

Admin.

October 2, 2019

Memorandum 2019-53

Minutes of Meeting on September 26, 2019 (Draft)

The California Law Revision Commission¹ held a meeting on September 26, 2019. A draft of Minutes for that meeting is attached for Commissioners to review.

The attached draft will be deemed final after it is approved by a vote of the Commission. When voting, the Commission may make specific changes to the Minutes. If so, those changes will be memorialized in the Minutes for the meeting at which the vote occurred.

Respectfully submitted,

Brian Hebert
Executive Director

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

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DRAFT MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
SEPTEMBER 26, 2019
Sacramento

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

Commission:

Present: Victor King, Chairperson
Crystal Miller-O'Brien, Vice-Chairperson
Diane F. Boyer-Vine, Legislative Counsel
Assembly Member Ed Chau
Thomas Hallinan

Absent: Susan Duncan Lee
Jane McAllister
Senator Richard D. Roth

Staff:

Present: Brian Hebert, Executive Director
Barbara Gaal, Chief Deputy Counsel
Kristin Burford, Staff Counsel
Steve Cohen, Staff Counsel
Jennifer Puza, Law Student Extern

Other Persons:

Rick Brausch, Department of Toxic Substances Control
Angela Donlan, Department of Fish and Wildlife
Alison Leary, League of California Cities
Julie Oltmann, Department of Fish and Wildlife

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APPROVAL OF ACTIONS TAKEN

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

MINUTES

The Commission considered Memorandum 2019-42, presenting draft Minutes for the July 26, 2019, meeting.

The Commission approved the Minutes without change. (*Commissioner Boyer-Vine abstained. Commissioner Hallinan was not present when the decision was made.*)

ADMINISTRATIVE MATTERS

Report of Executive Director

The Executive Director reported on the following matters:

- The Governor appointed Michael Romano of Stanford Law School to serve as Chair of the new Committee on Revision of the Penal Code.
- Kristin Burford will be promoted to Attorney III, to serve as Leader of the Commission’s Civil Law Team.
- The Commission is recruiting an entry-level Attorney to serve on the Civil Law Team.

- 1 • The Commission is recruiting an Attorney IV to lead the
2 Commission's Criminal Law Team.
- 3 • Steve Cohen has expressed interest in working on the Criminal
4 Law Team.
- 5 • The staff is investigating the best way to implement the
6 Commission's July 2019 decision to adjust the salary of the Chief
7 Deputy Counsel, in order to avoid salary compaction. That may
8 involve use of a Career Executive Assignment position.
- 9 • Acting on a Commission suggestion at the July 2019 meeting, the
10 staff will be using consent procedures as appropriate. The
11 Commission has not yet decided on whether or how to
12 standardize the practice.

13 Commissioner Suggestions

14 No Commissioner suggestions were made.

15 Meeting Schedule

16 The Commission considered Memorandum 2019-43, setting out a proposed
17 meeting schedule for 2020. The Commission approved the following schedule:

18	January 2020	Sacramento
19	Jan. 30	10:00 am – 4:00 pm
20	March 2020	Sacramento
21	Mar. 26	10:00 am – 4:00 pm
22	May 2020	Sacramento
23	May 21	10:00 am – 4:00 pm
24	July 2020	Sacramento
25	July 16	10:00 am – 4:00 pm
26	September 2020	Sacramento
27	Sept. 10	10:00 am – 4:00 pm
28	November 2020	Sacramento
29	Nov. 5	10:00 am – 4:00 pm

30 Commissioner Boyer-Vine noted that the July meeting date might conflict
31 with the Annual Meeting of the Uniform Law Commission. If so, an adjustment
32 to that date might be warranted. She will investigate and report back to the staff.

1 **New Topics and Priorities**

2 The Commission considered Memorandum 2019-44, presenting the status of
3 the Commission's current program of work, the new topics suggestions received
4 in 2019, proposed work priorities for 2020, and proposed changes to the
5 Commission's resolution of authority.

6 The Commission changed the comment period for the Commission's Fish and
7 Game tentative recommendations, as described on pages 10-11 of the
8 memorandum.

9 The Commission adopted the staff-recommended 2020 work priorities listed
10 on pages 47-48 of the memorandum.

11 The Commission deleted or revised a number of topics from its Calendar of
12 Topics Authorized for study, as described on pages 48-50 of the memorandum.
13 *(With one exception, Commissioner Miller-O'Brien voted against this decision; she voted*
14 *in favor of deleting Topic 23.)*

15 **2019 LEGISLATIVE PROGRAM**

16 The Commission considered Memorandum 2019-45, discussing the
17 Commission's 2019 Legislative Program. No Commission action was required or
18 taken.

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

20 The Commission considered Memorandum 2019-48, presenting a cumulative
21 draft of the material that the Commission has reviewed to date. No Commission
22 action was required or taken with regard to that memorandum.

23 The Commission also considered Memorandum 2019-49, presenting a draft of
24 Chapters 8 and 9 of Part 2 of the proposed new Division 45 of the Health and
25 Safety Code. The Commission approved that draft for inclusion in a tentative
26 recommendation.

27 The Commission also approved the proposed consent items discussed on
28 pages 3-7 of Memorandum 2019-49. The Commission directed the staff to handle
29 each item as recommended in the memorandum.

30 *(Commissioners Boyer-Vine and Chau were not present for these decisions.)*

1 STUDY EM-560 — EMINENT DOMAIN: PRE-CONDEMNATION ACTIVITIES

2 The Commission did not consider Memorandum 2019-50 or its First
3 Supplement. Those materials will be considered at a future meeting.

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

5 The Commission considered Memorandum 2019-47 and its First Supplement,
6 which discuss the comments on the tentative recommendation proposing a
7 recodification of the California Public Records Act (“CPRA”). The Commission
8 made the decisions described below.

9 **Consent Items**

10 The Commission approved the consent list shown on pages 1-2 of the First
11 Supplement to Memorandum 2019-47. The Commission directed the staff to
12 handle each item on that list as recommended in Memorandum 2019-47.

13 **Operative Date and Related Matters**

14 The operative date for the proposed recodification should be January 1, 2021,
15 not July 1, 2020. The narrative discussion entitled “Delayed Operative Date” (on
16 pages 16-17 of the tentative recommendation) should be revised to reflect that
17 change. No other revisions should be made in that discussion.

18 **Consistency: “Record” vs. “Records”**

19 The staff should not attempt to singularize each reference to “records” in the
20 proposed recodification. The usage of “record” and “records” in the tentative
21 recommendation remains acceptable.

22 **Organizational Issues**

23 *Government Code Section 6254, Proposed Government Code Section 7920.505 (“Former*
24 *Section 6254 Provisions”), and Convenient Cross-Referencing of CPRA*
25 *Exemptions*

26 As discussed at pages 16-17 of Memorandum 2019-47, the Commission’s
27 report should alert the Legislature to the possibility of (1) revisiting each statute
28 that now cross-refers to Government Code Section 6254, (2) assessing in each
29 instance whether the intent was, or should be, to cross-refer to all CPRA
30 exemptions, and, if so, (3) replacing the specific cross-reference with a more
31 general reference to records exempt from disclosure pursuant to the CPRA.

1 *Recurring Cross-References to Recodifications of Government Code Sections 6254.7 and*
2 *6254.13*

3 The recurring cross-references to recodifications of Government Code
4 Sections 6254.7 and 6254.13 appear necessary. Replacing them with
5 “notwithstanding” clauses in proposed Government Code Sections 7924.510,
6 7924.700, and 7929.610 might create a risk of a substantive change. It is better to
7 stick with the approach used in the tentative recommendation.

8 *Organization of “Part 2. Disclosure and Exemptions Generally” and “Part 3.*
9 *Procedures” (Proposed Gov’t Code §§ 7921.000-7922.210; 7922.500-7922.725)*

10 “Part 3. Procedures” should be renamed “Part 3. Procedures and Related
11 Matters.” No other changes should be made to the organization of Parts 2 and 3.

12 *Organization of “Part 4. Enforcement” (Proposed Gov’t Code §§ 7923.000-7923.510)*

13 The provisions in “Part 4. Enforcement” should not be consolidated into two
14 code sections (one recodifying Government Code Section 6258 and one
15 recodifying Government Code Section 6259).

16 *“Article 1. Law Enforcement Records Generally” (Gov’t Code § 6254(f); Proposed Gov’t*
17 *Code §§ 7923.600-7923.625)*

18 Instead of consolidating the provisions in “Article 1. Law Enforcement
19 Records Generally” into a single code section, the staff should add a new code
20 section to that article, which would state that (1) prior to the recodification, the
21 provisions in the article were in a single subdivision, and (2) dividing the
22 substance of that subdivision into multiple code sections was not intended to
23 affect their construction or relation to each other. The accompanying Comment
24 should make clear that courts and others should not draw any conclusions from
25 the lack of similar language elsewhere in the proposed recodification.
26 *(Commissioner Miller-O’Brien voted against this set of decisions.)*

27 In addition, proposed Government Code Section 7923.615 should be revised
28 to closely track the existing language, as follows:

29 7923.615. (a) (1) Notwithstanding any other provision of this
30 article, a state or local law enforcement agency shall make public
31 the information described in paragraph (2), except to the extent that
32 disclosure of a particular item of information would endanger the
33 safety of a person involved in an investigation or would endanger
34 the successful completion of the investigation or a related
35 investigation.

1 (2) Subject to the restrictions imposed by Section 841.5 of the
2 Penal Code, subdivision (a) applies to the time, substance, and
3 location of all complaints or requests for assistance received by the
4 agency and the time and nature of the response thereto, including,
5 to the extent the information regarding crimes alleged or
6 committed or any other incident investigated is recorded:

7 (A) The time, date, and location of occurrence.

8 (B) The time and date of the report.

9 (C) The name and age of the victim.

10 (D) The factual circumstances surrounding the crime or
11 incident.

12 (E) A general description of any injuries, property, or weapons
13 involved.

14 *Proposed Government Code Section 7924.305*

15 Proposed Government Code Section 7924.305(a) should remain as is. The
16 possibility of relocating the second sentence to the Food and Agricultural Code
17 should be added to the list of “Minor Clean-Up Issues For Possible Future
18 Legislative Attention” at the end of the Commission’s report.

19 **Other Issues**

20 *Proposed Government Code Section 7920.535*

21 Proposed Government Code Section 7920.535 should continue to refer to “a
22 probation officer *as defined in* Section 830.5 of the Penal Code.” The possibility of
23 revising that language should be added to the list of “Minor Clean-Up Issues For
24 Possible Future Legislative Attention” at the end of the Commission’s report.

25 *Proposed Government Code Section 7923.110*

26 Proposed Government Code Section 7923.110(a) should continue to cross-
27 refer to the provisions that would continue Government Code Sections 6254 and
28 6255. The Commission’s report should alert the Legislature to the possibility of
29 studying whether to replace those cross-references with a more general reference
30 to CPRA exemptions.

31 *Proposed Government Code Sections 7923.120 and 7923.510*

32 Proposed Government Code Sections 7923.120, 7923.500, 7923.505, and
33 7923.510 should be replaced with the following provision:

34 **§ 7923.500. Writ review and contempt**

35 7923.500. (a) An order of the court, either directing disclosure by
36 a public official or supporting the decision of the public official
37 refusing disclosure, is not a final judgment or order within the

1 meaning of Section 904.1 of the Code of Civil Procedure from
2 which an appeal may be taken, but shall be immediately
3 reviewable by petition to the appellate court for the issuance of an
4 extraordinary writ.

5 (b) Upon entry of any order pursuant to this chapter, a party
6 shall, in order to obtain review of the order, file a petition within 20
7 days after service upon the person of a written notice of entry of the
8 order, or within a further time, not exceeding an additional 20 days,
9 as the trial court may for good cause allow.

10 (c) If the notice is served by mail, the period within which to file
11 the petition shall be increased by five days.

12 (d) A stay of an order or judgment shall not be granted unless
13 the petitioning party demonstrates that the party will otherwise
14 sustain irreparable damage and probable success on the merits.

15 (e) Any person who fails to obey the order of the court shall be
16 cited to show cause why that person is not in contempt of court.

17 In addition, “Article 2. Writ Review” should be relabeled as “Article 2. Writ
18 Review and Contempt.”

19 “Chapter 7. Library Records” (Gov’t Code §§ 6254(j), 6267; Proposed Gov’t Code §§
20 7927.100, 7927.105)

21 Proposed Government Code Section 7927.100 should be revised to read:

22 **§ 7927.100. Library circulation records and related matters**

23 7927.100. (a) Except as provided in Sections 7924.510, 7924.700,
24 and 7929.610, this division does not require the disclosure of library
25 circulation records kept for the purpose of identifying the borrower
26 of items available in libraries, and library and museum materials
27 made or acquired and presented solely for reference or exhibition
28 purposes.

29 (b) The exemption in this section does not apply to records of
30 fines imposed on the borrowers.

31 The possibility of eliminating redundancies between the two provisions on
32 library records (proposed Government Code Sections 7927.100 and 7027.105)
33 should be added to the list of “Minor Clean-Up Issues For Possible Future
34 Legislative Attention” at the end of the Commission’s report.

35 *Leadline for Proposed Government Code Section 7927.605*

36 The leadline for proposed Government Code Section 7927.605 should be
37 changed to:

38 **§ 7927.605. Corporate financial records, corporate proprietary**
39 **information, and information relating to in-state siting furnished**
40 **to agency to facilitate such siting**

1 *Proposed Government Code Section 7928.720*

2 Proposed Government Code Section 7928.720 should cross-refer to all of the
3 provisions that would continue the substance of Government Code Section 6252,
4 not just the provision that would continue Section 6252’s definition of “state
5 agency.”

6 **New Appendix**

7 The text of Government Code Section 6254 should be included as an
8 appendix to the Commission’s report.

9 **Next Step**

10 For the next meeting, the staff will prepare a draft of a final recommendation,
11 which implements the above decisions and any necessary conforming revisions.

12 *(Commissioners Boyer-Vine and Chau were not present for the discussion of this*
13 *study.)*

14 STUDY J-1405.3 — TRIAL COURT RESTRUCTURING CLEAN-UP:

15 OBSOLETE REFERENCES TO MARSHALS

16 The Commission considered Memorandum 2019-51, which discusses the
17 input on the tentative recommendation and presents a draft of a final
18 recommendation on *Trial Court Restructuring Clean-Up: Obsolete References to*
19 *Marshals*. The Commission approved that draft as a final recommendation, for
20 publication and submission to the Legislature and the Governor.

21 *(Commissioners Boyer-Vine and Chau were not present when this decision was*
22 *made.)*

23 STUDY J-1405.4 — TRIAL COURT RESTRUCTURING CLEAN-UP:

24 REGIONAL JUSTICE FACILITIES ACTS

25 The Commission considered Memorandum 2019-52, which presents a
26 discussion draft relating to the San Joaquin County Regional Justice Facility
27 Financing Act, the Orange County Regional Justice Facilities Act, and the County
28 Regional Justice Facilities Financing Act. The Commission approved that draft
29 for circulation for comment.

30 *(Commissioners Boyer-Vine and Chau were not present when this decision was*
31 *made.)*

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

2 The Commission considered Memorandum 2019-46, presenting public
3 comments on a tentative recommendation regarding revocable transfer on death
4 deeds (“RTODD”). The Commission instructed the staff to prepare a draft of a
5 final recommendation, subject to the following decisions:

- 6 • The law should require that an RTODD be witnessed on execution.
7 The witnessing requirement should be based on the rules that
8 govern the witnessing of wills. Notarization will not be required.
9 The staff will contact the Association of California Notaries to alert
10 them of this proposed change in the law. (*Commissioner Miller-*
11 *O’Brien voted against these decisions. Commissioner Hallinan was not*
12 *present when the decisions were made.*)
- 13 • The proposed requirement that a beneficiary give notice to a
14 deceased transferor’s heirs should be retained in the proposed law,
15 with the following changes: (1) Publication of notice in a
16 newspaper of general circulation should also be required. (2) A
17 transferor should be personally liable to an heir for actual damages
18 caused by an intentional or grossly negligent failure to comply
19 with the notice requirements. (3) The law should prescribe the
20 contents of the notice and associated affidavit. (4) There should be
21 no change to the proposed rules on identifying the transferor’s
22 heirs. (*Commissioner Hallinan was not present when these decisions*
23 *were made.*)
- 24 • There should be no change to the proposed grounds for contesting
25 the revocation of an RTODD. (*Commissioners Boyer-Vine, Chau, and*
26 *Hallinan were not present when this decision was made.*)
- 27 • The Comment to Section 5672 should note that an action to enforce
28 a beneficiary’s liability for the unsecured debts of a transferor is
29 subject to a one-year statutory limitation period. (*Commissioners*
30 *Boyer-Vine, Chau, and Hallinan were not present when this decision was*
31 *made.*)
- 32 • A beneficiary’s personal liability should include liability for a
33 deceased transferor’s funeral expenses, expenses of last illness, and
34 wage claims. (*Commissioners Boyer-Vine, Chau, and Hallinan were not*
35 *present when this decision was made.*)
- 36 • A beneficiary should not be liable for general costs of
37 administering the transferor’s estate or for a family allowance.
38 (*Commissioners Boyer-Vine and Chau were not present when this*
39 *decision was made.*)
- 40 • The RTODD statute should apply to planned developments and
41 community apartment projects. (*Commissioners Boyer-Vine and*
42 *Chau were not present when this decision was made.*)

- 1 • The law should permit a trust to be named as beneficiary of an
2 RTODD. (*Commissioners Boyer-Vine and Chau were not present when*
3 *this decision was made.*)
- 4 • Language along these lines should be added to the RTODD
5 statute: “An error or ambiguity in describing property or
6 designating a beneficiary does not invalidate a revocable transfer
7 on death deed if the transferor’s intention can be determined by a
8 court. The general law that governs judicial construction or
9 reformation of an error or ambiguity in a deed applies to a
10 revocable transfer on death deed.” (*Commissioners Boyer-Vine and*
11 *Chau were not present when this decision was made.*)
- 12 • Existing language that requires that an RTODD revocation form be
13 recorded before the transferor’s death should be repealed.
14 (*Commissioners Boyer-Vine and Chau were not present when this*
15 *decision was made.*)
- 16 • The existing sunset date should be extended to January 1, 2031.
17 The Commission should be required to prepare a second follow-
18 up study, with the same scope as the current study. (*Commissioners*
19 *Boyer-Vine and Chau were not present when this decision was made.*)

APPROVED AS SUBMITTED

Date

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

Chairperson

Executive Director