

Admin.

July 7, 2021

Memorandum 2021-30

Minutes of Meeting on June 24, 2021 (Draft)

The California Law Revision Commission held a meeting on June 24, 2021, by teleconference.¹ 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.² 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

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. Gov't Code § 11124.

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DRAFT MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
JUNE 24, 2021

A meeting of the California Law Revision Commission was held on June 24, 2021. Consistent with Executive Order N-08-21, 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
Richard Rubin

Absent: Assembly Member Ed Chau
Senator Richard D. Roth

Staff:

Present: Brian Hebert, Executive Director
Barbara Gaal, Chief Deputy Director
Steve Cohen, Staff Counsel
Alexandra Azad, Summer Law Fellow

Other Persons:

Wendy Bogdan, Department of Fish and Wildlife
Angela Donlan, Department of Fish and Wildlife
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.

CLOSED SESSION

Pursuant to Government Code Section 11126, the Commission met in closed session to discuss a personnel matter. The session was informational only. No action was taken.

MINUTES

The Commission considered Memorandum 2021-24, presenting draft Minutes for the April 22, 2021, meeting. The Commission approved the Minutes, without change.

The Commission also considered Memorandum 2021-29, discussing a mistake in the minutes for the meeting held on November 19, 2020. Those minutes were corrected by replacing “Memorandum 2020-59” with “Memorandum 2020-63” in the following locations:

- Page 4, line 24
- Page 4, line 31
- Page 4, line 41

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ADMINISTRATIVE MATTERS

Report of Executive Director

The Executive Director reported on the following matters:

- Item (7), relating to toxic substances was removed from the agenda for the June meeting.
- The Committee on Revision of the Penal Code is interested in the possibility of holding hybrid in-person/teleconference meetings. The Commission may wish to consider a similar approach.
- Alexandra Azad, a law student at the University of California Davis Law School, is working for the Commission this summer. She is preparing a survey of COVID-response legislation in the various states. Her position is being funded with money donated to the law school by the Commission’s former Executive Director, Nathaniel Sterling. Ms. Azad was introduced and thanked for her work.

In connection with the matters reported by the Executive Director, the Commission made the following decisions:

- The Commission will temporarily table further work on the study of Recodification of Toxic Substances Statutes [Study E-200]. That decision will be revisited when the Commission considers the next memorandum on New Topics and Priorities.
- The Commission intends to follow its existing practice of holding monthly meetings, entirely by teleconference, for the remainder of the year or until the Executive Order authorizing such matters expires.
- The Executive Director should reach out to the State Government Operations Agency to inquire about how long the Executive Order on teleconference meetings will remain in effect. The Executive Director should also share the Commission’s good experience with meetings conducted entirely by teleconference and indicate its support for making the effect of the Executive Order permanent.

2021 LEGISLATIVE PROGRAM

The Commission considered Memorandum 2021-25, discussing the Commission’s 2021 legislative program. No Commission action was required or taken.

The Commission also considered the First Supplement to Memorandum 2021-25, relating to Assembly Bill 473 (Chau) and Assembly Bill 474 (Chau), which would recodify the California Public Records Act and make conforming

1 whether it is necessary to add language regarding jurisdictional classification or
2 appeal path.

3 The Commission decided to adopt the “no review and very limited
4 treatment” approach described at page 9 of the memorandum. In other words,
5 instead of systematically reviewing each of the thousands of statutory references
6 to “superior court,” the Commission will only examine such a reference if it
7 learns that the reference is presenting an actual (not hypothetical) problem
8 relating to jurisdictional classification.

9 Consistent with that approach, the Commission decided not to further
10 examine the hypothetical examples discussed in the staff’s 2002 internal
11 memorandum on this subject, at least at this time.

12 The Commission also considered the proposed amendment of Business and
13 Professions Code Section 6092.5 shown at pages 10-11 of Memorandum 2021-22,
14 and the proposed amendment of Penal Code Section 2620 shown at pages 12-13
15 of that memorandum. Those amendments should be included in the
16 Commission’s next tentative recommendation on trial court restructuring.

17 **Judicial Benefits**

18 The Commission considered Memorandum 2021-28, which discusses how to
19 update statutes relating to judicial benefits to reflect trial court restructuring. For
20 purposes of a tentative recommendation, the Commission made the decisions
21 described below.

22 *(Commissioner Jenkins was not present for any of these decisions.)*

23 *Gov’t Code § 69894.3*

24 Government Code Section 69894.3 does not appear to contain any material
25 made obsolete by trial court restructuring. To clarify its application, the section
26 should be amended along the following lines:

27 69894.3. Employees of the superior court in each county ~~having~~
28 ~~a population of over 2,000,000 of the first class~~ shall be entitled to
29 step advancement, vacation, sick leave,

30 **Comment.** Section 69894.3 is amended to make clear that it only
31 applies to a county of the first class (i.e., Los Angeles County). This
32 is not a substantive change. See Sections 28020, 28022; see also
33 CLRC Staff Memorandum 2021-28, pp. 4-9 & Exhibit pp. 1-8
34 (collecting and discussing legislative history materials).

1 The tentative recommendation should explain that the Commission is
2 proposing this technical revision pursuant to its general authority to “study and
3 recommend revisions to correct technical or minor substantive defects” (Gov’t
4 Code § 8298). The Commission might eventually put this proposed revision in a
5 separate proposal addressing various technical and minor substantive defects,
6 instead of its next report on trial court restructuring.

7 *Gov’t Code § 69894.4*

8 Government Code Section 69894.4 should be amended along the following
9 lines:

10 **§ 69894.4 (amended). Expense allowances**

11 SEC. _____. Section 69894.4 of the Government Code is amended
12 to read:

13 ~~69894.4. All of the employees provided for in Section 69894.1~~
14 ~~and judges of the superior court in each county having a~~
15 ~~population of over 2,000,000 shall be allowed actual traveling and~~
16 ~~necessary expenses incurred while engaged in the duties of their~~
17 ~~office, which shall be the same as allowed to officers and employees~~
18 ~~of such county. Any expenses for travel outside of the county shall~~
19 ~~require the prior approval of the board of supervisors.~~

20 ~~Whenever, In each county of the first class, whenever, because~~
21 ~~of the nature of the duties of any judge or officer of the court, the~~
22 ~~board of supervisors court determines that the best interest of the~~
23 ~~county and the court would be served, it may assign an automobile~~
24 ~~in lieu of allowing travel expenses.~~

25 ~~The salaries provided for in said Section 69894.1 shall be paid by~~
26 ~~the county out of such fund as other salary demands against the~~
27 ~~county are paid. The expenses provided for in this section shall be~~
28 ~~paid in monthly installments out of the general fund. Salaries and~~
29 ~~expenses shall be audited in the same manner as the law requires~~
30 ~~for other demands against the county.~~

31 **Comment.** Section 69894.4 is amended to reflect:

- 32 (1) Enactment of the Trial Court Employment Protection
33 and Governance Act. See Sections 71620 (trial court
34 personnel), 71623 (salaries), 71673 (authority of
35 court).

1 (2) Enactment of Section 69505 (business-related travel
2 expenses of trial court judges and employees).

3 (3) Enactment of the Trial Court Funding Act. See
4 Sections 77001 (local trial court management), 77003
5 (“court operations” defined), 77009 (Trial Court
6 Operations Fund), 77200 (state funding of trial court
7 operations); see also Cal. R. Ct. 810 (further
8 definition of “court operations”).

9 (4) Repeal of former Section 69894.1. See 2002 Cal. Stat.
10 ch. 784, § 310; see also *Statutes Made Obsolete by Trial*
11 *Court Restructuring: Part 1*, 32 Cal. L. Revision
12 Comm’n Reports 1, 279-80 (2002).

13 Section 69894.4 is also amended to make clear that it only
14 applies to a county of the first class (i.e., Los Angeles County). This
15 is not a substantive change. See Sections 28020, 28022; see also
16 CLRC Staff Memorandum 2021-28, pp. 4-9 & Exhibit pp. 1-8
17 (collecting and discussing legislative history materials).

18 *Gov’t Code § 53200.3*

19 The tentative recommendation should not include any proposed amendment
20 of Government Code Section 53200.3. It is unclear when the reference to
21 municipal court judges will become obsolete. Clean-up should be deferred until
22 it is more certain that the reference can be deleted without causing harm to
23 former municipal court judges or their beneficiaries.

24 (*Commissioner Cubas was not present for this decision.*)

25 *Gov’t Code § 53214.5*

26 Government Code Section 53214.5 should be amended along the following
27 lines:

28 **§ 53214.5 (amended). County deferred compensation plans**

29 SEC. _____. Section 53214.5 of the Government Code is amended
30 to read:

31 53214.5. A county or city and county ~~which~~ that pays the
32 salaries, either in whole or in part, of judges of the superior ~~and~~
33 ~~municipal~~ courts and the officers and attachés of those courts may
34 allow the judges, officers, and attachés to participate in any
35 deferred compensation plan established pursuant to this article.

1 Any county or city and county is hereby authorized to enter into a
2 written agreement with the judges, officers, and attachés providing
3 for deferral of a portion of their wages. The judges, officers, and
4 attachés may authorize deductions to be made from their wages for
5 the purpose of participating in the deferred compensation plan.

6 **Comment.** Section 53214.5 is amended to reflect unification of
7 the municipal and superior courts pursuant to former Article VI,
8 Section 5(e) of the California Constitution.

9 The section is also amended to make a grammatical correction.

10 *(Commissioner Cubas was not present for this decision.)*

11 *Sections in JRS or JRS II that Refer to Counties*

12 The tentative recommendation should not propose to revise any of the
13 sections in the Judges' Retirement Law ("JRS") or Judges' Retirement System II
14 ("JRS II") that refer to counties — i.e., Gov't Code §§ 75092, 75097, 75103, 75103.3,
15 75103.5, 75109.7, 75602, 75605, 75612. Those references do not appear to be
16 obsolete due to trial court restructuring.

17 *(Commissioner Cubas was not present for this decision.)*

18 *Sections in JRS or JRS II that Refer to Municipal or Justice Courts or Their Judges*

19 The tentative recommendation should not propose to revise any of the
20 sections in JRS or JRS II that refer to municipal or justice courts or their judges —
21 i.e., Gov't Code §§ 75002, 75029, 75029.1, 75029.5, 75033.5, 75076.2, 75502. It is
22 unclear when those references will become obsolete. Clean-up should be
23 deferred until it is more certain that the references can be deleted without
24 causing harm to former municipal or justice court judges or their beneficiaries.

25 *Next Step*

26 The staff should prepare a draft of a tentative recommendation that combines
27 the Commission's preliminary conclusions relating to judicial benefits with (1) its
28 preliminary conclusions relating to representation and indemnification, (2) the
29 proposed amendment of Business and Professions Code Section 6092.5 shown on
30 pages 10-11 of Memorandum 2021-22, and (3) the proposed amendment of Penal
31 Code Section 2620 shown at pages 12-13 of Memorandum 2021-22.

