors. The recommended revisions shall not make any substantive changes to the law. The commission's report shall also include a list of substantive issues that the commission identifies in the course of its work, for possible future study[.]

This assignment does not have a specified deadline. The Commission typically gives high priority to a legislative assignment, however, and it has done so in this instance. The Commission has been making steady progress on the study in the past year.

The staff recommends that the Commission continue to prioritize work on this study in 2020.

8. 2018 Cal. Stat. res. ch. 158.

California Public Records Act

In August 2016, the Legislature approved Assembly Concurrent Resolution 148 (Chau).⁹ This resolution includes the following assignment from the Legislature:

[T]he Legislature authorizes and requests that the California Law Revision Commission study, report on, and prepare recommended legislation as soon as possible, considering the commission's preexisting duties and workload demands, concerning the revision of the portions of the California Public Records Act and related provisions, and that this legislation shall accomplish all of the following objectives:

- (1) Reduce the length and complexity of current sections.
- (2) Avoid unnecessary cross-references.
- (3) Neither expand nor contract the scope of existing exemptions to the general rule that records are open to the public pursuant to the current provisions of the Public Records Act.
- (4) To the extent compatible with (3), use terms with common definitions.
- (5) Organize the existing provisions in such a way that similar provisions are located in close proximity to one another.
- (6) Eliminate duplicative provisions.
- (7) Clearly express legislative intent without any change in the substantive provisions[.]

The Legislature requested that the Commission undertake this study “as soon as possible” given the Commission’s current duties and workload demands.

As requested, the Commission has been prioritizing this study since it was assigned. In late May, it approved a tentative recommendation proposing a recodification of the California Public Records Act (“CPRA”).¹⁰ It will consider the comments on that tentative recommendation at the upcoming meeting. The Commission also recently approved a separate tentative recommendation consisting of conforming revisions for the proposed recodification, which is currently being circulated for comment.¹¹

The staff is hopeful that the Commission will be able to finalize its CPRA recommendations in time for introduction of legislation in 2020. **The staff recommends that the Commission continue to prioritize this study until it is complete.**

9. 2016 Cal. Stat. res. ch. 150; see also 2018 Cal. Stat. res. ch. 158.

10. See Tentative Recommendation on *California Public Records Act Clean-Up* (May 2019).

11. See Tentative Recommendation on *California Public Records Act Clean-Up: Conforming Revisions* (July 2019). The comment deadline is October 31, 2019.

Transfer on Death Deeds

In August 2016, the Governor signed Assembly Bill 1779 (Gatto),¹² which expanded the Commission's previously-assigned¹³ study on Transfer on Death Deeds. With the 2016 amendment, the Commission is directed to

... study the effect of California's revocable transfer on death deed set forth in Part 4 (commencing with Section 5600) of Division 5 of the Probate Code and make recommendations in this regard. The commission shall report all of its findings to the Legislature on or before January 1, 2020.

... [T]he commission shall address all of the following:

(1) Whether the revocable transfer on death deed is working effectively.

(2) Whether the revocable transfer on death deed should be continued.

(3) Whether the revocable transfer on death deed is subject to misuse or misunderstanding.

(4) What changes should be made to the revocable transfer on death deed or the law associated with the deed to improve its effectiveness and to avoid misuse or misunderstanding.

(5) Whether the revocable transfer on death deed has been used to perpetuate financial abuse on property owners and, if so, how the law associated with the deed should be changed to minimize this abuse.

(6) Whether it is feasible and appropriate to expand the revocable transfer on death deed to include the following:

(A) The transfer of stock cooperatives or other common interest developments.

(B) Transfers to a trust or other legal entity.

This study is a direct legislative assignment with a specified deadline. Typically, the Commission gives highest priority to such a study.

When the Commission originally received this assignment, the Commission decided to delay most of the work in this study, in order to provide as much time as possible for the development of experience with the new law.¹⁴ At that time, it was anticipated that analysis would begin in earnest in 2018 or 2019.

In the interim, the Commission addressed a narrow issue, which required more immediate attention, relating to the recordation requirement for a transfer on death deed. The resulting Commission recommendation,¹⁵ clarifying that a

12. 2016 Cal. Stat. ch. 179.

13. 2015 Cal. Stat. ch. 293.

14. See Memorandum 2015-53; Minutes (Dec. 2015), p. 5.

15. *Revocable Transfer on Death Deed: Recordation*, 45 Cal. L. Revision Comm'n Reports 1 (2017).

failure to record the “Common Questions” page of the statutory deed form does not invalidate the deed, was enacted into law in 2018.¹⁶

The Commission then turned its attention to the heart of this study, addressing a variety of issues relating to transfer on death deeds. It approved a tentative recommendation¹⁷ earlier this year and will consider the comments at the Commission’s September meeting.

The Commission is on track to meet the legislative deadline. **It should devote whatever resources are still necessary to accomplish this goal.**

Electronic Communications: State and Local Agency Access to Customer Information from Communications Service Providers & Government Interruption of Communication Services

In September 2013, Senate Concurrent Resolution 54 (Padilla) was adopted. This resolution directs the Commission to:

... report to the Legislature recommendations to revise statutes governing access by state and local government agencies to customer information from communications service providers in order to do all of the following:

(a) Update statutes to reflect 21st Century mobile and Internet-based technologies.

(b) Protect customers’ constitutional rights, including, but not limited to, the rights of privacy and free speech, and the freedom from unlawful searches and seizures.

(c) Enable state and local government agencies to protect public safety.

(d) Clarify the process communications service providers are required to follow in response to requests from state and local agencies for customer information or in order to take action that would affect a customer’s service, with a specific description of whether a subpoena, warrant, court order, or other process or documentation is required[.]¹⁸

Although SCR 54 does not set a deadline for completion of the assignment, the Commission has given it a fairly high priority.

In conducting this study, the Commission divided it into two subtopics, which were both included within the scope of the legislative mandate:

- (1) Government *access* to communications. This was essentially a study of government surveillance of communications.

16. 2018 Cal. Stat. ch. 65 (AB 1739 (Chau)).

17. Tentative Recommendation on *Revocable Transfer on Death Deed: Follow-Up Study* (May 2019).

18. 2013 Cal. Stat. res. ch. 115.

- (2) Government *interruption* of communications. This was a study of the legality and standards for government action to suspend a communication service to address illegal use or emergency.

The Commission completed most of its work on the first topic in 2015. At that time, as the Commission was nearing the point of developing reform recommendations in this study, Senator Leno introduced Senate Bill 178. That bill addressed most of the same substance as the Commission’s study. In response to the introduction of SB 178, the Commission decided to postpone the development of proposed reform legislation. Instead, it finalized an informational report on *State and Local Agency Access to Electronic Communications: Constitutional and Statutory Requirements* (Aug. 2015).¹⁹

Senate Bill 178 was enacted, establishing the California Electronic Communications Privacy Act (“Cal-ECPA”).²⁰ The enactment of that statute achieved all of the most important changes that the Commission would have recommended, had it proceeded with the development of a reform proposal at that time. However, there were a handful of significant issues that had not been addressed.²¹ The Commission decided to postpone further work on those issues, to give the new law time to develop and settle.²²

The staff believes that sufficient time has passed that it would be appropriate to reactivate this study and complete work on the remaining issues, as soon as resources permit.

Work on the second subtopic — government interruption of communications — was completed in 2017. The Commission made a final recommendation for reform of existing law on that topic.²³ The recommendation was enacted into law.²⁴ **No further work is required on that matter.**

Fish and Game Law

In January 2012, the Commission received a letter jointly signed by the Chair of the Senate Natural Resources and Water Committee (now former Senator Fran Pavley) and the Chair of the Assembly Water, Parks, and Wildlife Committee (now former Assembly Member Jared Huffman), urging the Commission to

19. See generally Memorandum 2015-51.

20. 2015 Cal. Stat. ch. 651.

21. See First Supplement to Memorandum 2015-3, pp. 5-7; Memorandum 2015-51, pp. 14-23.

22. See Minutes (Dec. 2015), pp. 4-5.

23. *Government Interruption of Communication Service*, 44 Cal. L. Revision Comm’n Reports 681 (2016).

24. 2017 Cal. Stat. ch. 322.

conduct a comprehensive review of the Fish and Game Code.²⁵ The same year, the Legislature granted the necessary authority to conduct the study:

Resolved, That the Legislature approves for study by the California Law Revision Commission the new topic listed below:

Whether the Fish and Game Code and related statutory law should be revised to improve its organization, clarify its meaning, resolve inconsistencies, eliminate unnecessary or obsolete provisions, standardize terminology, clarify program authority and funding sources, and make other minor improvements, without making any significant substantive change to the effect of the law²⁶

The Commission has made significant progress on this topic:

- In 2018, the Commission released a tentative recommendation that would repeal the existing Fish and Game Code and replace it with a reorganized Fish and Wildlife Code.²⁷ The deadline for public comment on the tentative recommendation is January 1, 2020.
- The Commission also released a discussion draft analyzing the funding provisions of the existing Fish and Game Code.²⁸ The deadline for public comment was April 30, 2018. No comments were received.
- In 2019, the Commission released a tentative recommendation that proposes conforming revisions that would need to be made if the Fish and Game Code were repealed and recodified, as proposed.²⁹ The deadline for public comment on the tentative recommendation is January 1, 2020.

If the Commission were to stick to its January 1, 2020, deadline for submission of public comment on the tentative recommendations, there would be a very large amount of staff work to perform on this study in 2020 — it is expected that the public comment will be voluminous.

However, the Department of Fish and Wildlife has requested that the Commission modify its schedule for public comment in this study.³⁰ The Department explains that high priority demands have been placed on its resources that prevent it from completing its review of the tentative

25. See Memorandum 2012-5, Exhibit pp. 32-33.

26. 2012 Cal. Stat. res. ch. 108.

27. See Tentative Recommendation on *Fish and Wildlife Code* (Dec. 2018).

28. See Discussion Draft on *Fish and Game Code: Funding Provisions* (Feb. 2018).

29. See Tentative Recommendation on *Fish and Wildlife Code: Conforming Revisions* (Feb. 2019).

30. See Exhibit pp. 1-2.

recommendations by January 1, 2020. Instead, it proposes that the process of commenting on the tentative recommendations be divided into two phases.

First, the Department would submit comment on the questions posed in the numerous “notes” that are included in the tentative recommendations. For the most part, these notes raise technical questions about the phrasing and meaning of individual provisions, rather than broader issues about the organization of the law. The Department suggests that it could probably complete a set of comments on those notes by early- to mid-2020.

The Department suggests that the Commission could then consider whether to immediately recommend reform legislation to effect the various improvements to individual sections that come out of that phase of the work. This would be similar to the approach the Commission took earlier in the study, where it accelerated certain individual reforms that appeared to be immediately beneficial and could be made to existing law prior to any reorganization.

The Department proposes that the second phase of its review and comment process would address the proposed reorganization of the Fish and Game Code as a recodified Fish and Wildlife Code. That phase of its review and comment process might be completed by July 1, 2021.

While the staff would have preferred to stick to its original schedule, in order to more expeditiously complete the study, the Commission cannot compel the Department to stick to that schedule. If they lack the resources to do so, then the Commission’s only choice would be to accept their suggested alternative schedule or proceed without the benefit of their input.

The staff recommends against the latter approach. The Commission depends on the expertise of the Department to aid in evaluating the proposed law. To proceed without that expertise would be a significant deviation from our usual standard of care and would be difficult to justify to the Legislature and Governor.

If the Commission decides to accede to the Department’s proposed schedule, the amount of staff work involved for this study in 2020 would be approximately halved.

Deadly Weapons

In 2006, the Legislature directed the Commission to study the statutes relating to control of deadly weapons.³¹ The objective was to make the statutory scheme more clear and readily understandable, without making substantive changes. The Commission completed its final report on this topic in compliance with the due date of July 1, 2009. Two voluminous bills³² and some follow-up legislation³³ have since been enacted, fully implementing the recodification.

In addition to the recodification, the 2009 report included a list of “Minor Clean-Up Issues for Possible Future Legislative Attention.”³⁴ The Legislature authorized the Commission to study those issues.³⁵

In 2014 and 2018, the Legislature enacted bills to implement Commission recommendations addressing some of the minor clean-up issues.³⁶

As time permits, the Commission should continue to consider the minor clean-up matters identified in its earlier report.

Trial Court Restructuring

California’s trial court system was dramatically restructured in the past quarter century. The restructuring involved three major reforms: (1) trial court unification, (2) state funding of trial court operations, and (3) a new personnel system for the trial courts.³⁷ Achieving these reforms required extensive statutory and constitutional revisions. In addition, hundreds of statutes became obsolete as a result of the reforms, necessitating repeals or adjustments to reflect the structural changes.

At the request of the Legislature, the Commission has been involved in trial court restructuring since late 1993. It has done a massive amount of work in the

31. 2006 Cal. Stat. res. ch. 128 (ACR 73 (McCarthy)).

32. See 2010 Cal. Stat. ch. 178 (SB 1115 (Committee on Public Safety)); 2010 Cal. Stat. ch. 711 (SB 1080 (Committee on Public Safety)).

33. See 2013 Cal. Stat. ch. 76, §§ 145.5, 147.3, 153.5 (AB 383 (Wagner)); 2012 Cal. Stat. ch. 162, §§ 12-14, 203, 227 (SB 1171 (Harman)); 2011 Cal. Stat. ch. 285 (AB 1402 (Committee on Public Safety)).

34. *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm’n Reports 217, 265-80 (2009).

35. See 2010 Cal. Stat. ch. 711, § 7.

36. See 2014 Cal. Stat. ch. 103 (AB 1798), implementing *Deadly Weapons: Minor Clean-Up Issues*, 43 Cal. L. Revision Comm’n Reports 63 (2013); 2018 Cal. Stat. ch. 185 (AB 2176), implementing *Deadly Weapons: Minor Clean-Up Issues (Part 2)*, 44 Cal. L. Revision Comm’n Reports 471 (2015).

37. For a more detailed discussion of these reforms, see First Supplement to Memorandum 2014-53, pp. 2-5.

area, involving preparation of numerous reports and enactment of many bills (affecting about 1,800 code sections) and a constitutional measure.³⁸

In the past year, the Commission has approved three final recommendations on trial court restructuring:

- *Trial Court Restructuring Clean-Up: Obsolete “Constable” References* (Oct. 2018).
- *Trial Court Restructuring Clean-Up: Task Force on Trial Court Employees* (Feb. 2019).
- *Statutes Made Obsolete by Trial Court Restructuring (Part 6): Court Facilities* (Feb. 2019).

The proposed legislation in these recommendations is ready for introduction in the Legislature in 2020.

The Commission also recently approved a tentative recommendation on *Trial Court Restructuring Clean-Up: Obsolete References to Marshals* (April 2019). The Commission will consider the comments on that tentative recommendation at the Commission’s September meeting. **If the Commission approves a final recommendation, the proposed legislation on marshals will also be ready for introduction in 2020.**

Although the Commission has been making good progress on trial court restructuring, there is still substantial work left to do. A list of the remaining projects is attached as Exhibit page 3.

Pursuant to Government Code Section 71674, the Commission is responsible for continuing the code clean-up. **The staff recommends that the Commission continue to work on this topic in 2020.**

Enforcement of Money Judgments

Code of Civil Procedure Section 681.035 authorizes the Commission to maintain a continuing review of the statutes governing enforcement of judgments. The Commission submits recommendations from time to time under this authority.

There are currently no active studies focusing on this topic.

38. For further discussion of the Commission’s role, see *id.*

Technical and Minor Substantive Defects

The Commission is authorized to recommend revisions to correct technical and minor substantive defects in the statutes generally, without specific direction by the Legislature.³⁹ The Commission exercises this authority from time to time, particularly when a student extern is available to pursue a useful, educationally-valuable project of reasonable scope.

Recent developments include:

- While working on fish and game law,⁴⁰ the staff uncovered several apparent cross-reference errors in Health and Safety Code Section 131052, which were unrelated to fish and game.⁴¹ The Commission conducted a separate study of this matter in 2018. After circulating a tentative recommendation,⁴² it decided not to make a final recommendation.⁴³
- In its work on fish and game law, the staff also identified some apparently obsolete material relating to the California Salmon Council. Again, the Commission commenced a separate study of the matter.⁴⁴ In May, it concluded that the material at issue was not obsolete. No further action on that matter is required.⁴⁵
- In last year's new topics memorandum, the staff described an issue relating to discrepancies between (1) statutory forms for property transactions and (2) the statutorily required format for a certificate of acknowledgment (see Civil Code Section 1189(a)). The Commission decided to study this issue "as resources permit, in the coming year."⁴⁶ **The staff has not yet undertaken that study; it may be a suitable, low priority project for the Commission.**

In its studies of trial court restructuring⁴⁷ and the CPRA,⁴⁸ the staff recently identified additional technical and minor substantive issues that might warrant attention. Those issues are discussed later in this memorandum, under "Suggested New Topics."

39. Gov't Code § 8298.

40. See discussion of "Fish and Game Law" *supra*.

41. See Memorandum 2015-40, pp. 8-9.

42. See Tentative Recommendation on *Technical and Minor Substantive Corrections: Health and Safety Code* (October 2018).

43. See Minutes (Dec. 2018), p. 9.

44. See Memorandum 2019-19; Minutes (April 2019), pp. 9-10.

45. See Minutes (May 2019), p. 6.

46. See Memorandum 2018-57, pp. 1, 38; Minutes (Dec. 2018), p. 3.

47. See discussion of "Trial Court Restructuring" *supra*.

48. See discussion of "California Public Records Act" *supra*.

Statutes Repealed by Implication or Held Unconstitutional

The Commission is directed by statute to recommend the express repeal of any statute repealed by implication or held unconstitutional by the California Supreme Court or the United States Supreme Court.⁴⁹ The Commission fulfills this directive annually in its Annual Report, identifying statutes that have been held unconstitutional or impliedly repealed and recommending that they be repealed (to the extent that the problematic defect has not been addressed).⁵⁰ The staff has not yet fully researched this matter. It will do so in connection with the Annual Report, which will be presented for consideration at the November meeting. The Commission does not ordinarily propose specific legislation to effectuate that general recommendation. The Commission could reconsider the matter in November, if the staff's research uncovers an issue that warrants Commission study.

CALENDAR OF TOPICS

The Commission's Calendar of Topics currently includes 25 topics.⁵¹ The next section of this memorandum reviews the status of each topic listed in the Calendar. On a number of the listed topics, the Commission has completed work, but the topic is retained in the Calendar in case corrective legislation is needed in the future.

In a number of instances, we also describe some possible areas of future work, which have been raised in previous years and retained for further consideration. New suggestions are discussed later in this memorandum.

Old Topics

Before discussing the individual matters authorized for study by the Commission's Calendar of Topics, the staff would like to raise a general issue: the possible deletion of certain "old topics" that have been kept on the Calendar for years, despite any activity on those topics. This issue seems worth discussing because of recent attention that has been given to the retention of old authority on the Calendar of Topics. That attention came from two sources:

- (1) When a resolution to approve the Calendar of Topics was introduced in 2018, mediator Ron Kelly sought to have the

49. Gov't Code § 8290.

50. See draft Annual Report attached to Memorandum 2018-56.

51. See 2018 Cal. Stat. res. ch. 158.

resolution amended to delete the language that had directed the Commission to study the relationship between mediation confidentiality and attorney malpractice and other misconduct. The Commission took no position on that advocacy, which ultimately failed. Nonetheless, the efforts drew fairly high profile attention to the issue of the Commission retaining study authority on its Calendar, even if there is no active work on a topic or any present plans to return to the matter later.⁵²

- (2) Individual Commissioners and Commission staff were asked by legislative staff to explain why the Commission keeps topics on its Calendar after it has completed work on them.

The explanation for the Commission's practice is fairly straightforward. When the Commission studies an area of law, it is helpful to retain authority to study that area in the future. In the short term, it is useful to retain such authority in case there is a need for clean-up or adjustment after a Commission recommendation is enacted. In the longer term, it makes sense for the Commission to retain broad authority on matters that it has studied closely, in order to make good use of the expertise that it has acquired.

For example, the Commission drafted the Probate Code. Its knowledge of that subject matter makes it very well-positioned to undertake further reform projects in that area. For that reason, the Calendar of Topics has continuously included a broad grant of authority to study any matter addressed by the Probate Code. For similar reasons, the Calendar includes broad grants of authority to study the Evidence Code, Family Law, property law, creditors remedies, etc.

The retention of those broad grants of authority, in areas where the Commission has subject matter knowledge, is beneficial. Barring some radical change of circumstances, those broad grants should be renewed in every resolution going forward.

However, the recent scrutiny of this issue has caused the staff to reflect on whether it might be helpful to prune some deadwood from the Calendar. It might be appropriate to delete a grant of authority from the Calendar if (1) the grant is narrow and specific, and (2) the work on the topic is complete or has never been started.

The last point — the possibility of eventually deleting authority on a topic that the Commission has not yet studied — requires some further explanation.

52. The advocacy reportedly involved direct outreach to individual legislators and the publication of an opinion piece in the *San Francisco Daily Journal*. See A. Marco Turk, *Mediation Confidentiality Still Up for Grabs*, S.F. Daily Journal (Mar. 16, 2018).

The staff is not suggesting that such a practice be applied universally or inflexibly. Every topic that is added to the Calendar should be given a fair chance to find a place in the Commission's active work. Realistically, however, the Commission always has more work on its Calendar that it can possibly accomplish. Even keeping up with the highest priority work (e.g., direct legislative assignments) is difficult enough. If a topic is postponed for long enough, the Commission should consider simply removing it. This would help to de-clutter the resolution, giving a clearer and more realistic picture of our actual workload and priorities.

Thus, in the following discussion of the items in the Calendar, the staff has included some recommendations that particular topics be deleted in the next resolution of authority.

1. Creditors' Remedies

Beginning in 1971, the Commission has made a series of recommendations covering specific aspects of creditors' remedies. In 1982, the Commission obtained enactment of a comprehensive statute governing enforcement of judgments. Since enactment of this statute, the Commission has submitted a number of narrower recommendations on this topic to the Legislature.

A possible subject for study under this topic is discussed below.

Judicial and Nonjudicial Foreclosure of Real Property Liens

The Commission has long-recognized that the laws governing foreclosure could benefit from revision. At various times, it has received suggestions regarding foreclosure procedure,⁵³ but it has consistently deferred undertaking a project on this subject, because of the magnitude, complexity, and controversy involved in that area of the law.

Over the years, the topic of foreclosure is one that has received consistent legislative and judicial attention.⁵⁴ **Given that, the staff recommends against**

53. See, e.g., Memorandum 2006-36, pp. 21-22 & Exhibit pp. 44-60; Memorandum 2005-29, p. 20; Memorandum 2002-17, p. 5 & Exhibit p. 47; Memorandum 2001-4, Exhibit pp. 1-2.

54. See, e.g., 2012 Cal. Stat. ch. 86 (AB 278 (Eng)); 2012 Cal. Stat. ch. 87 (SB 900 (Leno)); 2012 Cal. Stat. ch. 562 (AB 2610 (Skinner)); 2012 Cal. Stat. ch. 569 (AB 1950 (Davis)); 2012 Cal. Stat. ch. 568 (AB 1474 (Hancock)); 2012 Cal. Stat. ch. 201 (AB 2314 (Carter)); 2013 Cal. Stat. ch. 65 (SB 426 (Corbett)); 2013 Cal. Stat. ch. 251 (SB 310 (Calderon)); 2014 Cal. Stat. ch. 198 (SB 1051 (Galgiani)); 2018 Cal. Stat. ch. 404 (SB 818 (Beall)); 2018 Cal. Stat. ch. 1183 (SB 1183 (Morrell)). See *Coker v. JP Morgan Chase Bank, N.A.*, 62 Cal. 4th 667, 364 P.3d 176, 197 Cal. Rptr. 3d 131 (2016); *Yvanova v. New Century Mortgage Corp.*, 62 Cal. 4th 919, 365 P.3d 845, 199 Cal. Rptr. 3d 66 (2016); Dr.

undertaking a study of this topic unless the Legislature affirmatively seeks the Commission’s assistance.

2. Probate Code

The Commission drafted the current version of the Probate Code in 1990. The Commission continues to monitor experience under the code, and make occasional recommendations.

The Commission has undertaken work on, or previously expressed interest in studying, a number of probate-related topics, as discussed below.

Creditor Claims, Family Protections, and Nonprobate Assets

Several years ago, the Commission accepted an offer from its former Executive Secretary, Nathaniel Sterling, to prepare a background study on the liability of nonprobate transfers for creditor claims and family protections. In other words, if a decedent’s property passes outside of probate (e.g., by a trust, joint tenancy, or transfer-on-death beneficiary designation), to what extent should that property be liable to satisfy the decedent’s creditors (including persons who are entitled to the “family protections” applicable in probate)? And what procedures should be used to address any such liability?

Mr. Sterling summarizes the underlying problem as follows:

The move from a probate-based system for transfer of wealth at death to a nonprobate system has left California law in disarray. The policy of the law to require payment of a decedent’s just debts and to protect a decedent’s surviving spouse and children in probate has been shredded by the ad hoc development of nonprobate transfer law.⁵⁵

In 2010, the Commission circulated the background study for a 120-day public comment period.⁵⁶ No detailed comments were received in response to that request. The Commission tabled this topic, having received new, higher priority assignments from the Legislature.

Leevil, LLC v. Westlake Healthcare Center, 6 Cal. 5th 474, 431 P.3d 151, 241 Cal. Rptr. 3d 12 (2018); Black Sky Capital, LLC v. Cobb, 7 Cal. 5th 156, 439 P.3d 1149, 246 Cal. Rptr. 3d 583 (2019).

55. See Memorandum 2012-45, Exhibit p. 2.

56. See Memorandum 2010-27; Minutes (June 2010), p. 7.

The Commission briefly reactivated this study in June 2013.⁵⁷ However, further work on the topic had to be suspended due to other demands on staff resources.

The Commission reactivated this study again in 2017. In 2018, the Commission, based on stakeholder input, decided to suspend work on a general reform of the law on nonprobate transfer liability.⁵⁸ The Commission decided to proceed with work on two narrower issues:

- (1) Scope of the surviving spouse liability rule in Probate Code Sections 13550 and 13551.
- (2) Application of probate family protections to nonprobate transfers.⁵⁹

On the first of these topics, the Commission completed a final recommendation. Due to other demands on staff resources, the Commission has not yet commenced work on the second topic. **The staff recommends that the Commission commence work on the second topic, as resources permit.**

Presumptively Disqualified Fiduciaries

A number of years ago, the Legislature directed the Commission to study the operation and effectiveness of Probate Code provisions that establish a statutory presumption of fraud and undue influence when a person makes a gift to a “disqualified person” (i.e., the drafter of the donative instrument, a fiduciary who transcribed the donative instrument, or the care custodian of a transferor who is a dependent adult). After studying the topic, the Commission recommended a number of improvements to those provisions.⁶⁰ Legislation to implement that recommendation was introduced as SB 105 (Harman) in 2009.

The same year, the Commission began studying a related matter — whether the statutory presumption described above should also apply to an instrument naming a fiduciary.⁶¹ In other words, should there be a presumption of fraud or undue influence when an instrument names a “disqualified person” as the fiduciary of the person executing the instrument?

57. Memorandum 2013-25; Minutes (June 2013), p. 14.

58. Minutes (May 2018), p. 6.

59. *Id.* at 7.

60. See *Donative Transfer Restrictions*, 38 Cal. L. Revision Comm’n Reports 107 (2008).

61. See generally Memorandum 2009-22.

Because of the functional interrelationship between the two studies (both would apply the same factual predicate and evidentiary rules in defining the scope and effect of the presumption), the Commission decided to table the latter study until after the Legislature decided the fate of SB 105.

In 2010, the Legislature enacted SB 105, with amendments.⁶²

With the resolution of SB 105 settled, the Commission could return to this topic at any time. However, the topic does not appear to be as pressing as some of the other topics awaiting the Commission’s attention.

Simplified Administration Procedures

The Probate Code provides several procedures authorizing heirs or devisees to receive a decedent’s property without probate administration.⁶³ These procedures are referred to here collectively as simplified administration procedures.

In 2017, in response to a request for input on Transfer on Death Deeds (“TOD deeds”), the Commission received a letter from the Executive Committee of the Trusts and Estates Section of the State Bar (“TEXCOM”). TEXCOM’s letter raised concerns about the liability of a TOD deed beneficiary for a decedent’s unsecured debts.⁶⁴ The governing liability provisions for TOD deed beneficiaries were very closely modeled on provisions governing liability of a recipient of the decedent’s property under the simplified administration procedures.⁶⁵ Thus, TEXCOM’s concerns suggest that the liability provisions for the simplified administration procedures may be in need of reform.

At the time that TEXCOM’s letter was presented, the Commission approved the staff recommendation to study the simplified administration procedures.⁶⁶

In 2018, the staff, building on the work of student externs, completed two recommendations related to the simplified administration procedures.⁶⁷ Those recommendations were enacted into law in 2019.⁶⁸

62. See 2010 Cal. Stat. ch. 620; Prob. Code §§ 21360-21392; see also 2017 Cal. Stat. ch. 56 (amending Probate Code Section 21380).

63. See generally Prob. Code Division 8.

64. See Memorandum 2017-35, Exhibit pp. 5-8; see also Memorandum 2017-35, pp. 4-6.

65. Compare Prob. Code §§ 5672-5676 (liability for RTODD beneficiary) with Prob. Code §§ 13109-13111 (liability of recipient of personal property of small value received without administration); 13204-13206 (liability of recipient of real property of small value received without administration); 13561-13562 (liability of surviving spouse due to receipt of decedent’s property without administration).

66. See Minutes (Aug. 2017), p. 8.

In 2019, the Commission completed a tentative recommendation related to liability rules for the simplified administration procedures.⁶⁹ The tentative recommendation is currently circulating for public comment. **The staff recommends continuing to work on this topic in 2020, as needed to bring this work to completion.**

Uniform Custodial Trust Act

In 2000, the Commission decided to study the Uniform Custodial Trust Act on a low priority basis. That act provides a simple procedure for holding assets for the benefit of an adult (perhaps elderly or disabled), similar to that available for a minor under the Uniform Transfers to Minors Act.

California has not yet adopted the Uniform Custodial Trust Act, so the matter remains an appropriate topic for study. However, **this topic does not appear to be as pressing as some of the other topics awaiting the Commission's attention.**

3. Real and Personal Property

The study of property law was authorized by the Legislature in 1983, consolidating various previously authorized aspects of real and personal property law into one comprehensive topic.

Two specific topics that fall within this comprehensive authority are discussed below.

Eminent Domain

In 2016, the staff identified a case, *Property Reserve, Inc. v. Superior Court*,⁷⁰ in which the California Supreme Court concluded that the pre-condemnation entry and testing statutes in California's Eminent Domain Law were constitutionally deficient. The statutes at issue were enacted on the Commission's recommendation.⁷¹

67. *Disposition of Estate Without Administration: Dollar Amounts*, 45 Cal. L. Revision Comm'n Reports 387 (2018); *Disposition of Estate Without Administration: Interest Rate*, 45 Cal. L. Revision Comm'n Reports 419 (2018).

68. 2019 Cal. Stat. ch. 122 (AB 473 (Maienschein)).

69. Tentative Recommendation on *Disposition of Estate Without Administration: Liability* (July 2019). The comment deadline is October 15, 2019.

70. 1 Cal. 5th 151 (2016).

71. See *Recommendation Proposing The Eminent Domain Law*, 12 Cal. L. Revision Comm'n Reports 1741-42 (1974) (proposed Code of Civil Procedure Section 1245.060).

In 2016, the Commission decided, when considering the New Topics memorandum, to undertake study of the constitutional issue identified by the Supreme Court.⁷² In 2017, the Commission made significant process in studying this topic, including completion of a draft recommendation.⁷³ In the course of preparing the draft recommendation, the Commission received comments suggesting additional, related statutory reforms.⁷⁴ In response to those comments, the Commission decided to expand the scope of the study to include those issues.⁷⁵

Since then, the Commission has continued to work on this matter, on a low priority basis.⁷⁶ **The Commission should continue to work on this study in the same manner in 2020.**

Mechanics Lien Law

Several years ago, the Commission recommended a complete recodification of mechanics lien law. The laws implementing the recodification of mechanics lien law became operative on July 1, 2012.⁷⁷

In preparing the recommendation and seeking its enactment, the Commission deferred consideration of several possible substantive improvements to existing mechanics lien law. The Commission's overall view was that the recodification should be addressed separately from any significant substantive changes, which may be appropriate for future work by the Commission.

As discussed later in this memorandum, the Commission undertook work in 2016 on the application of mechanics lien law to common area property.⁷⁸

The staff is not currently aware of any other high priority issues on this topic. The Commission may wish to return to this topic after the Commission's higher priority workload eases.

72. See Memorandum 2016-53, p. 13; Minutes (Dec. 2016), p. 4.

73. See Memorandum 2017-43.

74. See Memorandum 2017-43, pp. 4-5, 8-9; see also First Supplement to Memorandum 2017-43.

75. See Minutes (Sept. 2017), p. 4.

76. For the most recent developments, see Memorandum 2019-50 (for consideration at upcoming meeting); see also Memorandum 2019-20; Minutes (April 2019), p. 4.

77. See 2010 Cal. Stat. ch. 697 (SB 189 (Lowenthal)); 2011 Cal. Stat. ch. 44 (SB 190 (Lowenthal)).

78. See discussion of "14. Common Interest Developments" *infra*.

4. Family Law

The Family Code was drafted by the Commission in 1992. Since then, the general topic of family law has remained on the Commission's agenda for ongoing review.

One aspect of this topic, which the Commission has kept in mind for possible future study, is discussed below.

Marital Agreements Made During Marriage

California has enacted the Uniform Premarital Agreements Act, as well as detailed provisions concerning agreements relating to rights on death of one of the spouses. Yet there is no general statute governing marital agreements made during marriage. Such a statute would be useful, but the development of the statute would involve controversial issues.

In 2012, the Uniform Law Commission ("ULC") approved the Uniform Premarital and Marital Agreements Act. Any Commission study of this topic should begin by examining the uniform act.

If the Commission decides to undertake such work, it could also consider clarifying certain language in Family Code Section 1615, governing the enforceability of premarital agreements.⁷⁹ In particular, the Commission could study circumstances in which the right to support can be waived.⁸⁰

This is an appropriate topic for Commission study, however it does not appear to be as pressing as some of the other topics awaiting the Commission's attention.

5. Discovery in Civil Cases

Some time ago, the Commission undertook a study of civil discovery, with the benefit of a background study prepared by Prof. Gregory Weber of McGeorge School of Law. A number of reforms were enacted, including the Commission's recommendation on *Deposition in Out-of-State Litigation*, which was enacted in 2008.⁸¹

79. See Memorandum 2005-29, p. 25 & Exhibit pp. 21-36; see also, e.g., 2019 Cal. Stat. ch. 193 (AB 1380 (Obernolte)), *In re Marriage of Clarke & Akel*, 19 Cal. App. 5th 914, 228 Cal. Rptr. 3d 483 (2018), *In re Marriage of Cadwell-Faso & Faso*, 191 Cal. App. 4th 945, 119 Cal. Rptr. 3d 818 (2011).

80. See *In re Marriage of Pendleton & Fireman*, 24 Cal. 4th 39, 5 P.3d 839, 99 Cal. Rptr. 2d 278 (2000).

81. 37 Cal. L. Revision Comm'n Reports 99 (2007); see 2008 Cal. Stat. ch. 231.

While it was actively working on civil discovery, the Commission received numerous suggestions from interested persons, which the staff has kept on hand. The Commission has also identified other discovery topics it might address.

The Commission, in its consideration of work priorities for 2017, directed the staff to begin work on a discovery topic suggested by now-former Commissioner Capozzola (related to depositions) and to prepare a list of other discovery topics suggested for study.⁸² However, the Commission suspended that work in light of then-pending discovery-related legislation — AB 383 (Chau) — that would expressly authorize informal discovery conferences.⁸³ After AB 383 was enacted into law with a sunset date of January 1, 2023,⁸⁴ the Commission decided to suspend study of discovery-related issues until the sunset of AB 383.⁸⁵

Consistent with the Commission’s decision, work on this topic is currently suspended.

Since the Commission suspended work on this topic, the Legislature has enacted additional discovery-related reforms.⁸⁶ The staff will continue to monitor the developments on this topic and provide a more detailed discussion of these issues when the Commission recommences work on this topic.

6. Rights and Disabilities of Minor and Incompetent Persons

Since authorization of this study in 1979, the Commission has submitted a number of recommendations relating to rights and disabilities of minor and incompetent persons. There are no active proposals relating to this topic before the Commission at this time.

The current staff has no subject matter expertise on this topic. Nor have there been any recent suggestions that the Commission work on this topic. The staff recommends that it be deleted.

7. Evidence

The Evidence Code was enacted in 1965 on recommendation of the Commission. Since then, the Commission has had continuing authority to study

82. See Minutes (Dec. 2016), p. 3.

83. See Minutes (Aug. 2017), p. 7; Memorandum 2017-26, pp. 22-24.

84. 2017 Cal. Stat. ch. 189.

85. Minutes (Dec. 2018), p. 3.

86. See 2019 Cal. Stat. ch. 208 (SB 370 (Umberg)), 2018 Cal. Stat. ch. 317 (AB 2230 (Berman)); see also SB 17 (Umberg) (enrolled).

issues relating to the Evidence Code. The Commission has made numerous recommendations on evidence issues, most of which have been enacted.

The Commission has on hand an extensive background study prepared by Prof. Miguel Méndez,⁸⁷ which is a comprehensive comparison of the Evidence Code and the Federal Rules of Evidence. A number of years ago, the Commission began to examine some topics covered in the background study, but encountered resistance from within the Legislature and suspended its work in 2005.

The staff later compiled a list of specific evidence issues for possible study, which appear likely to be relatively noncontroversial.⁸⁸ The Commission directed the staff to seek guidance from the judiciary committees regarding whether to pursue those issues. The staff explored this matter to some extent, without a clear resolution. **Unless the Commission otherwise directs, the staff will raise the matter with the judiciary committees again, but not until the Commission's higher priority workload eases.**

8. Alternative Dispute Resolution

The present California arbitration statute was enacted in 1961, on Commission recommendation. The topic was expanded in 2001 to include mediation and other alternative dispute resolution techniques.

At this time, the Commission is not actively working on any proposal pursuant to that grant of authority. **However, the topic should be retained on the Calendar of Topics, in case such work appears appropriate in the future.**

9. Administrative Law

This topic was authorized for Commission study in 1987, both by legislative initiative and at the request of the Commission. After extensive studies, a number of bills dealing with administrative adjudication and administrative rulemaking were enacted.

There are no active proposals relating to this topic before the Commission at this time. **However, the topic should be retained on the Calendar of Topics, in case any adjustments are needed in the laws enacted on Commission recommendation.**

87. The background study consists of a series of reports prepared by Prof. Méndez. See http://www.clrc.ca.gov/Menu3_reports/bkstudies.html.

At the time the reports were prepared, Prof. Méndez served as a Professor of Law at Stanford Law School and UC Davis School of Law.

88. See Memorandum 2006-36, Exhibit pp. 70-71.

10. Attorney's Fees

The Commission requested authority to study attorney's fees in 1988, pursuant to a suggestion of the California Judges Association ("CJA"). The staff did a substantial amount of preliminary work on the topic in 1990, but the work was suspended pending guidance from CJA on specific problems requiring attention, which were never identified.

In 1999, the Commission began studying one aspect of this topic — award of costs and contractual attorney's fees to the prevailing party. The Commission considered a number of issues and drafts, but had to put the matter on the back burner in 2001 due to other demands on staff and Commission time.

The Commission has also considered studying the possibility of standardizing various attorney's fee statutes.

While the staff does retain some subject matter familiarity with this topic, it is not an area where the Commission has made any headway. The subject matter may be too politically polarized to be a good fit for the Commission's process. The Commission should consider whether to delete this topic.

11. Uniform Unincorporated Nonprofit Association Act

In 1993, the Commission was authorized to study whether California should enact the Uniform Unincorporated Nonprofit Association Act. The Commission ultimately decided not to recommend enactment, but made other recommendations to clarify the status and governance of unincorporated associations, which were enacted.

The Commission completed its work on this topic, which was fairly narrow in scope. We have not learned of any problems with the law enacted on the Commission's recommendation. **The Commission should consider deleting this topic from its Calendar.**

12. Trial Court Unification

Trial court unification was assigned by the Legislature in 1993. Constitutional amendments and legislation recommended by the Commission have since been enacted.

The Commission should retain this topic on its Calendar of Topics as related work is currently ongoing.⁸⁹

89. See discussion of "Trial Court Restructuring" *supra*.

13. Contract Law

The Commission’s Calendar of Topics authorizes a study of the law of contracts, which includes a study of the effect of electronic communications on the law governing contract formation, the statute of frauds, the parol evidence rule, and related matters. In this regard, for the past decade or so the staff has been lightly monitoring developments relating to the Uniform Electronic Transactions Act (“UETA”), including possible preemption of California’s version of UETA by the federal Electronic Signatures in Global and National Commerce Act.⁹⁰ **The staff will continue to monitor this situation, but does not recommend commencing a project in this area until the courts have offered more guidance on the preemption issue.**

14. Common Interest Developments

Common interest development (“CID”) law was added to the Commission’s Calendar of Topics in 1999, at the request of the Commission. The Commission studied various aspects of this topic since that time, and has issued several recommendations, most of which have been enacted.

In 2013, the Legislature enacted Commission recommendations to (1) recodify the Davis-Stirling Common Interest Development Act,⁹¹ and (2) create a new and separate act for commercial and industrial common interest developments.⁹²

In 2016, the Commission completed a recommendation related to the application of mechanics lien law to common area property.⁹³ In 2017, AB 534 (Gallagher), which implements the Commission’s recommendation, was enacted.

The Commission has a long list of possible future CID study topics. For example, the Commission previously decided to consider situations in which the application of the Davis-Stirling Act appears inappropriate or unclear — e.g., a stock cooperative without a declaration, a homeowner association organized as a for-profit association, or a subdivision with a mandatory road maintenance association that is not technically a CID.⁹⁴

90. See Memorandum 2014-41, p. 19.

91. See 2012 Cal. Stat. ch. 180 (AB 805 (Torres)); 2012 Cal. Stat. ch. 181 (AB 806 (Torres)); see also 2013 Cal. Stat. ch. 183 (clean-up legislation) (SB 745 (Committee on Transportation and Housing)).

92. 2013 Cal. Stat. ch. 605 (SB 752 (Roth)).

93. See *Mechanics Liens in Common Interest Developments*, 44 Cal. L. Revision Comm’n Reports 739 (2016).

94. See Minutes (Oct. 2008).

Given our extensive work in this area of law, it would make sense to retain authority to study CID law. **However, the Commission has largely completed its work on the specific tasks that are enumerated in this topic. It would probably make sense to delete this specific topic and instead add a reference to common interest developments to our general grant of authority to study real property law.**⁹⁵

15. Statute of Limitations for Legal Malpractice

A number of years ago, the Commission did extensive work on the statute of limitations for legal malpractice. After circulating both a tentative recommendation and a revised tentative recommendation, the Commission decided that further work probably would be unproductive and discontinued the study without issuing a final recommendation. **It seems unlikely that the Commission will return to this topic. The staff recommends that it be deleted from the Calendar.**

16. Coordination of Public Records Statutes

A study of the laws governing public records was added to the Commission's Calendar of Topics in 1999, at the request of the Commission. The objectives are to coordinate the public records law with laws protecting personal privacy, and to update the public records law in light of electronic communications and databases.

It seems unlikely that the Commission will activate this topic. The staff recommends that it be deleted from the Calendar.

17. Criminal Sentencing

Review of the criminal sentencing statutes was added to the Commission's Calendar of Topics in 1999, at the request of the Commission. The Commission began to work on this matter, but received negative input and the proposal was tabled.

Given the upcoming creation of the PCR Committee, which will be charged with the study of criminal sentencing laws (among other matters), the staff sees no reason for this Commission to retain similar authority. **The staff recommends that it be deleted from the Calendar.**

95. See discussion of "3. Real and Personal Property" *supra*.

18. Subdivision Map Act and Mitigation Fee Act

In 2001, a study of the Subdivision Map Act and Mitigation Fee Act was added to the Commission's Calendar of Topics, at the request of the Commission. The objective of the study would be a revision to improve organization, resolve inconsistencies, and clarify and rationalize provisions of these complex statutes.

This project would be a massive, mostly nonsubstantive recodification. Recent experience shows that such projects can take several years to complete and the results may be difficult to enact.

The staff recommends that this topic be deleted from the Calendar.

19. Uniform Statute and Rule Construction Act

In 2003, a study of the Uniform Statute and Rule Construction Act (1995) was added to the Commission's Calendar of Topics, at the request of the Commission.

The Commission has previously indicated its intention to give this study a low priority. **The staff now recommends that the topic be deleted from the Calendar.**

20. Venue

In 2007, the Calendar of Topics was revised at the Commission's request, to add a study of "[w]hether the law governing the place of trial in a civil case should be revised."⁹⁶ That request was prompted by an unpublished decision in which the Second District Court of Appeal noted that Code of Civil Procedure Section 394, a venue statute, was a "mass of cumbersome phraseology," and that there was a "need for revision and clarification of the venue statutes."⁹⁷ The court of appeal was sufficiently concerned about this matter to direct its clerk to send a copy of its opinion to the Office of Legislative Counsel, which in turn alerted the Commission.

While this topic is one of the higher priority matters awaiting Commission attention, the staff does not believe that there will be sufficient resources to address this matter in 2020.

96. 2007 Cal. Stat. res. ch. 100.

97. See Memorandum 2005-29, Exhibit p. 59.

21. Charter School as a Public Entity

In 2009, the Legislature directed the Commission to analyze “the legal and policy implications of treating a charter school as a public entity for the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code,” which governs claims and actions against public entities and public employees.⁹⁸ The Commission issued its final report on that topic in 2012.⁹⁹ No further work on this topic is currently pending or expected.

The staff recommends that the topic be deleted from the Calendar.

22. Fish and Game Law

See discussion of this topic under “Current Legislative Assignments,” above.

23. Relationship Between Mediation Confidentiality and Attorney Malpractice and Other Misconduct

The Commission completed a recommendation on this topic in 2018, but no legislator agreed to introduce the implementing legislation.¹⁰⁰ Instead, the Legislature enacted another piece of legislation on mediation confidentiality.¹⁰¹

Given those developments, the Commission decided not to make any further effort to seek enactment of its recommendation on this topic.¹⁰² As reported in last year’s new topics memorandum,¹⁰³ the Commission’s work on this issue can be considered complete.

Because the scope of the language assigning this study to the Commission was so specific, there is probably no need to retain this authority. If the Commission sees a need to revisit the matter, it could do so under its general grant of authority to study alternative dispute resolution.¹⁰⁴

The staff recommends that the language on the relationship between mediation confidentiality and attorney malpractice and other misconduct be deleted from the Calendar.

98. See 2009 Cal. Stat. res. ch. 98.

99. See *Charter Schools and the Government Claims Act*, 42 Cal. L. Revision Comm’n Reports 225 (2012).

100. See *Relationship Between Mediation Confidentiality and Attorney Malpractice*, 45 Cal. L. Revision Comm’n Reports 19 (2018).

101. 2018 Cal. Stat. ch. 350 (SB 954 (Wieckowski)).

102. Minutes (Oct. 2018), p. 3.

103. See Memorandum 2018-57, pp. 8-9.

104. See discussion of “8. Alternative Dispute Resolution” *supra*.

24. California Public Records Act

See discussion of this topic under “Current Legislative Assignments,” above.

25. Recodification of Toxic Substance Statutes

See discussion of this topic under “Current Legislative Assignments,” above.

CARRYOVER SUGGESTIONS FROM PREVIOUS YEARS

When it considered last year’s memorandum on new topics, the Commission retained several suggestions for future reconsideration. Those carryover suggestions are briefly described below; further detail is available in the sources cited. For the most part, the carryover topics appear to be issues that the Commission is well-suited to address.

A few of these issues appear to be narrow, not likely to be controversial, and relatively straightforward to address.¹⁰⁵ **In 2020, the staff recommends that these issues be considered for staff-directed student work, as appropriate, or as low-priority staff projects as time permits.**

Otherwise, however, given the Commission’s current slate of assignments, **the staff expects that the Commission will lack the staff resources to undertake work on the carryover suggestions.**

The staff recommends that these suggestions be carried over for consideration in future years.

Intestate Inheritance by a Half-Sibling¹⁰⁶

Marlynn Stoddard of Newport Beach asked the Commission to study intestate inheritance by a half-sibling who lacks a familial relationship with the decedent.¹⁰⁷ Currently, California’s law on intestate succession provides that “relatives of the halfblood inherit the same share they would inherit if they were of the whole blood.”¹⁰⁸ Ms. Stoddard provides the example of the estate of her brother, who died intestate; Ms. Stoddard, who “had a very close relationship” with her brother, and two estranged half-siblings each received a one-third share

105. See discussion of “Social Security Number Disclosure Requirement in Probate Code,” “Attachment of Limited Liability Company Property,” and “Clarify What Documents a Motion for Summary Judgment Must Include for Unlawful Detainer Proceedings.”

106. See full analysis in Memorandum 2013-54, pp. 22-23.

107. See Memorandum 2012-5, Exhibit pp. 48-51.

108. Prob. Code § 6406.

of her brother's estate.¹⁰⁹ Ms. Stoddard indicated that "the current half-blood statute ... produces grossly unfair and irrational results in cases like mine."¹¹⁰

Civil Procedure: Stay of Trial Court Proceeding During Appeal¹¹¹

Attorney H. Thomas Watson suggested that the Commission consider a proposed amendment¹¹² of Code of Civil Procedure Section 916 that "seeks to resolve the anomalous split of authority" on whether a trial court retains jurisdiction to resolve a motion for judgment NOV while a case is stayed during an appeal.¹¹³ His proposed amendment was offered to ensure the trial court "retain[s] jurisdiction to rule on all post-trial motions regardless of whether a notice of appeal is perfected."¹¹⁴

Uniform Trust Code¹¹⁵

Nathaniel Sterling, the Commission's former Executive Secretary, wrote on behalf of the California Commission on Uniform State Laws, to request that the Law Revision Commission "make a study to determine whether the Uniform Trust Code should be enacted in California, in whole or in part."¹¹⁶

Social Security Number Disclosure Requirement in Probate Code¹¹⁷

Attorneys Peter Stern and Jennifer Wilkerson shared a concern about Probate Code Section 1841, which requires that a conservatorship petition include the social security number of the proposed conservatee if that person is an absentee. Mr. Stern further indicated that social security numbers are generally not used in any non-confidential pleadings or filings. The staff, in reviewing the issue, found another section of the Probate Code (Section 3703), which requires a social security number of an absentee to be included in a court filing.

109. See Memorandum 2012-5, Exhibit pp. 48-51.

110. *Id.* at 50.

111. See full analysis in Memorandum 2013-54, p. 27.

112. First Supplement to Memorandum 2012-5, Exhibit p. 12.

113. *Id.* at 12-13.

114. *Id.* at 13.

115. See full analysis in Memorandum 2013-54, pp. 32-33.

116. *Id.* at Exhibit p. 36.

117. See full analysis in Memorandum 2014-41, pp. 26-29.

Revocability of Trusts by Surviving Co-Trustee & Disposition of Trust Assets¹¹⁸

Attorney Beverley Pellegrini wrote to request statutory clarification as to the meaning of the “joint lifetimes of the trustors” when that phrase is used in trust documents.¹¹⁹ In particular, Ms. Pellegrini believes that the phrase is ambiguous as it could mean either the time period when *all* trustors are alive (i.e., until the first trustor dies) or the time period when *any* trustor is alive (i.e., until all trustors are deceased).¹²⁰

Ms. Pellegrini’s concern relates to the ability of co-Trustors to achieve their intended result during the survivorship period (i.e., after the first Trustor is deceased) with respect to both the revocation and disposition of trust property. For instance, should a marital trust that provides for revocability during the “joint lifetimes” of the Trustors permit the surviving spouse to revoke as to the entire property or only that spouse’s share of the property?¹²¹ To the extent that the surviving spouse has the power to revoke the entire trust corpus, does that spouse also control the disposition of that property?¹²²

118. See full analysis in Memorandum 2015-47, pp. 27-29; see also First Supplement to Memorandum 2015-47, p. 2.

119. Memorandum 2015-47, Exhibit pp. 28-29; see also Email from Beverly Pellegrini to Kristin Burford and Brian Hebert (Nov. 2, 2016) (on file with Commission).

120. Memorandum 2015-47, Exhibit p. 28.

121. Generally, the answer to this question would be determined according to Probate Code Section 15401. In relevant part, that section reads:

(b)(1) Unless otherwise provided in the instrument, if a trust is created by more than one settlor, each settlor may revoke the trust as to the portion of the trust contributed by that settlor, except as provided in Section 761 of the Family Code [which permits either spouse to unilaterally revoke the trust as to community property while both spouses are living].

(2) Notwithstanding paragraph (1), a settlor may grant to another person, including, but not limited to, his or her spouse, a power to revoke all or part of that portion of the trust contributed by that settlor, regardless of whether that portion was separate property or community property of that settlor, and regardless of whether that power to revoke is exercisable during the lifetime of that settlor or continues after the death of that settlor, or both.

122. Generally, the answer to this question would be determined according to Probate Code Section 15410. In relevant part, that section reads:

At the termination of a trust, the trust property shall be disposed of as follows:

(a) In the case of a trust that is revoked by the settlor, the trust property shall be disposed of in the following order of priority:

(1) As directed by the settlor.

(2) As provided in the trust instrument.

(3) To the extent that there is no direction by the settlor or in the trust instrument, to the settlor, or his or her estate, as the case may be.

(b) In the case of a trust that is revoked by any person holding a power of revocation other than the settlor, the trust property shall be disposed of in the following order of priority:

(1) As provided in the trust instrument.

(2) As directed by the person exercising the power of revocation.

Bond and Undertaking Law¹²³

Attorney Frank Coats raised concerns that recent changes to California's Bond and Undertaking Law do not adequately account for the operation of the law in non-litigation matters.¹²⁴ Perhaps the most troubling issue raised by Mr. Coats is that the recent amendments could be read to only permit the use of bonds or notes as a deposit in lieu of an appeal bond and, thus, to preclude the deposit of bonds or notes in lieu of a bond required as a condition of a permit or contract.¹²⁵

In addition, Mr. Coats identifies a few provisions in the current law that may cause confusion.¹²⁶ These issues may be appropriate to address if the Commission undertakes a study of the issue discussed above.

Timing Rules for Service by Mail and Email¹²⁷

Attorney Joshua Merliss expressed concern about differing judicial interpretations of the rules governing the timing of service by mail (Code Civ. Proc. § 1013) and service by email (Code Civ. Proc. § 1010.6(a)(4)).¹²⁸ Each provision extends litigation deadlines, notice periods, and the like for a certain number of days after service occurring by the specified means (mail or email).

However, the statutes do not expressly say who can take advantage of the extension of time. With respect to whether a person other than a recipient of the service is entitled to the extension of time, Mr. Merliss indicated that two appellate courts have reached differing conclusions.¹²⁹

Given the similarities between Sections 1010.6 and 1013, the differing interpretations as to who is entitled to a time extension seem problematic and potentially confusing. Addressing this issue would clarify the applicable

(3) To the extent that there is no direction in the trust instrument or by the person exercising the power of revocation, to the person exercising the power of revocation, or his or her estate, as the case may be.

....

123. See full analysis in Memorandum 2015-47, pp. 30-31; see also First Supplement to Memorandum 2015-47, p. 1.

124. Memorandum 2015-47, Exhibit pp. 1-2.

125. See Code Civ. Proc. § 995.710(a)(2).

126. See Memorandum 2015-47, Exhibit pp. 1-2; see also First Supplement to Memorandum 2015-47, Email from Frank Coats to Brian Hebert (Sept. 16, 2015) (on file with Commission).

127. See full analysis in Memorandum 2015-47, pp. 31-32.

128. *Id.* at Exhibit pp. 6-27.

129. *Id.* at Exhibit pp. 6-7. The cases are *Westrec Marina Management v. Jardine Ins. Brokers Orange County*, 85 Cal. App. 4th 1042, 102 Cal. Rptr. 2d 673 (2000), and *Kahn v. The Dewey Group*, 240 Cal. App. 4th 227, 192 Cal. Rptr. 3d 679 (2015); see also Memorandum 2015-47, Exhibit pp. 8-27.

deadlines and help to avoid inadvertent late filings, which could have significant legal consequences.

Attachment of Limited Liability Company Property¹³⁰

Attorney Dana Cisneros wrote with concern that the prejudgment attachment statutes (in particular, Code of Civil Procedure Section 487.010) make no provision for limited liability company property.¹³¹ However, Ms. Cisneros indicates that, in practice, “courts are issuing attachments for LLCs.”¹³²

Code of Civil Procedure Section 487.010 authorizes attachment of specified property for defendants who are corporations, partnerships, or other unincorporated associations, and natural persons. Section 487.010 does not mention limited liability companies.

The staff’s initial analysis of this issue suggests that the failure to address LLCs in the prejudgment attachment statute may have been an oversight.¹³³ Assuming further study confirms this assessment, the statutes would benefit from a clarifying reform that specifies that LLCs are subject to the same rules for prejudgment attachment as other legal entities.

Application of Marketable Record Title Act to Oil & Gas Leases¹³⁴

Attorney Jack Quirk wrote to identify ambiguities regarding the application of certain provisions in the Marketable Record Title Act (“MRTA”) to oil and gas leases.¹³⁵ In particular, Mr. Quirk is concerned that the statutes are not sufficiently clear on whether the MRTA’s abolition of possibilities of reverter applies to such interests in oil and gas leases.¹³⁶

Mr. Quirk notes that a typical oil and gas lease includes an initial, defined term of years and a secondary, indefinite term (often, contingent upon continued production).¹³⁷ California case law construes such leases as creating a fee simple

130. See full analysis in Memorandum 2017-55, pp. 31-32.

131. *Id.* at Exhibit p. 1.

132. *Id.*

133. See 1994 Cal. Stat. ch. 1010 (SB 2053 (Killea)); 1994 Cal. Stat. ch. 469 (SB 469 (Beverly)).

134. See full analysis in Memorandum 2017-55, pp. 33-35.

135. *Id.* at Exhibit pp. 5-8. Mr. Quirk’s emails refer to several cases that he provided as attachments. Those attachments are not reproduced in the Exhibit, but are on file with the Commission.

136. See Civ. Code § 885.020. (“Fees simple determinable and possibilities of reverter are abolished. Every estate that would be at common law a fee simple determinable is deemed to be a fee simple subject to a restriction in the form of a condition subsequent. Every interest that would be at common law a possibility of reverter is deemed to be and is enforceable as a power of termination.”).

137. See Memorandum 2017-55, Exhibit p. 5.

determinable interest held by the lessee and a complementary possibility of reverter in favor of the lessor.¹³⁸ Essentially, this treatment means that the lease automatically terminates when the specified condition occurs (e.g., failure to produce paying quantities of oil and gas).¹³⁹

In the original enactment of the MRTA, it seems clear that the Legislature did not intend to modify the treatment of oil and gas leases (i.e., convert the possibility of reverter to a power of termination).¹⁴⁰ Several years later, the MRTA was amended, on Commission recommendation, to change the terminology used to refer to certain property interests.¹⁴¹ However, the change introduced a circular reference problem in the statutory language regarding the treatment of oil and gas leases.

While the current understanding in practice is in accord with the apparent legislative intent (i.e., the MRTA does not convert the possibility of reverter in oil and gas leases), the statutory language itself is somewhat troubling and could be conformed for clarity.

Paid Sick Leave¹⁴²

Commissioner Crystal Miller-O'Brien proposed a suggested new topic at the Commission's December 2017 meeting, relating to California's Healthy Workplaces, Healthy Families Act of 2014 (hereafter, "Act").¹⁴³

As described in Memorandum 2018-2, Commissioner Miller-O'Brien

indicates that since the Act was enacted, numerous cities and counties have enacted their own paid sick leave laws. She believes that the resulting patchwork of requirements complicates employment law in problematic ways and that legislative clarification would be helpful. She also suggests creating new exceptions to the application of the law (e.g., limiting the law so

138. See *id.*; see also, e.g., *Dabney v. Edwards*, 5 Cal. 2d 1, 11-13, 53 P.2d 962 (1935), *Lough v. Coal Oil, Inc.*, 217 Cal. App. 3d 1518, 1526, 266 Cal. Rptr. 611 (1990) ("In California, an oil and gas lease with a 'so long thereafter' habendum clause creates a determinable fee interest in the nature of *profit a prendre*, an interest that terminates upon the happening of the specified event with no notice required.").

139. See *supra* note 138; see also *Renner v. Huntington-Hawthorne Oil and Gas Co.*, 39 Cal. 2d 93, 244 P.2d 895 (1952) ("A determinable fee terminates upon the happening of the event named in the terms of the instrument which created the estate; no notice is required for, and no forfeiture results from, such termination.").

140. See Memorandum 2017-55, pp. 33-34.

141. See 1991 Cal. Stat. ch. 156 (AB 1577); *Application of Marketable Title Statute to Executory Interests*, 21 Cal. L. Revision Comm'n Reports 53 (1991).

142. See full analysis in Memorandum 2018-2 and Memorandum 2018-57, pp. 43-45, Exhibit pp. 22-35.

143. See Labor Code §§ 245-249.

that it only applies to businesses with five or more non-family-member employees).¹⁴⁴

The Commission would need to seek new authority to work on this topic.

Clarify What Documents a Motion for Summary Judgment Must Include for Unlawful Detainer Proceedings¹⁴⁵

Attorney Bonnie Maly wrote, on behalf of Continuing Education of the Bar (“CEB”), to request that the Commission clarify “what supporting documents are required in summary judgment motions in unlawful detainer actions.”¹⁴⁶

Ms. Maly explains that subdivision (b) of Code of Civil Procedure Section 437c specifies, among other things, the required contents of motions for summary judgment generally.¹⁴⁷ However, subdivision (s) of that section makes subdivisions (a) and (b) expressly inapplicable to actions, like unlawful detainer, which are “brought pursuant to Chapter 4 (commencing with Section 1159) of Title 3 of Part 3.”¹⁴⁸

Subdivisions (a) and (b) of Section 437(c) also include several timing rules for the summary judgment procedure, as well other provisions about motions for summary judgment and hearings.¹⁴⁹

Ms. Maly suggested that subdivision (s) should be narrowed to specify that only the standard time periods for filing and serving papers and the scheduling of hearings are inapplicable to motions for summary judgment in unlawful detainer proceedings,¹⁵⁰ based on her assessment of the probable original legislative intent.¹⁵¹

The Commission has done previous work on unlawful detainer and has identified a few issues pertaining to discovery in unlawful detainer proceedings to be addressed when time permits.¹⁵² When Commission decides to pursue work on this topic, it may be possible to put together a package of minor reforms related to unlawful detainer proceedings.

144. Memorandum 2018-2, p. 1.

145. See full analysis in Memorandum 2018-57, pp. 32-35, Exhibit pp. 19-21.

146. Memorandum 2018-57, Exhibit p. 19.

147. *Id.* at 19.

148. See also *id.* at 19-21.

149. See, e.g., Code Civ Proc. § 437c(b)(5) (“Evidentiary objections not made at the hearing shall be deemed waived.”).

150. See *id.* at 19.

151. Memorandum 2018-57, Exhibit p. 19; see also *id.* at 20-21.

152. See Memorandum 2006-40, pp. 9-10 (“Timetable for Other Forms of Discovery” and “Interrelationship Between Discovery Cutoff and Hearing Date”); Memorandum 2007-3, pp. 3-4.

SUGGESTED NEW TOPICS

During the past year, there have been a few suggestions regarding new topics for the Commission to study. A number of those suggestions are discussed below. Other suggestions do not warrant discussion in this memorandum, because they clearly are a poor fit for the Commission's expertise, or obviously should be resolved by elected representatives rather than Commission appointees.

Probate Code

The Commission has received one new topic suggestion that falls within the Commission's existing authority to study issues in the Probate Code. In addition, the Commission identified two narrow estate planning reforms that it might study as resources permit. Those items would also fall within the Commission's existing authority. All three possible study topics are discussed below.

Accountability Under the Trust Law

Mary Madeline DelPonti, of Palos Verdes Estates, raised concerns about the laws governing the accountability of a trustee and the challenges faced by those seeking to hold trustees accountable.¹⁵³ Her concerns stem from her experience contesting the actions of a trustee administering her father's trust.

Ms. DelPonti believes that the current laws governing the trustee's conduct and obligations are not effective to "prevent the Trustee from breaching their fiduciary duties." Her experience also suggests that the long timelines associated with litigation can preclude someone challenging a trustee's actions from getting effective relief. "By the time the court intervenes, the Trust can be completely depleted of assets leaving Petitioners further victimized."

Ms. DelPonti makes a number of suggestions, all of which are focused on increasing oversight of trustees and making it easier to challenge a trustee's actions. In particular, her specific suggestions include:

- Providing a more restrictive time window for a trustee to provide necessary records.¹⁵⁴

153. See Emails from Mary Madeline DelPonti to Brian Hebert (June 26, 2019 and June 30, 2019) (on file with the Commission). Ms. DelPonti's emails are not attached to this memorandum, as they contain allegations of misconduct or wrongdoing against identified persons. See CLRC Handbook Rule 370(c).

154. See, e.g., Prob Code §§ 16060-16069. Certain notifications must be served no later than 60 days following the occurrence of the event triggering the notice requirement. See Prob. Code §

- Shifting the burden of costs (i.e., having the trust pay for challengers' costs and attorney's fees).¹⁵⁵
- Requiring that the trust pay costs and attorney's fees for a challenger upfront.¹⁵⁶
- Allowing a petitioner to receive necessary documents without requiring approval of the trustee.

Ms. DelPonti's overarching view appears to be that the legislative balance struck in the Trust Law¹⁵⁷ provides too much flexibility and control to trustees, at the expense of those challenging a trustee's actions.

Adjusting the policy balance in the Trust Law is no small matter, particularly given the proliferation of trusts as a primary estate-planning device.¹⁵⁸ These individual reforms, while perhaps seemingly minor, would have broad effects. A change that increases the burden on the trustee or the trust could impose costs or delays to trusts across the board. In addition, it may be difficult to craft a rule that would work for the wide variety of different trust situations (i.e., depending on the complexity of the trust's structure, the amount and type of assets in the trust, and whether the trustee is a professional versus a layperson). The flexibility inherent in the Trust Law may be intentional, to allow a court to assess the reasonableness of the trustee's actions considering the facts of the case.

This is not to say that reforms to the Trust Law, like those suggested by Ms. DelPonti, would not be worthwhile. However, this type of reform is not one that the Commission should undertake lightly. These reforms require reevaluating a policy balance struck by the Legislature, on a topic that can involve significant

16061.7(f). The trustee is also required to provide an account to beneficiaries annually. See Prob. Code § 16062 (a). Other provisions require the trustee to provide information on request, but do not specify a timeline for the trustee's response. See, e.g., Prob. Code §§ 16060.7, 16061.

155. While the American rule "generally precludes recovery of fees from an opponent," there are "a variety of circumstances in which it may be possible in trust and probate litigation to obtain reimbursement of reasonable fees and expenses on successful prosecution of a proceeding." CEB, *California Trust and Probate Litigation* §§ 3.28, 3.29; see also *id.* at § 3.30. Even when a party is entitled to reimbursement, reimbursement may be delayed as a "result of protracted litigation or appeals or the intervention of other claims that prevent an assessment of the value of the services or raise questions about the cost of the service relative to the size of the estate." *Id.* at § 3.28.

156. Ms. DelPonti, in recognition that the trustee could be falsely accused, suggests that "perhaps the Petitioner should be required to put up a bond or some type of collateral in an escrow account."

157. Prob. Code §§ 15000-19530.

158. See Nathaniel Sterling, *Background Study on Liability of Nonprobate Transfer for Creditor Claims and Family Protections*, pp. 8, 17 (June 2010), available at <http://www.clrc.ca.gov/pub/BKST/BKST-L4100-NPT-Creditors.pdf>.

sums of money and complicated family dynamics. **The staff would recommend against undertaking such work absent clear direction from the Legislature.**

Transfer of Use-Restricted Property at Death

In the Commission's study of revocable transfer on death deeds, it was pointed out that real property can be subject to an enforceable restriction on who may occupy the property. For example, a condominium project might be subject to an enforceable rule that requires board approval of any new occupant.

That prompted a question: What is the result when such property is inherited? Can the heir, devisee, or beneficiary take title even if that person is ineligible to occupy the property? The Commission decided to consider that issue in a separate study. The study would consider all forms of property transfer on death, not just a transfer by a transfer on death deed.¹⁵⁹

With the Commission's recent work on probate matters, it may be useful to address this relatively narrow issue sooner rather than later. **The Commission may want to work on this project in 2020, as time permits.**

Use of Uniform TOD Security Registration Act to Transfer Share of Ownership in Stock Cooperative

In the Commission's study of revocable transfer on death deeds, it was pointed out that a deed is not the right kind of instrument to transfer ownership of a share in a stock cooperative. For that reason, the Commission tentatively recommended that stock cooperatives be excluded from the definition of "real property" that can be conveyed by a transfer on death deed.¹⁶⁰

However, the Commission also decided to study whether "existing law allowing the transfer of securities by TOD registration could be adapted to provide a means of transferring an ownership interest in a stock cooperative."¹⁶¹

Again, the staff thinks the Commission may want to work on this project in 2020, as time permits.

Technical and Minor Substantive Defects

In the course of the Commission's study work this year, the Commission identified two issues involving technical and minor substantive defects in the

159. Minutes (Dec. 2018), p. 8.

160. *Id.* at 7.

161. *Id.* at 8.

statutes. Those items would also fall within the Commission's existing study authority. Those topics are discussed below.

CPRA Exemptions That Are Not Included in the CPRA Index

As the Commissioners are well aware, Article 2 of the CPRA (Government Code Sections 6275-6276.48) is an alphabetical list of CPRA exemptions scattered throughout the codes. When working on the tentative recommendation proposing to recodify the CPRA, the staff did not search for provisions that belong in the CPRA index but are not currently included. Such research would be time-consuming and could significantly delay completion of the CPRA recodification. Moreover, such work is not essential in that study, because Section 6275 expressly states that the CPRA index "may not be inclusive of all exemptions."¹⁶²

Although the staff did not do such research, we nonetheless noticed some omissions. For example, the CPRA index does not include an entry for California's constitutional right of privacy.¹⁶³ Similarly, we noticed several other omissions:

- The mediation confidentiality provisions in the Evidence Code¹⁶⁴ are not included in the CPRA index.
- Government Code Section 6254(p) is included in the CPRA index, but the alphabetized description of it only encompasses the content of subdivision (p)(1), not the content of subdivision (p)(2).
- Section 6254.1(c) is included in the CPRA index, but the alphabetized description of it does not encompass all of Section 6254.1(c).
- Penal Code Section 11105.03(f) is not included in the CPRA index.¹⁶⁵

There probably are more such omissions.

The staff brought this matter to the Commission's attention earlier this year.¹⁶⁶ The Commission decided that the constitutional right of privacy is so

162. See also Section 6276, which states: "Records or information not required to be disclosed pursuant to subdivision (k) of Section 6254 may include, but shall not be limited to, records or information identified in statutes listed in this article." (Emphasis added.)

163. Cal. Const. art. I, § 1.

164. Evid. Code §§ 1115-1129.

165. Penal Code Section 11105.03(f) is not the same as Penal Code Section 11105.3, which is included in the CPRA index.

166. See Memorandum 2019-31, pp. 15-16.

fundamental and so closely linked to the CPRA that it should be added to the CPRA index in the course of the CPRA recodification.¹⁶⁷

The Commission decided not to complicate the CPRA recodification with further efforts to make the CPRA index more complete. Instead, the Commission decided that in its next review of new topics and priorities, “the staff should raise the possibility of reviewing the codes for additional provisions to include in the CPRA index.”¹⁶⁸

As requested, the staff is now raising that possibility, for consideration together with other possible new topics. The Commission could undertake such a project pursuant to its authority to “study and recommend revisions to correct technical or minor substantive defects in the statutes of the state”¹⁶⁹ The project would be worthwhile, because it would make the CPRA index more useful to CPRA users. As such, it would be a natural complement to the Commission’s ongoing effort to recodify the CPRA in a more user-friendly manner. **The Commission may thus want to pursue it on a low-priority basis in 2020, if resources permit.**

Lease-Purchase Agreement for Courthouse Replacement Facility in San Joaquin County (Gov’t Code § 25539.10)

While working on trial court restructuring, the staff came across Government Code Section 25539.10, which authorizes the board of supervisors in a county of the 15th class (i.e., San Joaquin County)¹⁷⁰ to sell, trade, or lease property near the county courthouse in conjunction with a lease-purchase agreement for a replacement facility:

25539.10. Notwithstanding any other provision of law, the board of supervisors of a county of the 15th class may sell, trade, or lease property near the county courthouse in conjunction with a lease-purchase agreement for a replacement facility through an open and competitive request-for-proposal process.

This section was added to the codes in 1984¹⁷¹ and has never been amended.

An uncodified provision in the 1984 bill explains the purpose of Section 25539.10:

167. See Minutes (May 2019), p. 4; see also Tentative Recommendation on *California Public Records Act Clean-Up* (May 2019), at 13 n.74, 160 (proposed Gov’t Code § 7930.100).

168. Minutes (May 2019), p. 4.

169. Gov’t Code § 8298.

170. See Sections 28020, 28036, 28085.

171. 1984 Cal. Stat. ch. 302, § 1.

The Legislature finds that unique and special circumstances exist in San Joaquin County for which a general statute cannot be made applicable. The San Joaquin County Human Services Agency is housed in the Hotel Stockton, a historical landmark, which is owned by the county. The Human Services Agency has outgrown the Hotel Stockton. The Hotel Stockton is not appropriate housing for the Human Services Agency. The Hotel Stockton is at the head of the channel and suitable for renovation as commercial property. Because the hotel is the cornerstone of downtown Stockton, and because of the hotel's unique location and the county's need for additional space elsewhere, it is desirable for San Joaquin County to elicit proposals for a lease-purchase of a new building for its Human Services Agency and to sell, trade, or lease the hotel in accordance with [Section 25539.10].¹⁷²

Thus, although Section 25539.10 mentions "the county courthouse," it focuses on relocation of the San Joaquin County Human Services Agency more than thirty years ago and repurposing of the building in which that agency was housed.

It seems likely that the provision is obsolete, but not due to trial court restructuring. Pursuant to its general authority to "study and recommend revisions to correct technical or minor substantive defects,"¹⁷³ the Commission could investigate whether Section 25539.10 is ripe for repeal. **This might be a good project to assign to a law student.**

AVAILABLE RESOURCES

For the past few years, the staff has been preparing a chart that lists the Commission's active studies and estimates, for each study, the level of staffing required and the likely completion date.

Preparing that kind of chart is difficult this year, because of three significant uncertainties about the Commission's future workload and resources:

- (1) *Fish and Game*. As discussed above, the Department of Fish and Wildlife has proposed extending the period of comment on the Commission's proposed recodification for another year. If the Commission accepts that approach, the work involved in responding to public comment will be spread out to two years, rather than one. The study would then have a longer duration, but a lighter workload each year.
- (2) *RTODDs*. The Commission's report on RTODDs is due by the end of this year. If the Commission recommends that the RTODD

172. 1984 Cal. Stat. ch. 302, § 2.

173. Section 8298.

statute be allowed to sunset, the study would be effectively complete. If instead, the Commission recommends that the RTODD statute be continued in effect, with significant reforms, the staff will likely have a great deal of work to do on the implementing legislation.

- (3) *Penal Code Review Committee*. The new PCR Committee will be formed at the beginning of 2020. The staff cannot predict with certainty how much the staffing required for that new body will take away from the resources available to the Commission, but the effect is likely to be significant.

It might be possible to create a chart (or series of alternative charts) that map out the alternative scenarios, but it is probably sufficient for our needs to simply list the Commission's active studies and the staff resources they would likely require in 2020. The staffing required for those studies could then be compared to the staff resources that are likely to be available in 2020.

The Commission's active studies and the amount of staff resources they would likely consume in 2020 are estimated below:

- *Recodification of Toxic Substance Statutes*: 1.0 Attorney.
- *Trial Court Restructuring*: 0.5 Attorney.
- *Fish and Game Law*: 0.25 Attorney.
- *Minor Studies (Eminent Domain, Estate Planning)*: 0.25 Attorney

In total, those active studies are estimated to require two Attorneys' time in 2020. The staff will also need to devote significant time to managing the Commission's 2020 legislative program, which is likely to be substantial.

It might be reasonable to initially assume that the Executive Director and Chief Deputy Counsel will have their time divided equally between the work of the Commission and the new Penal Code Revision Committee. If so, their combined work for the Commission would be roughly one Attorney. With that assumption, the Commission could allocate three Attorneys' worth of staff time to its active studies in 2020.

As noted above, the Commission's existing work would consume approximately two Attorneys' time. That leaves one Attorney free to begin new work.

The Commission is expected to hire a new Attorney to work on the Commission's studies. That person would likely be the "one attorney" available to start new projects (because it would be most efficient to assign active studies to existing staff, who have the greatest familiarity with those topics).

The likelihood that the new attorney would be the person free to start a new study is an important consideration in deciding which new topics to study. There are two small estate planning studies, discussed previously, that the Commission has already decided to undertake, which seem like they would be a good fit for a new attorney's first work. They are the studies of *Transfer of Use-Restricted Property at Death* and *Use of Uniform TOD Registration Act to Transfer Interest in a Stock Cooperative*. Several other topics discussed in this memorandum may also be appropriate for the new attorney's early work.¹⁷⁴

SUGGESTED PRIORITIES

The Commission needs to determine its priorities for work during 2020. Traditionally, the Commission's highest priority has been assisting with legislation to implement recently-completed Commission recommendations. That activity typically consumes substantial staff resources, but requires little of the Commission's time.

Aside from the legislative work, the Commission's highest priority has been matters that the Legislature has indicated should receive a priority and other matters that the Commission has concluded deserve immediate attention. The Commission has also tended to give priority to studies for which a consultant has delivered a background report, because it is desirable to take up the matter before the research goes stale and while the consultant is still available. Finally, once a study has been activated, the Commission has felt it important to make steady progress so as not to lose continuity on it.

To summarize, the traditional scheme of priorities for Commission work is:

- (1) Managing the Commission's legislative program.
- (2) Studies assigned by the Legislature and other matters the Commission has concluded deserve immediate attention.
- (3) Studies for which the Commission has an expert consultant.
- (4) Studies that have been previously activated but not completed.
- (5) New topics that appear appropriate for the Commission to study.

174. See, e.g., discussion of "CPRA Exemptions That Are Not Included in the CPRA Index" *supra*. The project might also be a good fit for the Commission's new staff attorney working under close supervision. For other possible projects, see *supra* note 105.

In addition, the Commission staff and student employees¹⁷⁵ typically address technical and minor substantive issues within the Commission's authority as resources permit.

This priority scheme has worked well over the years. Generally, the staff recommends that the Commission continue to follow it in 2020, as detailed below.

Legislative Program for 2020

In 2020, the **Commission's legislative program will likely include legislation on the following topics:**

- Trial Court Restructuring Clean-Up: Obsolete "Constable" References
- Trial Court Restructuring Clean-Up: Task Force on Trial Court Employees
- Statutes Made Obsolete by Trial Court Restructuring (Part 6): Court Facilities
- Nonprobate Transfers: Liability of a Surviving Spouse Under Probate Code Sections 13550 and 13551
- Resolution of Authority

In addition, the Commission will be completing its work on several topics in late 2019. **The Commission's legislative program for 2020 may also include legislation on the following topics:**

- Trial Court Restructuring Clean-up: Obsolete References to Marshals
- Revocable Transfer on Death Deeds: Follow-up Study
- California Public Records Act Clean-up
- California Public Records Act Clean-up: Conforming Revisions
- Disposition of Estate Without Administration: Liability

Managing this legislative program will consume significant staff resources in 2020, but should not require much attention from the Commission.

Legislative Assignments and Other Matters Deserving Immediate Attention

The Commission received no new legislative assignments in 2019.

175. Minutes (Apr. 2015), p. 3.

The Commission should continue its work on the other legislatively-assigned studies for which work is ongoing: (1) Fish and Game Law, (2) Recodification of Toxic Substance Statutes, and (3) Trial Court Restructuring.

As resources permit, the Commission should address the remaining issues in the study of state and local agency access to customer information from communications service providers.

Consultant Studies

For some studies, the Commission has the benefit of a consultant's assistance. In particular, the Commission is fortunate to have Mr. Sterling's extensive background study on *Liability of Nonprobate Transfer for Creditor Claims and Family Protections* (June 2010). **The Commission should complete its work on the remaining issue it decided to examine in that area: liability of nonprobate transfers for family protections.**

In addition, the Commission has background studies on the following topics, which it has already studied to some extent:

- Civil discovery (background study prepared by Prof. Gregory Weber of McGeorge School of Law).
- Common interest development law (background study prepared by Prof. Susan French of UCLA Law School).
- Review of the California Evidence Code (background study prepared by Prof. Miguel Méndez of Stanford Law School and UC Davis School of Law).

In line with the Commission's decision to table the civil discovery study, that study should be revisited in 2023, after the sunset of the legislation expressly authorizing informal discovery conferences. The issues addressed by the other two background studies do not appear to be pressing at this time, but should be addressed when resources permit.

Other Activated Studies

The Commission's work on simplified administration procedures is ongoing and complements the Commission's study of transfer on death deeds. The Commission is also working on eminent domain matters on a low priority basis. **The staff recommends that the Commission continue to work on these topics in 2020.**

The Commission has previously activated studies on two other topics: (1) attorney's fees and (2) presumptively disqualified fiduciaries. Those studies are currently on hold.

The study of attorney's fees has been inactive for a long time and may not be worth pursuing. The study of presumptively disqualified fiduciaries should be addressed when resources permit, but it does not appear to be particularly pressing at this time.

New Topics

Given the Commission's traditional priority scheme and the number of outstanding, active and higher priority issues, the Commission could add one or two modest new studies to its work for 2020.

The staff recommends adding the studies of *Transfer of Use-Restricted Property at Death and Use of Uniform TOD Registration Act to Transfer Interest in a Stock Cooperative*. These two studies appear to be well-suited for a new attorney to handle, with close supervision.

In addition, we recommend that the Commission follow its usual practice of addressing technical and minor substantive issues (typically with law student assistance), on a low-priority basis as time permits.

Summary

If the Commission approves the staff recommendations made in this memorandum, the Commission's priorities for 2020 would include:

- Manage the 2020 legislative program.
- Continue to work on any of the candidates for the 2020 legislative program that are not completed in time for introduction in 2020.
- Continue the study on recodification of toxic substance statutes.
- Continue the study on fish and game law.
- Continue the study on trial court restructuring.
- Continue the study on the liability rules for the disposition of estates without administration.
- Continue the study of owner compensation for precondemnation activities.
- Continue the study on nonprobate transfers, focusing on surviving spouse liability rules and family protection liability.
- Begin one or two new studies of the estate planning matters discussed above (transfer of use-restricted property at death and use of Uniform TOD Registration Act to transfer interest in stock cooperative).

- Study one or more technical or minor substantive issues on a low-priority basis, if time permits (probably as a student project).
- As resources permit, continue work on the remaining issues in the study of state and local agency access to customer information from communications service providers.

Does the Commission approve of these staff recommendations?

CHANGES TO THE CALENDAR OF TOPICS

The staff expects to seek introduction of a resolution of authority in 2020. The resolution will authorize study of the matters listed in the Calendar of Topics.

As discussed above, **the staff recommends that the resolution delete the following topics from the Calendar (with the numbering from the most recent resolution of authority):**

(6) Whether the law relating to the rights and disabilities of minors and incompetent persons should be revised.

(10) Whether the law relating to the payment and the shifting of attorney's fees between litigants should be revised.

(11) Whether the Uniform Unincorporated Nonprofit Association Act, or parts of that uniform act, and related provisions should be adopted in California.

(14) Whether the law governing common interest housing developments should be revised to clarify the law, eliminate unnecessary or obsolete provisions, consolidate existing statutes in one place in the codes, establish a clear, consistent, and unified policy with regard to formation and management of these developments and transaction of real property interests located within them, and to determine to what extent they should be subject to regulation.

(15) Whether the statutes of limitation for legal malpractice actions should be revised to recognize equitable tolling or other adjustment for the circumstances of simultaneous litigation, and related matters.

(16) Whether the law governing disclosure of public records and the law governing protection of privacy in public records should be revised to better coordinate them, including consolidation and clarification of the scope of required disclosure and creation of a single set of disclosure procedures, to provide appropriate enforcement mechanisms, and to ensure that the law governing disclosure of public records adequately treats electronic information, and related matters.

(17) Whether the law governing criminal sentences for enhancements relating to weapons or injuries should be revised to simplify and clarify the law and eliminate unnecessary or obsolete provisions.

(18) Whether the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code) and the Mitigation Fee Act (Chapter 5 (commencing with Section 66000), Chapter 6 (commencing with Section 66010), Chapter 7 (commencing with Section 66012), Chapter 8 (commencing with Section 66016), and Chapter 9 (commencing with Section 66020) of Division 1 of Title 7 of the Government Code) should be revised to improve their organization, resolve inconsistencies, and clarify and rationalize provisions, and related matters.

(19) Whether the Uniform Statute and Rule Construction Act (1995) should be adopted in California in whole or in part, and related matters.

(21) Analysis of the legal and policy implications of treating a charter school as a public entity for the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(23)(A) Analysis of the relationship under current law between mediation confidentiality and attorney malpractice and other misconduct, and the purposes for, and impact of, those laws on public protection, professional ethics, attorney discipline, client rights, the willingness of parties to participate in voluntary and mandatory mediation, and the effectiveness of mediation, as well as any other issues that the commission deems relevant. Among other matters, the commission shall consider the following:

(i) Sections 703.5, 958, and 1119 of the Evidence Code and predecessor provisions, as well as California court rulings, including, but not limited to, *Cassel v. Superior Court* (2011) 51 Cal.4th 113, *Porter v. Wyner* (2010) 183 Cal.App.4th 949, and *Wimsatt v. Superior Court* (2007) 152 Cal.App.4th 137.

(ii) The availability and propriety of contractual waivers.

(iii) The law in other jurisdictions, including the Uniform Mediation Act, as it has been adopted in other states, other statutory acts, scholarly commentary, judicial decisions, and any data regarding the impact of differing confidentiality rules on the use of mediation.

(B) In studying this matter, the commission shall request input from experts and interested parties, including, but not limited to, representatives from the California Supreme Court, the State Bar of California, legal malpractice defense counsel, other attorney groups and individuals, mediators, and mediation trade associations. The commission shall make any recommendations that it deems appropriate for the revision of California law to balance the competing public interests between confidentiality and accountability.

In addition, if the Commission decides to delete the authority on common interest developments, the staff would recommend the following revision of the Calendar:

(3) Whether the law should be revised that relates to real and personal property, including, but not limited to, a marketable title act, covenants, servitudes, conditions, and restrictions on land use or relating to land, common interest developments, powers of termination, escheat of property and the disposition of unclaimed or abandoned property, eminent domain, quiet title actions, abandonment or vacation of public streets and highways, partition, rights and duties attendant on assignment, subletting, termination, or abandonment of a lease, and related matters.

Are these suggested revisions of the Calendar of Topics acceptable to the Commission?

Respectfully submitted,

Kristin Burford
Staff Counsel

Barbara Gaal
Chief Deputy Counsel

Brian Hebert
Executive Director

**EMAIL FROM ANGELA DONLAN,
DEPARTMENT OF FISH & WILDLIFE
(8/20/19)**

Brian,

Thank you for your willingness to continue discussions about how CDFW can best participate in the Law Revision Commission's review of the Fish and Game Code. We would like to propose a two phased approach to providing the Law Revision Commission with our input on the draft amendments.

CDFW proposes approaching this project in two phases described below. Briefly, in Phase 1 CDFW will evaluate the 400+ "Notes" in CLRC's proposal that specifically invite comments on changes CLRC proposes to the code. Phase 1 will run until early to mid-2020. Phase 2 will look at the reorganization and other code changes proposed by CLRC not covered in the "Notes". Phase 2 will run from when Phase 1 is completed until July 1, 2021.

Phase 1: CDFW will conduct a review of all 400+ sections where CLRC has asked the public for specific comment on proposed changes. These "Notes" include things like identifying sections that are obsolete, duplicative or superfluous. They also propose language changes that CLRC believes are non-substantive but do things like improve clarity. This review will be done in the context of existing law. For example, when CLRC proposes moving a section and changing the language of that section, in Phase 1 CDFW will look at the language change in the context of how that section is written in the current code. Moving the section will be considered in Phase 2 as part of the overall reorganization of the code. In addition, by the end of Phase 1 CDFW will evaluate whether the changes proposed in the "Notes" have a corresponding impact on Title 14, and whether CDFW can absorb making necessary regulatory changes within its existing resources. The goal of Phase 1 will be to see if all parties can agree to changes that are beneficial to the existing code and those changes could be introduced at the first legislative opportunity following the close of this phase. (Also, during this phase, CDFW will continue the preliminary work necessary to have Phase 2 begin as scheduled.)

Phase 2: In this phase, CDFW will evaluate the recodification of the entire code. Recodification includes the reorganization of the code, any language changes not identified in the "Notes", checking internal cross references, and looking at Title 14 implications not covered in Phase 1. Because the scope of the recodification is so large, this review will involve many more staff than the first phase. CDFW has designed an electronic survey that will be completed by reviewing staff to evaluate the changes. The survey results will be tabulated into a searchable database to determine a proposed change's implications, prioritize the proposed changes for further review, and draft a report back to CLRC on these changes. The goal of Phase 2 will be to ensure that all the implications of CLRC's recodification have been considered before such changes are considered by the Legislature.

Schedule: Tentatively, Phase 1 will run from mid-August 2019 to the beginning of 2020. This period allows for program staff to have some time to return to their normal duties after the close of a few other major initiatives that have occupied them over the last year (e.g. CEQA audit, Service Based Budgeting, etc.) and assumes that no other initiatives will take up their time. Phase 2, which will involve a survey of thousands of sections of the code, will take place the following fiscal year (beginning whenever Phase 1 is completed until June 30, 2021).

Work done to date: CDFW has: (1) identified a Project Manager and a Project Lead who meet weekly; (2) broken down the new Table of Contents (itself 88 pages) into subject areas to identify staff who need to be involved in both phases; (3) developed a tentative draft of the survey instrument and the two databases that will be used in Phase 2 to sort responses and track completed work; (4) has done initial testing of these instruments; (5) has completed the bulk of the training for the attorney team that will be working on Phase 1 and identified dozens of sections that that team will be starting with; and (6) has created a Sharepoint site with related documents for Phase 1 work.

We hope this proposal can help inform the Law Revision Commission's workload considerations going into 2020 and are available to discuss the proposal or answer any questions. Thank you for all your help.

Angela

Trial Court Restructuring: Remaining Projects (as of Sept. 23, 2019)

PREMATURE	WHEN TIME PERMITS PERMITS (may not result in legislation)	WHEN TIME PERMITS (legislation likely)	STUDY IN PROGRESS	LEGISLATION READY OR ALMOST READY TO INTRODUCE
<i>Organization of Government Code.</i> See MM18-5, p. 9; MM14-53s1, p. 9. Do when TCR clean-up is almost done.	Compensation of Official Reporter. See MM18-5, pp. 7-8. Check with Judiciary Committees before pursuing.	Rights and Responsibilities of County vs. Superior Court (Part 2). See MM18-5, p. 6.	<i>Regional Justice Facilities Acts (J-1405.4)</i>	Court Facilities (J-1405)
<i>Final Review of References to “Municipal Court.”</i> See MM18-5, p. 9; MM14-53s1, p. 20. Do when TCR clean-up is almost done.	References to “Superior Court.” See MM18-5, p. 7.	Judicial Benefits. See MM18-5, p. 7.		<i>Obsolete “Constable” References (J-1405.1)</i>
	<i>Coordination and Consolidation.</i> See MM14-53s1, pp. 17-18.	<i>Representation and Indemnification of Court and Court Personnel.</i> See MM14-53s1, pp. 11-12.		<i>Task Force on Trial Court Employees (J-1405.2)</i>
	<i>Precedential Value of Appellate Division Decisions.</i> See MM14-53s1, p. 18.	<i>Judicial Districts & Local Venue.</i> See MM14-53s1, pp. 12-13. <i>Judicial Disqualification.</i> See MM14-53s1, pp. 13-14.		<i>Obsolete References to Marshals (J-1405.3)</i>
		<i>Minor Odds & Ends.</i> See BG list.		

Major projects are in boldface; other projects are in italics