

Memorandum 2019-54

2019-2020 Annual Report (Staff Draft)

Attached to this memorandum is a staff draft of the Commission's *2019-2020 Annual Report*.¹ In the interest of saving photocopying and mailing costs, we have not reproduced some of the recurring appendices to the Annual Report (i.e., the text of the Commission's governing statute, its calendar of topics, the cumulative table of legislative action on Commission recommendations, and the list of Commission publications). After approval of the text of the Annual Report, the staff will add these appendices.

The attached draft does include the recurring appendix that contains Commissioner biographies. The Commission's general practice relating to the content of these biographies is to start with the biographical information in the Governor's press release announcing a Commissioner's appointment, and add updates as needed. **Staff requests that Commissioners review this draft appendix, and advise if any content needs to be changed.**

Much of the content of the Annual Report is routine, and does not change significantly from year to year. Two matters that require special attention are noted below.

CONTINGENT TEXT

Some portions of the draft have been temporarily flagged with **light shading**.² The shaded text is contingent on decisions made at the upcoming November meeting that will determine whether some ongoing studies are completed in 2019, or continue into 2020. Following those decisions, the staff will remove the

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. See shaded text in attached draft, pp. 3-5 and 11-13.

temporary shading and adjust the text as needed to conform to the Commission's decisions.

ACTIVITIES OF COMMISSION MEMBERS AND STAFF

The Annual Report notes any outside activities of Commission members and staff relating to the Commission's work that were engaged in since approval of the previous Annual Report.³ **Staff requests that Commissioners advise of any activities of this type to report for this time period.**⁴

EDITORIAL SUGGESTIONS

If Commissioners have any editorial suggestions relating to the draft Annual Report, please be sure to inform the staff.

CONCLUSION

The Commission needs to decide whether to approve the attached draft report, with or without changes, for publication.

Respectfully submitted,

Steve Cohen
Staff Counsel

3. See attached draft, p. 29.

4. The Commission's 2018-19 Annual Report was approved on December 7, 2018.

STATE OF CALIFORNIA

**CALIFORNIA LAW
REVISION COMMISSION**

STAFF DRAFT

2019-2020 Annual Report

California Law Revision Commission
c/o UC Davis School of Law
Davis, CA 95616
www.clrc.ca.gov

Cite this report as *2019-2020 Annual Report*,
46 Cal. L. Revision Comm'n Reports __ (2020).

SUMMARY OF WORK OF COMMISSION

Recommendations to the 2019 Legislature

In 2019, a bill effectuating two Commission recommendations was enacted, relating to the following subjects:

- Disposition of Estate Without Administration: Interest Rate
- Disposition of Estate Without Administration: Dollar Amounts

Recommendations to the 2020 Legislature

In 2020, the Commission plans to seek the introduction of legislation effectuating Commission recommendations on the following subjects:

- Revocable Transfer on Death Deeds: Follow-up Study
- California Public Records Act Clean-up
- California Public Records Act Clean-up: Conforming Revisions
- 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
- Trial Court Restructuring Clean-up: Obsolete References to Marshals
- Disposition of Estate Without Administration: Liability
- Nonprobate Transfers: Liability of a Surviving Spouse Under Probate Code Sections 13550 and 13551

Commission Activities Planned for 2020

During 2020, the Commission intends to work on the following major topics: revision of the Fish and Game Code, nonsubstantive clean-up of toxic substance statutes, trial court restructuring, the

application of family protections to nonprobate transfers, liability rules for the disposition of an estate without administration, the compensation of a real property owner for pre-condemnation activities, transfer of use-restricted property at death, the use of the Uniform TOD Registration Act to transfer interest in a stock cooperative, revocable transfer on death deeds, California Public Records Act clean-up, and state and local agency access to customer information from communications service providers.

The Commission may work on other topics as time permits.

Committee on Revision of the Penal Code

On January 1, 2020, the Committee on Revision of the Penal Code will be formed as a part of the California Law Revision Commission.

The Commission's staff will support that new function, but the membership, authority, and deliberative processes of the two bodies will be separate and non-overlapping.

As the new Committee is required to submit its own separate Annual Report, this report does not further address the work of the Committee.

CONTENTS

	<i>Page</i>
Introduction.....	9
2020 Legislative Program	10
Commission Activities Planned for 2020.....	11
Revision of the Fish and Game Code	11
Toxic Substance Statute Clean-Up	12
Trial Court Restructuring	12
Disposition of Estate Without Administration.....	12
Nonprobate Transfers and Family Protection	
Liability.....	12
Eminent Domain Pre-Condemnation Activities	12
Transfer of Use-Restricted Real Property on Death	12
Use of Uniform TOD Registration Act to Transfer	
Interest in Stock Cooperative.....	13
California Public Records Act Clean-Up.....	13
Revocable Transfer on Death Deeds.....	13
State and Local Agency Access to Customer Information	
Held by Communications Service Providers	13
Other Subjects.....	13
Calendar of Topics for Study.....	13
Function and Procedure of Commission.....	14
Background Studies and Expert Consultants	15
Recommendations	15
Official Comments	17
Commission Materials as Legislative History.....	17
Use of Commission Materials to Determine Legislative	
Intent.....	19
Publications	24
Electronic Publication and Internet Access.....	24
Electronic Mail	24
MCLE Credit.....	25
Personnel of Commission	26
Commission Budget.....	27

Committee on Revision of the Penal Code	28
Other Activities	28
National Conference of Commissioners on Uniform State Laws	28
Other Commissioner and Staff Activities	29
Legislative History of Recommendations in the 2019 Legislative Session.....	29
Disposition of Estate Without Administration	29
Report on Statutes Repealed by Implication or Held Unconstitutional.....	29
Recommendations.....	30

APPENDICES

1. Statute Governing the California Law Revision
Commission
2. Calendar of Topics Authorized for Study
3. Legislative Action on Commission
Recommendations (Cumulative)
4. Biographies of Current Commissioners
5. Commission Publications

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

c/o UC Davis School of Law
Davis, CA 95616

VICTOR KING, Chairperson
CRYSTAL MILLER-O'BRIEN, Vice-Chairperson
DIANE F. BOYER-VINE
DAVID A. CARRILLO
ASSEMBLY MEMBER ED CHAU
ANA CUBAS
JANE McALLISTER
SENATOR RICHARD ROTH
RICHARD RUBIN
RICHARD SIMPSON

November 21, 2019

To: The Honorable Gavin Newsom
Governor of California, and
The Legislature of California

In conformity with Government Code Section 8293, the California Law Revision Commission submits this report of its activities during 2019 and its plans for 2020.

Two Commission recommendations considered by the Legislature in 2019 were enacted into law.

The Commission is grateful to the member of the Legislature who carried Commission-recommended legislation in 2019:

- Assembly Member Brian Maienschein

The Commission held six one-day meetings in 2019. All meetings were held in Sacramento.

Respectfully submitted,

Victor King
Chairperson

2019-2020 ANNUAL REPORT

Introduction

The California Law Revision Commission was created in 1953 and commenced operation in 1954 as the permanent successor to the Code Commission,¹ with responsibility for a continuing substantive review of California statutory and decisional law.² The Commission studies the law to discover defects and anachronisms and recommends legislation to make needed reforms.

The Commission ordinarily works on major topics, assigned by the Legislature, that require detailed study and cannot easily be handled in the ordinary legislative process. The Commission's work is independent, nonpartisan, and objective.

The Commission consists of:³

- A Member of the Senate appointed by the Rules Committee
- A Member of the Assembly appointed by the Speaker
- Seven members appointed by the Governor with the advice and consent of the Senate
- The Legislative Counsel, who is an ex officio member

The Commission may study only topics that the Legislature has authorized.⁴

1. See 1953 Cal. Stat. ch. 1445, operative September 9, 1953. The first meeting of the Commission was held on February 23, 1954.

2. See Gov't Code §§ 8280-8298 (statute establishing Law Revision Commission) (Appendix 1 *infra*). See also *1955 Report* [Annual Report for 1954] at 7, 1 Cal. L. Revision Comm'n Reports (1957).

3. For current membership, see "Personnel of Commission" *infra*.

4. Under its general authority, the Commission may study only topics that the Legislature, by concurrent resolution, authorizes for study. See *Calendar of Topics Authorized for Study*, Appendix 2 *infra*. However, the Commission may study and recommend revisions to correct technical or minor substantive defects in state statutes without a prior concurrent resolution. Gov't Code § 8298. Additionally, a concurrent resolution or statute may directly confer authority to study a particular subject. See, e.g., 2016 Cal. Stat. ch. 179 [AB 1779] and 2015 Cal. Stat. ch. 293 [AB 139] (revocable transfer on death deeds); 2014 Cal. Stat. ch. 243 [SB 406] (standards for recognition of tribal and foreign court money

The Commission has submitted 416 recommendations to the Legislature, of which 385 (more than 90%) have been effectuated in whole or in substantial part.⁵ Commission recommendations have resulted in the enactment of legislation affecting 25,321 sections of California law: 5,257 sections amended, 11,101 sections added, and 8,963 sections repealed.

The Commission's recommendations, reports, and other selected materials are regularly published in hardcover volumes. Recent materials are also available through the Internet. A list of past publications and information on obtaining printed or electronic versions of Commission material can be found at the end of this Annual Report.⁶

2020 Legislative Program

In 2020, the Commission plans to seek the introduction of legislation effectuating Commission recommendations on the following subjects:

- Revocable Transfer on Death Deeds: Follow-up Study
- California Public Records Act Clean-up
- California Public Records Act Clean-up: Conforming Revisions
- 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

judgments); 2013 Cal. Stat. res. ch. 115 [SCR 54] (state and local agency access to customer information from communications service providers); 2006 Cal. Stat. res. ch. 128 [ACR 73] (nonsubstantive reorganization of weapon statutes); 2006 Cal. Stat. ch. 216 [AB 2034] (donative transfer restrictions).

5. See *Legislative Action on Commission Recommendations*, Appendix 3 *infra*.

6. See *Commission Publications*, Appendix 5 *infra*.

- Trial Court Restructuring Clean-up: Obsolete References to Marshals
- Disposition of Estate Without Administration: Liability
- Nonprobate Transfers: Liability of a Surviving Spouse Under Probate Code Sections 13550 and 13551

Commission Activities Planned for 2020

During 2020, the Commission intends to work on the following major topics: revision of the Fish and Game Code, nonsubstantive clean-up of toxic substance statutes, trial court restructuring, the application of family protections to nonprobate transfers, liability rules for the disposition of an estate without administration, the compensation of a real property owner for pre-condemnation activities, transfer of use-restricted property at death, the use of the Uniform TOD Registration Act to transfer interest in a stock cooperative, revocable transfer on death deeds, California Public Records Act clean-up, and state and local agency access to customer information from communications service providers.

The Commission may work on other topics as time permits.

Revision of the Fish and Game Code

The Commission will continue to study the revision of the Fish and Game Code and related statutory law to improve organization, clarify 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 law.⁷

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

Toxic Substance Statute Clean-Up

The Commission will continue to study the nonsubstantive revision of two chapters of the Health and Safety Code relating to toxic substances.⁸

Trial Court Restructuring

The Commission will continue to work on cleaning up the codes to reflect three major trial court restructuring reforms: (1) trial court unification, (2) enactment of the Lockyer-Isenberg Trial Court Funding Act, and (3) enactment of the Trial Court Employment Protection and Governance Act.⁹

Disposition of Estate Without Administration

The Commission will continue to study possible defects in existing statutes governing disposition of estates without administration.¹⁰

Nonprobate Transfers and Family Protection Liability

The Commission will continue to study nonprobate transfers with respect to family protections.¹¹

Eminent Domain Pre-Condemnation Activities

The Commission will continue to study whether to codify the holding of *Property Reserve Inc. v Superior Court*, 1 Cal. 5th 151 (2016) and related issues.¹²

Transfer of Use-Restricted Real Property on Death

The Commission will study the effect of an enforceable use restriction on real property that is transferred on death.¹³

8. *Id.*

9. See Gov't Code § 71674; see also 2018 Cal. Stat. res. ch. 158.

10. *Id.*

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

12. *Id.*

13. *Id.*

Use of Uniform TOD Registration Act to Transfer Interest in Stock Cooperative

The Commission will study whether the Uniform TOD Registration Act (Probate Code §§ 5500-5512) can be adapted to provide a means of transferring an ownership interest in a stock cooperative.¹⁴

Revocable Transfer on Death Deeds

The Commission will continue to study the effect of California's revocable transfer on death deed.¹⁵

California Public Records Act Clean-Up

The Commission will continue to study the nonsubstantive revision of the California Public Records Act (Gov't Code §§ 6250-6276.48) and related provisions.¹⁶

State and Local Agency Access to Customer Information Held by Communications Service Providers

As time permits, the Commission will continue to study revision of statutes that govern state and local agency access to customer information held by communications service providers.¹⁷

Other Subjects

The studies described above will dominate the Commission's time and resources during 2020. As time permits, the Commission may consider other subjects that are authorized for study.

Calendar of Topics for Study

The Commission's calendar of topics includes 25 topics that have been authorized by the Legislature for study.¹⁸

14. *Id.*

15. See 2016 Cal. Stat. ch. 179, § 1 (AB 1779 (Gatto)); 2015 Cal. Stat. ch. 293, § 21 (AB 139 (Gatto)).

16. *Id.*

17. See 2013 Cal. Stat. res. ch. 115.

18. See *Calendar of Topics Authorized for Study*, Appendix 2 *infra*.

Function and Procedure of Commission

The principal duties of the Commission are to:¹⁹

- (1) Examine the common law and statutes for the purpose of discovering defects and anachronisms.
- (2) Receive and consider suggestions and proposed changes in the law from the American Law Institute, the National Conference of Commissioners on Uniform State Laws,²⁰ bar associations, and other learned bodies, and from judges, public officials, lawyers, and the public generally.
- (3) Recommend such changes in the law as it deems necessary to bring California law into harmony with modern conditions.²¹

The Commission is required to file a report at each regular session of the Legislature containing a calendar of topics selected by it for study, listing both studies in progress and topics intended for future consideration. Under its general authority, the Commission may study only topics that the Legislature, by concurrent resolution, authorizes for study.²² However, the Commission may study and recommend revisions to correct technical or minor substantive defects in state statutes without a

19. Gov't Code §§ 8280-8298 (statute governing California Law Revision Commission). See Appendix 1 *infra*.

20. The Legislative Counsel, an ex officio member of the Law Revision Commission, serves as a Commissioner of the Commission on Uniform State Laws. See Gov't Code § 10271.

21. Gov't Code § 8289. The Commission is also directed to recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the California Supreme Court or the United States Supreme Court. Gov't Code § 8290. See "Report on Statutes Repealed by Implication or Held Unconstitutional" *infra*.

22. Gov't Code § 8293. Section 8293 requires a concurrent resolution authorizing the Commission to study topics contained in the calendar of topics set forth in the Commission's regular report to the Legislature. Section 8293 also requires that the Commission study any topic that the Legislature by concurrent resolution or statute refers to the Commission for study.

prior concurrent resolution.²³ Additionally, a concurrent resolution²⁴ or statute²⁵ may directly confer authority to study a particular subject.

Background Studies and Expert Consultants

The Commission's work on a recommendation typically begins after a background study has been prepared. The background study may be prepared by a member of the Commission's staff or by a specialist in the field who is retained as a consultant. Law professors and practicing attorneys who serve as consultants have already acquired the considerable knowledge necessary to understand the specific problems under consideration, and receive little more than an honorarium for their services.

From time to time, the Commission requests expert assistance from law professors and other legal professionals, who may provide written input or testify at meetings.

Recommendations

After making its preliminary decisions on a subject, the Commission ordinarily distributes a tentative recommendation to interested persons and organizations, including the State Bar, local

23. Gov't Code § 8298.

24. For an example of a concurrent resolution referring a specific topic to the Commission for study, see 2013 Cal. Stat. res. ch. 115 [SCR 54] (state and local agency access to customer information from communications service providers).

25. For example, Government Code Section 70219 requires the Commission, in consultation with the Judicial Council, to perform follow-up studies taking into consideration the experience in courts that have unified. For a list of specific studies, see *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51, 82-86 (1998).

Government Code Section 71674 requires the Commission to recommend repeal of provisions made obsolete by the Trial Court Employment Protection and Governance Act (Gov't Code § 71600 *et seq.*), Lockyer-Isenberg Trial Court Funding Act of 1997 (1997 Cal. Stat. ch. 850), and the implementation of trial court unification.

Pursuant to Code of Civil Procedure Section 681.035, the Commission also has continuing authority to study enforcement of judgments.

Statutory authority may be uncodified. See, e.g., 2016 Cal. Stat. ch. 179 (revocable transfer on death deeds).

and specialized bar associations, public interest organizations, and business and professional associations. Notice of the availability of the tentative recommendation is mailed to interested persons on the Commission's mailing list and publicized in legal newspapers and other relevant publications. Notice is also posted on the Commission's website and emailed to interested persons.

Comments received on the tentative recommendation are considered by the Commission in determining what recommendation, if any, will be made to the Legislature.²⁶ When the Commission has reached a conclusion on the matter,²⁷ its recommendation to the Legislature (including a draft of any necessary legislation) is published and distributed in printed form and on the Internet. If a background study has been prepared in connection with the recommendation, it may be published by the Commission or in a law review.²⁸

26. For a step-by-step description of the procedure followed by the Commission in preparing the 1963 governmental liability statute, see DeMouly, *Fact Finding for Legislation: A Case Study*, 50 A.B.A. J. 285 (1964). The procedure followed in preparing the Evidence Code is described in 7 Cal. L. Revision Comm'n Reports 3 (1965). See also Gaal, *Evidence Legislation in California*, 36 S.W.U. L. Rev. 561, 563-69 (2008); Quillinan, *The Role and Procedures of the California Law Revision Commission in Probate and Trust Law Changes*, 8 Est. Plan. & Cal. Prob. Rep. 130-31 (Cal. Cont. Ed. Bar 1987).

27. Occasionally, one or more members of the Commission may not join in all or part of a recommendation submitted to the Legislature by the Commission. Dissents are noted in the minutes of the meeting at which the recommendation is approved.

28. For recent background studies published in law reviews, see Méndez, *California Evidence Code - Federal Rules of Evidence, IX. General Provisions*, 44 U.S.F. L. Rev. 891 (2010); Méndez, *California Evidence Code - Federal Rules of Evidence, VIII. Judicial Notice*, 44 U.S.F. L. Rev. 141 (2009); Méndez, *California Evidence Code - Federal Rules of Evidence, VII. Relevance: Definition and Limitations*, 42 U.S.F. L. Rev. 329 (2007); Méndez, *California Evidence Code - Federal Rules of Evidence, VI. Authentication and the Best and Secondary Evidence Rules*, 41 U.S.F. L. Rev. 1 (2006); Méndez, *California Evidence Code - Federal Rules of Evidence, V. Witnesses: Conforming the California Evidence Code to the Federal Rules of Evidence*, 39 U.S.F. L. Rev. 455 (2005); Alford, *Report to Law Revision Commission Regarding Recommendations for Changes to California Arbitration Law*, 4 Pepp. Disp. Resol. L.J. 1 (2004); Méndez, *California Evidence Code - Federal Rules of*

Official Comments

The Commission ordinarily prepares an official Comment explaining each section it recommends for enactment, amendment, or repeal. The Comments are included in the Commission's published recommendations. A Comment indicates the derivation of a section and often explains its purpose, its relation to other law, and potential issues concerning its meaning or application.²⁹

Commission Materials as Legislative History

Commission recommendations are printed and sent to both houses of the Legislature, as well as to the Legislative Counsel and Governor.³⁰ Receipt of a recommendation by the Legislature is

Evidence, IV. Presumptions and Burden of Proof: Conforming the California Evidence Code to the Federal Rules of Evidence, 38 U.S.F. L. Rev. 139 (2003); Méndez, *California Evidence Code - Federal Rules of Evidence, I. Hearsay and Its Exceptions: Conforming the Evidence Code to the Federal Rules*, 37 U.S.F. L. Rev. 351 (2003); Méndez, *California Evidence Code - Federal Rules of Evidence, II. Expert Testimony and the Opinion Rule: Conforming the Evidence Code to the Federal Rules*, 37 U.S.F. L. Rev. 411 (2003); Méndez, *California Evidence Code - Federal Rules of Evidence, III. The Role of Judge and Jury: Conforming the Evidence Code to the Federal Rules*, 37 U.S.F. L. Rev. 1003 (2003).

For a list of background studies published in law reviews before 2003, see 32 Cal. L. Revision Comm'n Reports 585 n.14 (2002); 20 Cal. L. Revision Comm'n Reports 198 n.16 (1990); 19 Cal. L. Revision Comm'n Reports 513 n.22 (1988); 18 Cal. L. Revision Comm'n Reports 212 n.17, 1713 n.20 (1986); 17 Cal. L. Revision Comm'n Reports 819 n.6 (1984); 16 Cal. L. Revision Comm'n Reports 2021 n.6 (1982); 13 Cal. L. Revision Comm'n Reports 1628 n.5 (1976); 11 Cal. L. Revision Comm'n Reports 1008 n.5, 1108 n.5 (1973); 10 Cal. L. Revision Comm'n Reports 1108 n.5 (1971).

29. Commission Comments are published by LexisNexis and Thomson Reuters in their print editions of the annotated codes, and printed in selected codes prepared by other publishers. Comments are also available on Westlaw and LexisNexis.

30. See Gov't Code §§ 8291, 9795, 11094-11099; see also *Reynolds v. Superior Court*, 12 Cal. 3d 834, 847 n.18, 528 P.2d 45, 53 n.18, 117 Cal. Rptr. 437, 445 n.18 (1974) (Commission "submitted to the Governor and the Legislature an elaborate and thoroughly researched study").

noted in the legislative journals, and the recommendation is referred to the appropriate policy committee.³¹

The bill introduced to effectuate a Commission recommendation is assigned to legislative committees charged with study of the matter in depth.³² A copy of the recommendation is provided to legislative committee members and staff before the bill is heard and throughout the legislative process. The legislative committees rely on the recommendation in analyzing the bill and making recommendations to the Legislature concerning it.³³

If an amendment is made to the bill that renders one of the Commission's original Comments inconsistent, the Commission generally will adopt a revised Comment and provide it to the committee. The Commission also provides this material to the Governor's office once the bill has passed the Legislature and is before the Governor for action. These materials are a matter of public record.

Until the mid-1980s, a legislative committee, on approving a bill implementing a Commission recommendation, would adopt the Commission's recommendation as indicative of the committee's intent in approving the bill.³⁴ If a Comment required revision, the

31. See, e.g., Senate J. Aug. 18, 2003, at 2031 (noting receipt of 2002-2003 recommendations and their transmittal to the Committee on Judiciary).

32. See, e.g., Office of Chief Clerk, California State Assembly, California's Legislature 126-27 (2000) (discussing purpose and function of legislative committee system).

33. The Commission does not concur with the suggestion of the court in *Conservatorship of Wendland*, 26 Cal. 4th 519, 542, 28 P.3d 151, 166, 110 Cal. Rptr. 2d 412, 430 (2001), that a Commission Comment might be entitled to less weight based on speculation that the Legislature may not have read and endorsed every statement in the Commission's report. That suggestion belies the operation of the committee system in the Legislature. See White, *Sources of Legislative Intent in California*, 3 Pac. L.J. 63, 85 (1972) ("The best evidence of legislative intent must surely be the records of the legislature itself and the reports which the committees relied on in recommending passage of the legislation.").

34. See, e.g., *Baldwin v. State*, 6 Cal. 3d 424, 433, 491 P.2d 1121, 1126, 99 Cal. Rptr. 145, 150 (1972). For a description of legislative committee reports adopted in connection with the bill that became the Evidence Code, see *Arellano v. Moreno*, 33 Cal. App. 3d 877, 884, 109 Cal. Rptr. 421, 426 (1973).

revised Comment would be adopted as a legislative committee Comment. The committee's report would be printed in the journal of the relevant house.³⁵

The Legislature has discontinued the former practice due to increased committee workloads and an effort to decrease the volume of material reprinted in the legislative journals. Under current practice, a legislative committee relies on Commission materials in its analysis of a bill, but does not separately adopt the materials. Instead, the Commission makes a report detailing the legislative history of the bill, including any revised Comments. Bill reports are published as appendices to the Commission's annual reports.³⁶

Use of Commission Materials to Determine Legislative Intent

Commission materials that have been placed before and considered by the Legislature are legislative history, are declarative of legislative intent,³⁷ and are entitled to great weight in construing statutes.³⁸ The materials are a key interpretive aid for

35. For an example of such a report, see *Report of Senate Committee on Judiciary on Assembly Bill 3472*, Senate J. June 14, 1984, reprinted in 18 Cal. L. Revision Comm'n Reports 1, 115 (1986).

36. Commission reports have in the past been published as well in the legislative journals. See, e.g., *In re Marriage of Neal*, 153 Cal. App. 3d 117, 124, 200 Cal. Rptr. 341, 345 (1984) (noting that Chairman of Senate Judiciary Committee, when reporting on AB 26 on Senate floor, moved that revised Commission report be printed in Senate Journal as evidence of legislative intent).

37. See, e.g., *Fair v. Bakhtiari*, 40 Cal. 4th 189, 195, 147 P.3d 653, 657, 51 Cal. Rptr. 3d 871, 875 (2006) ("The Commission's official comments are deemed to express the Legislature's intent."); *People v. Williams*, 16 Cal. 3d 663, 667-68, 547 P.2d 1000, 128 Cal. Rptr. 888 (1976) ("The official comments of the California Law Revision Commission on the various sections of the Evidence Code are declarative of the intent not only of the draft[ers] of the code but also of the legislators who subsequently enacted it.").

38. See, e.g., *Dep't of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.*, 40 Cal. 4th 1, 12-13 n.9, 145 P.3d 462, 469 n.9, 50 Cal. Rptr. 3d 585, 593 n.9 (2006) (Commission's official comments are persuasive evidence of Legislature's intent); *Hale v. S. Cal. IPA Med. Group, Inc.*, 86 Cal. App. 4th 919, 927, 103 Cal. Rptr. 2d 773, 778 (2001):

practitioners as well as courts,³⁹ and courts may judicially notice and rely on them.⁴⁰ Courts at all levels of the state⁴¹ and federal⁴² judicial systems depend on Commission materials to construe statutes enacted on Commission recommendation.⁴³ Appellate

In an effort to discern legislative intent, an appellate court is entitled to take judicial notice of the various legislative materials, including committee reports, underlying the enactment of a statute. (*Kern v. County of Imperial* (1990) 226 Cal. App. 3d 391, 400, fn. 8 [276 Cal. Rptr. 524]; *Coopers & Lybrand v. Superior Court* (1989) 212 Cal. App. 3d 524, 535, fn. 7 [260 Cal. Rptr. 713].) In particular, reports and interpretive opinions of the Law Revision Commission are entitled to great weight. (*Schmidt v. Southern Cal. Rapid Transit Dist.* (1993) 14 Cal. App. 4th 23, 30, fn. 10 [17 Cal. Rptr. 2d 340].)

39. Cf. 7 B. Witkin, Summary of California Law *Constitutional Law* § 123, at 230 (10th ed. 2005) (Commission reports as aid to construction); Gaylord, *An Approach to Statutory Construction*, 5 Sw. U. L. Rev. 349, 384 (1973).

40. See, e.g., *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.*, 133 Cal. App. 4th 26, 34 Cal. Rptr. 3d 520 (2005) (providing overview of materials that may be judicially noticed in determining legislative intent); *Hale*, 86 Cal. App. 4th at 927; *Barkley v. City of Blue Lake*, 18 Cal. App. 4th 1745, 1751 n.3, 23 Cal. Rptr. 2d 315, 318-19 n.3 (1993).

41. See, e.g., *Sullivan v. Delta Air Lines, Inc.*, 15 Cal. 4th 288, 298, 935 P.2d 781, 63 Cal. Rptr. 2d 74 (1997) (California Supreme Court); *Admin. Mgmt. Services, Inc. v. Fid. Deposit Co. of Md.*, 129 Cal. App. 3d 484, 488, 181 Cal. Rptr. 141 (1982) (court of appeal); *Rossetto v. Barross*, 90 Cal. App. 4th Supp. 1, 110 Cal. Rptr. 2d 255 (2001) (appellate division of superior court).

42. See, e.g., *California v. Green*, 399 U.S. 149, 154 n.3 (1970) (United States Supreme Court); *S. Cal. Bank v. Zimmerman (In re Hilde)*, 120 F.3d 950, 953 (9th Cir. 1997) (federal court of appeals); *Williams v. Townsend*, 283 F. Supp. 580, 582 (C.D. Cal. 1968) (federal district court); *Ford Consumer Fin. Co. v. McDonell (In re McDonell)*, 204 B.R. 976, 978-79 (B.A.P. 9th Cir. 1996) (bankruptcy appellate panel); *In re Garrido*, 43 B.R. 289, 292-93 (Bankr. S.D. Cal. 1984) (bankruptcy court).

43. See, e.g., *Jevne v. Superior Court*, 35 Cal. 4th 935, 947, 111 P.3d 954, 962, 28 Cal. Rptr. 3d 685, 694-95 (2005) (Commission report entitled to substantial weight in construing statute); *Collection Bureau of San Jose v. Rumsey*, 24 Cal. 4th 301, 308 & n.6, 6 P.3d 713, 718 & n.6, 99 Cal. Rptr. 2d 792, 797 & n.6 (2000) (Comments to reenacted statute reiterate the clear understanding and intent of original enactment); *Brian W. v. Superior Court*, 20 Cal. 3d 618, 623, 574 P.2d 788, 791, 143 Cal. Rptr. 717, 720 (1978) (Comments persuasive evidence of Legislature's intent); *Volkswagen Pac., Inc. v. City of Los Angeles*, 7 Cal. 3d 48, 61-63, 496 P.2d 1237, 1247-48, 101 Cal. Rptr. 869,

courts have cited Commission materials in more than a thousand published opinions.⁴⁴

Commission materials have been used as direct support for a court's interpretation of a statute,⁴⁵ as one of several indicia of legislative intent,⁴⁶ to explain the public policy behind a statute,⁴⁷ and on occasion to demonstrate (by their silence) the Legislature's intention not to change the law.⁴⁸ The Legislature's failure to adopt a Commission recommendation may be used as evidence of legislative intent to reject the proposed rule.⁴⁹

Commission materials are entitled to great weight, but they are not conclusive.⁵⁰ While the Commission endeavors in Comments

879-80 (1972) (Comments evidence clear legislative intent of law); *Van Arsdale v. Hollinger*, 68 Cal. 2d 245, 249-50, 437 P.2d 508, 511, 66 Cal. Rptr. 20, 23 (1968) (Comments entitled to substantial weight), overruled on other grounds by *Privette v. Superior Court*, 5 Cal. 4th 689, 854 P.2d 721, 21 Cal. Rptr. 2d 72 (1993); *County of Los Angeles v. Superior Court*, 62 Cal. 2d 839, 843-44, 402 P.2d 868, 870-71, 44 Cal. Rptr. 796, 798-99 (1965) (statutes reflect policy recommended by Commission).

44. It should be noted that the Law Revision Commission should not be cited as the "Law Revision Committee" or as the "Law Review Commission." See, e.g., *Venerable v. City of Sacramento*, 185 F. Supp. 2d 1128, 1132 (E.D. Cal. 2002) (Law Revision "Committee"); *Ryan v. Garcia*, 27 Cal. App. 4th 1006, 1010 n.2, 33 Cal. Rptr. 2d 158, 160 n.2 (1994) (Law "Review" Commission).

45. See, e.g., *People v. Ainsworth*, 45 Cal. 3d 984, 1015, 755 P.2d 1017, 1036, 248 Cal. Rptr. 568, 586 (1988).

46. See, e.g., *Heieck & Moran v. City of Modesto*, 64 Cal. 2d 229, 233 n.3, 411 P.2d 105, 108 n.3, 49 Cal. Rptr. 377, 380 n.3 (1966).

47. See, e.g., *Southern Cal. Gas Co. v. Public Utils. Comm'n*, 50 Cal. 3d 31, 38 n.8, 784 P.2d 1373, 1376 n.8, 265 Cal. Rptr. 801, 804 n.8 (1990).

48. See, e.g., *State ex rel. State Pub. Works Bd. v. Stevenson*, 5 Cal. App. 3d 60, 64-65, 84 Cal. Rptr. 742, 745-46 (1970) (finding that Legislature had no intention of changing existing law where "not a word" in Commission's reports indicated intent to abolish or emasculate well-settled rule).

49. See, e.g., *McWilliams v. City of Long Beach*, 56 Cal. 4th 613, 623-24, 300 P.3d 886, 155 Cal. Rptr. 3d 817 (2013); *Nestle v. City of Santa Monica*, 6 Cal. 3d 920, 935-36, 496 P.2d 480, 490, 101 Cal. Rptr. 568, 578 (1972).

50. See, e.g., *Redevelopment Agency v. Metropolitan Theatres Corp.*, 215 Cal. App. 3d 808, 812, 263 Cal. Rptr. 637, 639 (1989) (Comment does not override clear and unambiguous statute). Commission materials are but one indicium of legislative intent. See, e.g., *Estate of Joseph*, 17 Cal. 4th 203, 216,

to explain any changes in the law made by a section, the Commission does not claim that every consistent or inconsistent case is noted in the Comments,⁵¹ nor can it anticipate judicial conclusions as to the significance of existing case authorities.⁵² Hence, failure of the Comment to note every change the recommendation would make in prior law, or to refer to a consistent or inconsistent judicial decision, is not intended to, and should not, influence the construction of a clearly stated statutory provision.⁵³

Some types of Commission materials are not properly relied on as evidence of legislative intent. On occasion, courts have cited preliminary Commission materials such as tentative recommendations, correspondence, and staff memoranda and drafts in support of their construction of a statute.⁵⁴ While these

949 P.2d 472, 480, 70 Cal. Rptr. 2d 619, 627 (1998). The accuracy of a Comment may also be questioned. See, e.g., *Buzgheia v. Leasco Sierra Grove*, 30 Cal. App. 4th 766, 774, 36 Cal. Rptr. 2d 144, 149 (1994); *In re Thomas*, 102 B.R. 199, 202 (Bankr. E.D. Cal. 1989).

51. *Cf. People v. Coleman*, 8 Cal. App. 3d 722, 731, 87 Cal. Rptr. 554, 559 (1970) (Comments make clear intent to reflect existing law even if not all supporting cases are cited).

52. See, e.g., *Arellano v. Moreno*, 33 Cal. App. 3d 877, 885, 109 Cal. Rptr. 421, 426-27 (1973) (noting that decisional law cited in Comment was distinguished by the California Supreme Court in a case decided after enactment of the Commission recommendation).

53. The Commission does not concur in the *Kaplan* approach to statutory construction. See *Kaplan v. Superior Court*, 6 Cal. 3d 150, 158-59, 491 P.2d 1, 5-6, 98 Cal. Rptr. 649, 653-54 (1971). For a reaction to the problem created by the *Kaplan* approach, see *Recommendation Relating to Erroneously Ordered Disclosure of Privileged Information*, 11 Cal. L. Revision Comm'n Reports 1163 (1973); 1974 Cal. Stat. ch. 227.

54. See, e.g., *Rojas v. Superior Court*, 33 Cal. 4th 407, 93 P.3d 260, 15 Cal. Rptr. 3d 643 (2005) (tentative recommendation, correspondence, and staff memorandum and draft); *Yamaha Corp. v. State Bd. of Equalization*, 19 Cal. 4th 1, 12-13, 960 P.2d 1031, 1037, 78 Cal. Rptr. 2d 1, 7 (1998) (tentative recommendation). However, in some cases, proposed legislation will be based on a tentative, rather than final, Commission recommendation. See, e.g., *Estate of Archer*, 193 Cal. App. 3d 238, 243, 239 Cal. Rptr. 137, 140 (1987). In that event, reliance on the tentative recommendation is proper.

materials may be indicative of the Commission's intent in proposing the legislation, only the Legislature's intent in adopting the legislation is entitled to weight in construing the statute.⁵⁵ Unless preliminary Commission materials were before the Legislature during its consideration of the legislation, those materials are not legislative history and are not relevant in determining the Legislature's intention in adopting the legislation.⁵⁶

A Commission study prepared after enactment of a statute that analyzes the statute is not part of the legislative history of the statute.⁵⁷ However, documents prepared by or for the Commission may be used by the courts for their analytical value, apart from their role in statutory construction.⁵⁸

See also *Ilkhchooyi v. Best*, 37 Cal. App. 4th 395, 406, 45 Cal. Rptr. 2d 766, 772-73 (1995) (letter responding to tentative recommendation); D. Henke, California Legal Research Handbook § 3.51 (1971) (background studies).

55. Cf. *Rittenhouse v. Superior Court*, 235 Cal. App. 3d 1584, 1589, 1 Cal. Rptr. 2d 595, 598 (1991) (linking Commission's intent and Legislature's intent); *Guthman v. Moss*, 150 Cal. App. 3d 501, 508, 198 Cal. Rptr. 54, 58 (1984) (determination of Commission's intent used to infer Legislature's intent).

56. The Commission concurs with the opinion of the court in *Juran v. Epstein*, 23 Cal. App. 4th 882, 894 n.5, 28 Cal. Rptr. 2d 588, 594 n.5 (1994), that staff memoranda to the Commission should generally not be considered as legislative history.

57. See, e.g., *Duarte v. Chino Community Hosp.*, 72 Cal. App. 4th 849, 856 n.3, 85 Cal. Rptr. 2d 521, 525 n.3 (1999).

58. See, e.g., *Sierra Club v. San Joaquin Local Agency Formation Comm'n*, 21 Cal. 4th 489, 502-03, 981 P.2d 543, 551-52, 87 Cal. Rptr. 2d 702, 712 (1999) (unenacted Commission recommendation useful as "opinion of a learned panel"); *Hall v. Hall*, 222 Cal. App. 3d 578, 585, 271 Cal. Rptr. 773, 777 (1990) (Commission staff report most detailed analysis of statute available); *W.E.J. v. Superior Court*, 100 Cal. App. 3d 303, 309-10, 160 Cal. Rptr. 862, 866 (1979) (law review article prepared for Commission provides insight into development of law); *Schonfeld v. City of Vallejo*, 50 Cal. App. 3d 401, 407 n.4, 123 Cal. Rptr. 669, 673 n.4 (1975) (court indebted to many studies of Commission for analytical materials).

Publications

Commission publications are distributed to the Governor, the Secretary of the Senate, the Chief Clerk of the Assembly, and the Legislative Counsel.⁵⁹ Commission materials are also distributed to interest groups, lawyers, law professors, courts, district attorneys, law libraries, and other individuals requesting materials.

The Commission's reports, recommendations, and studies are published in hardcover volumes that serve as a permanent record of the Commission's work and are a valuable contribution to the legal literature of California. These volumes are available at many county law libraries and at some other libraries. About half of the hardcover volumes are out of print, but others are available for purchase.⁶⁰ Publications that are out of print are available as electronic files.⁶¹

Electronic Publication and Internet Access

Since 1995, the Commission has provided a variety of information on the Internet, including online material and downloadable files.⁶² Interested persons with Internet access can find the current agenda, meeting minutes, background studies, tentative and final recommendations, staff memoranda, and general background information.

Since 2002, all Commission publications and staff memoranda are available as electronic files. They can be downloaded from the Commission's website.

Electronic Mail

Email commenting on Commission proposals or suggesting issues for study is given the same consideration as letter correspondence. Email to the Commission may be sent to commission@clrc.ca.gov.

59. See Gov't Code § 8291. For limitations on Section 8291, see Gov't Code §§ 9795, 11094-11099.

60. See *Commission Publications*, Appendix 5 *infra*.

61. See "Electronic Publication and Internet Access" *infra*.

62. The URL for the Commission's website is <<http://www.clrc.ca.gov>>.

The Commission distributes the majority of its meeting agendas, staff memoranda, and other written materials electronically, by means of its website and email distribution lists. The Commission encourages use of email as an inexpensive and expedient means of communication with the Commission.

MCLE Credit

The Commission is approved by the State Bar of California as a minimum continuing legal education provider. Participants and attendees at Commission meetings may be eligible to receive MCLE credit. To receive credit for participation or attendance at a meeting, a person must register at the meeting. Meeting materials are available free of charge on the Internet⁶³ or may be purchased in advance from the Commission.

63. See “Electronic Publication and Internet Access” *supra*.

Personnel of Commission⁶⁴

As of November 1, 2019, the following persons were members of the Law Revision Commission:

Legislative Members⁶⁵

Assembly Member Ed Chau
 Senator Richard Roth

Members Appointed by Governor⁶⁶

	<i>Term Expires</i>
Victor King, La Crescenta <i>Chairperson</i>	October 1, 2023
Crystal Miller-O'Brien, Los Angeles <i>Vice-Chairperson</i>	October 1, 2021
David Carrillo, Berkeley	October 1, 2023
Ana Cubas, Los Angeles	October 1, 2021
Jane McAllister, Hilmar	October 1, 2023
Richard Rubin, Mill Valley	October 1, 2021
Richard Simpson, Sacramento	October 1, 2023

Legislative Counsel⁶⁷

Diane F. Boyer-Vine, Sacramento

64. See also *Biographies of 2019 Commissioners*, Appendix 4 *infra*.

65. The Senate and Assembly members of the Commission serve at the pleasure of their respective appointing powers, the Senate Committee on Rules and the Speaker of the Assembly. Gov't Code § 8281.

66. Seven Commission members are appointed by the Governor with the advice and consent of the Senate. Gov't Code § 8281. These Commissioners serve staggered four-year terms. *Id.* The provision in Government Code Section 8281 to the effect that Commission members appointed by the Governor hold office until the appointment and qualification of their successors has been superseded by the rule in Government Code Section 1774 declaring a vacancy if there is no reappointment 60 days following expiration of the term of office. See also Gov't Code § 1774.7 (Section 1774 overrides contrary special rules unless specifically excepted).

67. The Legislative Counsel serves on the Commission by virtue of office. Gov't Code § 8281.

Olga Mack, who joined the Commission in 2018, ended her service as a Commissioner on March 17, 2019. Tom Hallinan, who joined the Commission in 2015, and Susan Duncan Lee, who joined the Commission in 2005, ended their service as Commissioners on October 1, 2019.

The Commission expresses its gratitude for their service to the People of California.

The following persons are on the Commission's staff:

Legal

BRIAN HEBERT
Executive Director

BARBARA S. GAAL
Chief Deputy Counsel

KRISTIN BURFORD
Staff Counsel

STEVE COHEN
Staff Counsel

Administrative-Secretarial

DEBORA LARRABEE
*Associate Governmental
Program Analyst*

Commission Budget

The Commission's operations for the 2019-20 fiscal year have been funded through a reimbursement from the California Office of Legislative Counsel, in the amount of \$1,564,000.

That reimbursement is supplemented by monies budgeted for income generated from the sale of documents to the public, to recover the cost of the documents.

The Commission also receives substantial donations of necessary library materials from the legal publishing community, especially California Continuing Education of the Bar, LexisNexis, and Thomson Reuters. In addition, the Commission receives benchbooks from the California Center for Judicial Education and Research (CJER). The Commission also receives a copy of the

McGeorge Law Review, annually. The Commission receives additional library materials from other legal publishers and from other law reform agencies on an exchange basis, and has full access to the law libraries at the University of California, Davis, School of Law and at Stanford Law School. The Commission is grateful for these contributions.

Committee on Revision of the Penal Code

On January 1, 2020, the Committee on Revision of the Penal Code will be formed as a part of the California Law Revision Commission.⁶⁸

The Commission's staff will support that new function, but the membership, authority, and deliberative processes of the two bodies will be separate and non-overlapping.⁶⁹

As the new Committee is required to submit its own separate Annual Report,⁷⁰ this report does not further address the work of the Committee.

Other Activities

The Commission is directed by statute to cooperate with bar associations and other learned, professional, or scientific associations, institutions, or foundations in any manner suitable for the fulfillment of the purposes of the Commission.⁷¹

National Conference of Commissioners on Uniform State Laws

The Commission is directed by statute to receive and consider proposed changes in the law recommended by the National Conference of Commissioners on Uniform State Laws.⁷²

68. Gov't Code § 8280(b).

69. Gov't Code §§ 8281 (Commission membership), 8281.5 (Committee membership), 8289 (Commission duties), 8290.5 (Committee duties), 8293(a) (Commission authority).

70. Gov't Code § 8293(b).

71. Gov't Code § 8296.

72. Gov't Code § 8289.

Legislative Counsel and Commission member Diane F. Boyer-Vine is a member of the California Commission on Uniform State Laws and the National Conference. The Commission's Executive Director, Brian Hebert, is an associate member of the National Conference.

Other Commissioner and Staff Activities

On November 13, 2019, Commissioner Boyer-Vine and the Executive Director, Brian Hebert, participated in a panel discussion of the legislative process, at the UC Davis School of Law.

Legislative History of Recommendations in the 2019 Legislative Session

In 2019, a bill to effectuate two Commission recommendations was introduced. The proposal was enacted.

Disposition of Estate Without Administration

Assembly Bill 473 (2019 Cal. Stat. ch. 122) was introduced in 2019 by Assembly Member Brian Maienschein. The bill effectuated the Commission's recommendations on *Disposition of Estate Without Administration: Interest Rate*, 45 Cal. L. Revision Comm'n Reports 387 (2018), and *Disposition of Estate Without Administration: Dollar Amounts*, 45 Cal. L. Revision Comm'n Reports 419 (2018).

The measure was enacted.

Report on Statutes Repealed by Implication or Held Unconstitutional

Government Code Section 8290 provides:

The commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the state or the Supreme Court of the United States.

Pursuant to this directive, the Commission has reviewed the decisions of the United States Supreme Court and the California

Supreme Court published since the Commission's last Annual Report was prepared,⁷³ and has the following to report:

- No decision holding a state statute repealed by implication has been found.
- No decision of the United States Supreme Court holding a state statute unconstitutional has been found.
- No decision of the California Supreme Court holding a state statute unconstitutional has been found.

Recommendations

Except as otherwise provided below, the Commission respectfully recommends that the Legislature authorize the Commission to continue its study of the topics previously authorized.⁷⁴

The Commission recommends that the following topics be removed from the Commission's calendar of topics:

(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

73. This study has been carried through opinions published on or before October 31, 2019.

74. See *Calendar of Topics Authorized for Study*, Appendix 2 *infra*.

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.

If topic (14) is removed from the calendar of topics, the Commission recommends that item (3) be revised as follows:

(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.

BIOGRAPHIES OF 2019 COMMISSIONERS

Victor King, of La Crescenta, serves as the Chairperson of the Commission, and has been university legal counsel for California State University, Los Angeles since 2002. He was previously a partner with the law firm of Lewis Brisbois Bisgaard and Smith LLP from 2001 to 2002, an associate with the law firm of Lewis Brisbois Bisgaard and Smith LLP from 1999 to 2001, an associate with the law firm of Bottum and Feliton from 1996 to 1999, and an associate with the law firm of Ochoa and Sillas from 1991 to 1995. He was also a trustee of the Glendale Community College District from 1997 to 2009. Commissioner King received a Juris Doctor degree from the University of Michigan Law School.

Crystal Miller-O'Brien, of Los Angeles, serves as the Vice-Chairperson of the Commission, and has been general counsel for the All City Employee Benefits Services Association, Inc., since 2016. She was previously corporate counsel for Medical Management Consultants, Inc. from 2006 to 2015, an associate with the law firm of Anderson McPharlin and Connors LLP from 2005 to 2006, an associate with the law firm of Robie and Matthai PC from 2003 to 2004, an associate with the law firm of Bullivant Houser Bailey PC from 2002 to 2003, and a judicial clerk for the Honorable Faith Ireland of the Washington State Supreme Court from 2001 to 2002. She also served on the board of directors of the Conference of California Bar Associations from 2009 to 2012, and is a member of Corporate Counsel Women of Color, the Black Women Lawyers Association of Los Angeles, and the National Association of Women Business Owners. Commissioner Miller-O'Brien received a Juris Doctor degree and a Joint Certificate in Alternative Dispute Resolution from Willamette University College of Law.

Diane Boyer-Vine, of Sacramento, has been Legislative Counsel for the State of California since 2002. She was previously a deputy and thereafter a chief deputy in the Legislative Counsel's office from 1988 to 2002, and before that an associate with the law firm of

Martorana and Stockman. She also serves as a member of the California Commission on Uniform State Laws. Commissioner Boyer-Vine received a Juris Doctor degree from the University of California, Davis School of Law.

David A. Carrillo, of Berkeley, has been executive director and lecturer in residence at the California Constitution Center, University of California, Berkeley School of Law since 2012. He was previously a deputy attorney general for the California Department of Justice from 2001 to 2003 and from 2007 to 2012, a deputy city attorney for the City of San Francisco from 2003 to 2007, a senior litigation associate for Seyfarth Shaw from 1999 to 2000, a litigation associate for Nossaman LLP in 1999, and a deputy district attorney for Contra Costa County from 1995 to 1998. Commissioner Carrillo received a Juris Doctor degree, a Master of Laws degree, and a Doctor of the Science of Jurisprudence degree from the University of California, Berkeley School of Law.

Assembly Member Ed Chau, of Monterey Park, has been a member of the Assembly since 2012. He was previously a general law practitioner in the Law Office of Edwin Chau, a small business owner for over 20 years, an engineer for IBM, and a programmer for Unisys Corporation. He has also previously served as a board member of the Montebello Unified School District, where he acted as Board President three times, and has served as Judge Pro Tem for the Los Angeles Superior Court. Commissioner Chau received a Juris Doctor degree from Southwestern University.

Ana Cubas, of Los Angeles, has been an adjunct professor with the Los Angeles Community College District since 2017. She was previously government affairs manager at Vanir Construction Management from 2016 to 2017, and chief of staff for District 14 at the City of Los Angeles from 2009 to 2012. She is a member of the United States Green Building Council, and the California Hispanic Chambers of Commerce. Commissioner Cubas received a Master of Arts degree in urban and regional planning from Princeton University, and a Master of Business Administration degree from the University of Southern California.

Tom Hallinan, of Ceres, has been a partner with Churchwell White LLP since 2012. He was previously a partner with Bush, Ackley, Milich and Hallinan from 1994 to 2012, a law clerk at the United States Attorney's Office from 1991 to 1993, and a law clerk at the Judicial Council of California from 1990 to 1992. He has also served on the 38th District Agricultural Association, Stanislaus County Fair Board of Directors. Commissioner Hallinan received a Juris Doctor degree from Lincoln Law School.

Susan Duncan Lee, of Tiburon, has been a deputy attorney general and thereafter a supervising deputy attorney general with the California Department of Justice since 1989. Commissioner Lee received a Juris Doctor degree from the University of California, Hastings College of the Law.

Jane McAllister, of Hilmar, has been a partner with McAllister and McAllister, Inc. since 1996. She was previously an associate attorney with Damrell, Nelson, Schrimp, Pallios, Pacher and Silva from 1988 to 1996. Commissioner McAllister received a Juris Doctor degree from Humphreys College School of Law.

Senator Richard Roth, of Riverside, has been a member of the Senate since 2012. He previously was a managing partner in the law firm of Roth Carney APC, engaged in the practice of labor and employment law with other Riverside-based firms for over 30 years, an attorney with the National Labor Relations Board, an adjunct instructor at the University of California at Riverside's Anderson School of Management and in the University's extension division, a Legal Advisor to the Airlift/Tanker Association, and a Lawyer Representative to the Ninth Circuit Court of Appeals Judicial Conference. He has also served in the United States Air Force, and was a member of the JAG Corps, including service in the Pentagon as Mobilization Assistant to the Judge Advocate General of the U.S. Air Force, retiring with the rank of major general. He has also previously served as Chairman of the Board for the Greater Riverside Chambers of Commerce, president of the Monday Morning Group, vice-chairperson of the Parkview Community Hospital Board, and trustee of the March Field Museum. He is a

member of the Raincross Club, the Riverside Community Hospital Advisory Board, the Thomas W. Wathen Foundation Board (Flabob Airport), the Riverside County Bar Association Board of Directors, the Path of Life Ministries Advisory Board, the Air Force Judge Advocate General's School Foundation Board, and the La Sierra University Foundation Board, and a past member of the Riverside Public Library Foundation Board, and the Riverside Art Museum Board. Commissioner Roth received a Juris Doctor degree from Emory University.

Richard Rubin, of Mill Valley, has been a contributing columnist on the Fox and Hounds media site since 2015, and for the Marin Independent Journal since 1998. Presently a non-practicing attorney, he previously founded the San Francisco firm Richard Rubin & Associates in 1984 where he was president until 2019, was an adjunct professor at the University of San Francisco's Fromm Institute from 2004 to 2012, and a legislative assistant in Washington, D.C. for Senator John Tunney (D-CA) from 1970 to 1973, and for Senator Harrison Williams (D-NJ) from 1966 to 1970. He has chaired the California Commonwealth Club Board of Governors, served as a Vice President on the California State Bar Board for nine years, and chaired both the Berkeley Repertory Theater and the San Francisco Self Help for the Elderly Boards. Commissioner Rubin received a Juris Doctor degree from George Washington Law School, and a Master of Arts degree in international affairs from Columbia University.

Richard Simpson, of Sacramento, has been chief of staff for the Office of Senator Hertzberg in 2019. He was previously deputy chief of staff and education advisor for the Office of the Assembly Speaker from 1999 to 2016, legislative secretary for the Office of Governor Gray Davis from 1998 to 1999, deputy chief of staff for the Office of Assembly Speaker Villaraigosa in 1998, a legislative advocate for the California Teachers Association from 1996 to 1998, staff director for the Senate Education Committee from 1995 to 1996, and education advisor for the Office of the Assembly Speaker Willie Brown Jr. from 1991 to 1994. He is a member of the Commission on Judicial Performance, and served as a member of

the Sacramento Board of Education from 1990 to 2002. Commissioner Simpson received a Master of Public Policy degree from the University of California, Berkeley.
