

Admin.

April 29, 2021

## Memorandum 2021-24

**Minutes of Meeting on April 22, 2021 (Draft)**

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The California Law Revision Commission held a meeting on April 22, 2021, by teleconference.<sup>1</sup> 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.

The Bagley-Keene Open Meeting Act provides that attendees cannot be required to identify themselves.<sup>2</sup> As a means of observing that rule, the Commission is only listing attendees who have affirmatively consented to being identified in the Minutes, as part of the registration process required for those who wish to attend the meeting.

Respectfully submitted,

Brian Hebert  
Executive Director

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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](http://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. Gov't Code § 11124.



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**DRAFT MINUTES OF MEETING**  
**CALIFORNIA LAW REVISION COMMISSION**  
**April 22, 2021**

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A meeting of the California Law Revision Commission was held on April 22, 2021. Consistent with Executive Orders N-25-20 and N-29-20, the meeting was held as an online video webinar.

Only those members of the public who expressly consented to being identified in the Minutes are listed as attendees.

**Commission:**

*Present:* Crystal Miller-O'Brien, Chairperson  
Richard Simpson, Vice-Chairperson  
David A. Carrillo  
Ana Cubas  
Cara Jenkins, Legislative Counsel  
Victor King  
Jane McAllister

*Absent:* Assembly Member Ed Chau  
Senator Richard D. Roth  
Richard Rubin

**Staff:**

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

**Other Persons:**

Wendy Bogdan, Department of Fish and Wildlife  
Angela Donlan, 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 2021-17, presenting draft Minutes for the March 25, 2021, meeting.

The Commission approved the Minutes, without change.

ADMINISTRATIVE MATTERS

**Report of Executive Director**

The Executive Director gave a brief report on the work of the Committee on Revision of the Penal Code.

**Commissioner Suggestions**

The Commission made three decisions that were based on Commissioner suggestions:

- (1) The Commission will use elements drawn from the *California Style Manual* when citing cases. Specifically, the year parenthetical will follow the case name without a comma and there will be no spaces in abbreviated case reporter names.
- (2) The meeting scheduled for May 2021 is cancelled.

- 1 (3) The Executive Director’s report will occasionally include a brief  
2 summary of the work of the Committee on Revision of the Penal  
3 Code.

4 2021 LEGISLATIVE PROGRAM

5 The Commission considered Memorandum 2021-18, discussing the  
6 Commission’s 2021 Legislative Program.

7 The Commission considered amendments made to Senate Bill 315 (Roth) and  
8 Senate Bill 391 (Min) and decided against taking any position on those changes.

9 The Commission revised its Comment to proposed Civil Code Section 5450,  
10 as shown on pages 3-4 of the memorandum.

11 STUDY E-200 – RECODIFICATION OF TOXIC SUBSTANCE STATUTES

12 The Commission considered Memorandum 2021-19, presenting draft  
13 language for the first piece of proposed legislation for the recodification of  
14 Chapter 6.5 of Division 20 of the Health and Safety Code.

15 The Commission provisionally approved the draft for inclusion in a future  
16 tentative recommendation.

17 STUDY J-1407 — STATUTES MADE OBSOLETE BY TRIAL COURT  
18 RESTRUCTURING (PART 8)

19 The Commission considered Memorandum 2021-21, relating to  
20 representation and indemnification of trial courts and trial court personnel. For  
21 purposes of a tentative recommendation, the Commission made the decisions  
22 described below.

23 **Gov’t Code § 811.9. Representation, Defense, and Indemnification of Trial**  
24 **Court Personnel**

25 Government Code Section 811.9 does not appear to contain any material  
26 made obsolete by trial court restructuring. It should be left as is.

27 **Gov’t Code § 990.2. Authority to Insure Court Officer or Attaché**

28 Government Code Section 990.2 should be amended along the following  
29 lines:

30 **Gov’t Code § 990.2 (amended). Authority to insure court officer or**  
31 **attaché**

1 SEC. \_\_\_\_ . Section 990.2 of the Government Code is amended to  
2 read:

3 990.2. ~~A county~~ The Judicial Council may insure any officer or  
4 attaché of its superior ~~and municipal~~ courts against all or any part  
5 of the officer or attaché's liability for injury resulting from any act  
6 or omission in the scope of the officer or attaché's employment, and  
7 also may insure against the expense of defending any claim against  
8 ~~such~~ the officer or attaché, whether or not liability exists on ~~such~~  
9 that claim.

10 **Comment.** Section 990.2 is amended to reflect:

11 (1) Unification of the municipal and superior courts pursuant to  
12 former Article VI, Section 5(e), of the California Constitution.

13 (2) Enactment of the Trial Court Funding Act. See Section 70003  
14 ("court operations" defined), 77200 (state funding of trial court  
15 operations).

16 (3) Enactment of Section 811.9 (2000 Cal. Stat. ch. 447, § 4.5) and  
17 subsequent legislation clarifying and solidifying the Judicial  
18 Council's role in handling claims against trial courts and trial court  
19 personnel (see 2002 Cal. Stat. ch. 1007 and 2005 Cal. Stat. ch. 706, §  
20 16).

21 The tentative recommendation should include an accompanying Note, which  
22 solicits comments on (1) whether the Judicial Council needs the authority that the  
23 proposed amendment of Section 990.2 would provide, and (2) if not, whether the  
24 section should be repealed instead of amended.

## 25 **Gov't Code § 26524. Representation of Court or Judge by District Attorney**

26 Government Code Section 26524 appears to be obsolete and should be  
27 repealed, as follows:

### 28 **Gov't Code § 26524 (repealed). Representation of court or judge** 29 **by district attorney**

30 SEC. \_\_\_\_ . Section 26524 of the Government Code is repealed.

31 ~~26524. Upon request of any judge of the superior or municipal~~  
32 ~~court, the district attorney shall appear for and represent the court~~  
33 ~~or judge if the court or judge in his or her official capacity is a party~~  
34 ~~defendant in any action.~~

35 **Comment.** Section 26524 is repealed to reflect:

36 (1) Unification of the municipal and superior courts pursuant to  
37 former Article VI, Section 5(e), of the California Constitution.

38 (2) Enactment of Section 811.9 (2000 Cal. Stat. ch. 447, § 4.5) and  
39 subsequent legislation clarifying and solidifying the Judicial  
40 Council's role in handling claims against trial courts and trial court

1 personnel (see 2002 Cal. Stat. ch. 1007 and 2005 Cal. Stat. ch. 706, §  
2 16; see also Sections 810-998.3; Cal. R. Ct. 20.201-10.203).

3 The tentative recommendation should include an accompanying Note, which  
4 points out that Government Code Section 811.9 directs the Judicial Council to  
5 provide for representation or defense “through the county counsel, the Attorney  
6 General, or other counsel.” The Note should solicit comments on whether there  
7 are circumstances under which the Judicial Council might want to provide for  
8 representation or defense through a district attorney, and, if so, whether Section  
9 26524 should be amended to permit such representation upon “request of the  
10 Judicial Council” (instead of upon “request of any judge of the superior or  
11 municipal court”).

12 **Gov’t Code § 26529. County Counsel to Discharge Duties of District Attorney**

13 To reflect the proposed repeal of Government Code Section 26524,  
14 Government Code Section 26529 should be amended as follows:

15 **Gov’t Code § 26529 (amended). County counsel to discharge**  
16 **duties of district attorney**

17 SEC. \_\_\_\_ . Section 26529 of the Government Code is amended to  
18 read:

19 26529. (a) In counties that have a county counsel, the county  
20 counsel shall discharge all the duties vested in the district attorney  
21 by Sections 26520, 26522, 26523, ~~26524~~, and 26526. The county  
22 counsel shall defend or prosecute all civil actions and proceedings  
23 in which the county or any of its officers is concerned or is a party  
24 in ~~his or her~~ the officer’s official capacity. Except where the county  
25 provides other counsel, the county counsel shall defend as  
26 provided in Part 7 (commencing with Section 995) of Division 3.6 of  
27 Title 1 of the Government Code any action or proceeding brought  
28 against an officer, employee, or servant of the county.

29 (b) Notwithstanding any other provision of law, the County  
30 Counsel of the County of Solano may, and when directed by the  
31 board of supervisors of that county shall, bring a civil action when  
32 the county, or any of its officers, has a cause of action to abate a  
33 public nuisance in the county. The County Counsel and the District  
34 Attorney of Solano County have the concurrent right to bring an  
35 action to abate a public nuisance pursuant to this subdivision.

36 **Comment.** Section 26529 is amended to reflect the repeal of  
37 Section 26524, concerning representation of a trial court or trial  
38 court judge by the district attorney.

1 **Gov't Code § 27647. Representation of Court or Judge by County Counsel**

2 Government Code Section 27647 should be amended along the following  
3 lines:

4 **Gov't Code § 27647 (amended). Representation of court or judge**  
5 **by county counsel**

6 SEC. \_\_\_\_ . Section 27647 of the Government Code is amended to  
7 read:

8 27647. (a) If requested to do so by the ~~superior court of the~~  
9 ~~county of the county counsel, or by any judge thereof~~ Judicial  
10 Council when the Government Claims Act (Division 3.6  
11 (commencing with Section 810) of Title 1) applies, or by the local  
12 superior court or any judge thereof when that act does not apply,  
13 and insofar as ~~such~~ these duties are not in conflict with, and do not  
14 interfere with, other duties, the county counsel may represent ~~any~~  
15 ~~such~~ the superior court or a judge thereof in all matters and  
16 questions of law pertaining to any of ~~such~~ the judge's duties,  
17 including any representation authorized by Section 68111 and  
18 representation in all civil actions and proceedings in any court in  
19 which with respect to the court's or judge's official capacity, ~~such~~  
20 the court or judge is concerned or is a party.

21 (b) This section does not apply to any of the following:

22 (1) Any criminal proceedings in which a judge is a defendant.

23 (2) Any grand jury proceedings.

24 (3) Any proceeding before the Commission on Judicial  
25 Qualifications Performance.

26 (4) Any civil action or proceeding arising out of facts under  
27 which the judge was convicted of a criminal offense in a criminal  
28 proceeding.

29 **Comment.** Section 27647 is amended to reflect the enactment of  
30 Section 811.9 (2000 Cal. Stat. ch. 447, § 4.5) and subsequent  
31 legislation clarifying and solidifying the Judicial Council's role in  
32 handling claims against trial courts and trial court personnel (see  
33 2002 Cal. Stat. ch. 1007 and 2005 Cal. Stat. ch. 706, § 16; see also  
34 Sections 810-998.3; Cal. R. Ct. 20.201-10.203).

35 The section is also amended to update an obsolete reference to  
36 the "Commission on Judicial Qualifications," which is now known  
37 as the "Commission on Judicial Performance."



1 **Gov't Code § 27648. Reimbursement Where Judge Is Required to Retain Own**  
2 **Counsel Due to Conflict of Interest**

3 The staff should do further research on Government Code Section 27648, seek  
4 input on it from knowledgeable sources, and report back to the Commission. The  
5 Commission is particularly interested in whether that section applies in any  
6 situations beyond the scope of the Government Claims Act and, if so, what those  
7 situations are.

8 *(Commissioner Jenkins was not present when this decision was made.)*

9 **Preparation of a Tentative Recommendation**

10 The staff should not prepare a separate tentative recommendation on  
11 representation and indemnification of trial courts and trial court personnel, at  
12 least at this time. The proposed revisions relating to that subject might receive  
13 more attention if they are put in a tentative recommendation that is broader in  
14 scope.

15 *(Commissioner Jenkins was not present when this decision was made.)*

16 STUDY L-3032.5 — STOCK COOPERATIVES AND THE  
17 UNIFORM TOD SECURITY REGISTRATION ACT

18 The Commission considered Memorandum 2021-23, which presented a staff  
19 draft of a tentative recommendation. The draft was approved for distribution as  
20 a tentative recommendation, without change.

21 *(Commissioner Jenkins was not present when this decision was made.)*

22 STUDY R-100 — FISH AND GAME LAW

23 The Commission considered Memorandum 2021-20, analyzing public  
24 comment on the Commission's tentative recommendation on *Fish and Wildlife*  
25 *Code* (Dec. 2018).

26 The Commission made the following decisions:

- 27 • The provisions set out under the heading "Changes That Should  
28 Be Made" were provisionally approved for inclusion in a draft  
29 recommendation.
- 30 • The proposed revisions discussed under the heading "Changes  
31 That Should *Not* Be Made" will not be included in a draft  
32 recommendation.
- 33 • The proposed revisions discussed under the heading "Changes  
34 That Should Presumptively Be Made" will be presented again in a

- 1 future memorandum, after providing an adequate opportunity for  
2 public comment.
- 3 • The staff will present cumulative drafts at each meeting where this  
4 study is taken up. Those drafts will provide draft language for all  
5 provisions that have been provisionally approved for inclusion in  
6 a draft recommendation.

APPROVED AS SUBMITTED

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Executive Director