

Admin.

September 3, 2021

## Memorandum 2021-41

**Minutes of Meeting on August 26, 2021 (Draft)**

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The California Law Revision Commission held a meeting on August 26, 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  
August 26, 2021

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A meeting of the California Law Revision Commission was held on August 26, 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  
Victor King  
Jane McAllister  
Richard Rubin

*Absent:* Assembly Member Ed Chau  
Cara Jenkins, Legislative Counsel  
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:**

Angela Donlan, Department of Fish and Wildlife  
Jacqueline Wong-Hernandez

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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 2021-30, presenting draft Minutes of the June 24, 2021, meeting. The Commission approved the Minutes without change.

ADMINISTRATIVE MATTERS

**Report of Executive Director**

The Executive Director reported on the following matters:

- The Commission has hired an Office Technician.
- The Executive Director plans to begin reopening the Davis office on September 7, 2021.
- The staff will begin using a formal roll-call voting procedure for all final Commission decisions.

**Use of Teleconferencing**

The Commission considered Memorandum 2021-31 and its First Supplement, discussing the use of teleconferencing to conduct Commission meetings. No Commission decisions were required or made.

1 **Election of Officers**

2 The Commission considered Memorandum 2021-34, discussing the election of  
3 officers. Richard Simpson was elected to serve as Chair; David A. Carrillo will  
4 serve as Vice-Chair. The terms of the new officers will begin on September 1,  
5 2021.

6 Members of the Commission expressed their thanks and admiration to  
7 outgoing Chair Crystal Miller-O'Brien and her predecessor Victor King, who led  
8 the Commission during two very difficult years.

9 2021 LEGISLATIVE PROGRAM

10 The Commission considered Memorandum 2021-35, discussing the  
11 Commission's 2021 legislative program. No Commission action was required or  
12 taken.

13 The Commission also considered the First Supplement to Memorandum  
14 2021-35, relating to Assembly Bill 473 (Chau) and Assembly Bill 474 (Chau),  
15 which would recodify the California Public Records Act and make conforming  
16 revisions throughout the codes. The Commission approved all of the Comment  
17 revisions discussed in that supplement.

18 STUDY G-300 — STATE AND LOCAL AGENCY ACCESS TO CUSTOMER INFORMATION  
19 FROM COMMUNICATION SERVICE PROVIDERS

20 The Commission considered Memorandum 2021-38, discussing a possible  
21 requirement that notice be given to a customer when an administrative subpoena  
22 is served on a communications service provider for the production of the  
23 customer's records.

24 The Commission directed the staff to prepare a draft tentative  
25 recommendation based on the proposed language attached to the memorandum.  
26 In addition, when an agency serves notice of a subpoena on a customer, the  
27 proposed law should require that proof of service be served on the  
28 communications service provider. The staff will examine Code of Civil  
29 Procedure Section 1985.3 as a possible model for that provision.

30 The staff should consider providing advisory information in the notice of  
31 subpoena that would be served on a customer.

32 The staff will confirm whether existing law provides a general prohibition on  
33 communication service provider disclosure of customer communications, barring

1 a statutory exception. If so, that fact will be noted in the draft tentative  
2 recommendation; if not, the staff will bring that information back to the  
3 Commission for further discussion.

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

6 The Commission considered Memorandum 2021-37, relating to  
7 representation and indemnification of trial courts and trial court personnel.

8 For purposes of a tentative recommendation, the Commission made the  
9 decisions described below.

10 **Government Code Section 811.9**

11 Government Code Section 811.9 should be amended along the following  
12 lines:

13 **Gov't Code § 811.9 (amended). Representation, defense, and**  
14 **indemnification of trial courts and trial court personnel**

15 811.9. (a) Notwithstanding any other provision of law, judges,  
16 subordinate judicial officers, and court executive officers of the  
17 superior courts are state officers for purposes of Part 1  
18 (commencing with Section 810) to Part 7 (commencing with Section  
19 995), inclusive, and trial court employees are employees of the trial  
20 court for purposes of Part 1 (commencing with Section 810) to Part  
21 7 (commencing with Section 995), inclusive. The Judicial Council  
22 shall provide for representation, defense, and indemnification of  
23 those individuals and the court pursuant to Part 1 (commencing  
24 with Section 810) to Part 7 (commencing with Section 995),  
25 inclusive. The Judicial Council shall provide for that representation  
26 or defense through the county counsel, the Attorney General, or  
27 other counsel. The county counsel and the Attorney General may,  
28 but are not required to, provide representation or defense for ~~the~~  
29 Judicial Council a trial court, judge, subordinate judicial officer,  
30 court executive officer, or trial court employee if the Judicial  
31 Council requests that assistance to fulfill its duties under this  
32 section. The fact that a justice, judge, subordinate judicial officer,  
33 court executive officer, court employee, the court, the Judicial  
34 Council, or ~~the Administrative Office of the Courts~~ the staff of the  
35 Judicial Council is or was represented or defended by the county  
36 counsel, the Attorney General, or other counsel shall not be the sole

1 basis for a judicial determination of disqualification of a justice,  
2 judge, subordinate judicial officer, the county counsel, the Attorney  
3 General, or other counsel in unrelated actions.

4 (b) To promote the cost-effective, prompt, and fair resolution of  
5 actions, proceedings, and claims affecting the trial courts, the  
6 Judicial Council shall adopt rules of court requiring ~~the~~  
7 ~~Administrative Office of the Courts~~ its staff to manage actions,  
8 proceedings, and claims that affect the trial courts and involve  
9 superior courts, superior court judges, subordinate judicial officers,  
10 court executive officers, or trial court employees in consultation  
11 with the affected courts and individuals. The ~~Administrative Office~~  
12 ~~of the Courts'~~ staff's management of these actions, proceedings,  
13 and claims shall include, but not be limited to, case management  
14 and administrative responsibilities such as selection of counsel and  
15 making strategic and settlement decisions.

16 (c) Nothing in this section shall be construed to affect the  
17 employment status of subordinate judicial officers, court executive  
18 officers, and trial court employees related to any matters not  
19 covered by subdivision (a).

20 **Comment.** Section 811.9 is amended for purposes of  
21 clarification. This is not a substantive change.

22 The section is also amended to update the references to the  
23 Administrative Office of the Courts. The Judicial Council no longer  
24 uses that name to refer to its staff. See Cal. R. Ct. 10.81 & Advisory  
25 Committee Comment.

## 26 **Government Code Section 27647**

27 Government Code Section 27647 should be amended along the following  
28 lines:

### 29 **Gov't Code § 27647 (amended). Representation of court or judge** 30 **by county counsel**

31 SEC. \_\_\_\_ . Section 27647 of the Government Code is amended to  
32 read:

33 27647. (a) If requested to do so by the ~~superior court of the~~  
34 ~~county of the county counsel, or by any judge thereof~~ Judicial  
35 Council, and insofar as ~~such~~ these duties are not in conflict with,  
36 and do not interfere with, other duties, the county counsel may  
37 represent ~~any such~~ the superior court or a judge thereof in all  
38 matters and questions of law pertaining to any of ~~such~~ the judge's

1 duties, including any representation authorized by Section 68111  
2 and representation in all civil actions and proceedings in any court  
3 in which with respect to the court's or judge's official capacity, ~~such~~  
4 the court or judge is concerned or is a party.

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

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

7 (2) Any grand jury proceedings.

8 (3) Any proceeding before the Commission on Judicial  
9 Qualifications Performance.

10 (4) Any civil action or proceeding arising out of facts under  
11 which the judge was convicted of a criminal offense in a criminal  
12 proceeding.

13 **Comment.** Section 27647 is amended to reflect the enactment of  
14 Section 811.9 (2000 Cal. Stat. ch. 447, § 4.5) and subsequent  
15 legislation clarifying and solidifying the Judicial Council's role in  
16 handling claims against trial courts and trial court personnel (see  
17 2002 Cal. Stat. ch. 1007 and 2005 Cal. Stat. ch. 706, § 16; see also  
18 Sections 810-998.3; Cal. R. Ct. 20.201-10.203).

19 The section is also amended to update an obsolete reference to  
20 the "Commission on Judicial Qualifications," which is now known  
21 as the "Commission on Judicial Performance."

## 22 **Government Code Section 27648**

23 Government Code Section 27648 should be repealed, as follows:

24 **Gov't Code § 27648 (repealed). Reimbursement where judge is**  
25 **required to retain own counsel due to conflict of interest**

26 ~~27648. If, because of a declared conflict of interest, any judge,~~  
27 ~~who is otherwise entitled to representation pursuant to Section 825,~~  
28 ~~995, or 27647, is required to retain his own counsel, such judge is~~  
29 ~~entitled to recover from the appropriate public entity such~~  
30 ~~reasonable attorney's fees, costs, and expenses as were necessarily~~  
31 ~~incurred thereby.~~

32 **Comment.** Section 27648 is repealed to reflect:

33 (1) Enactment of the Lockyer-Isenberg Trial Court Funding Act,  
34 1997 Cal. Stat. ch. 850 (see generally Sections 77000-77655).

35 (2) Enactment of the Trial Court Employment Protection and  
36 Governance Act ("TCEPGA"), 2000 Cal. Stat. ch. 1010 (see generally  
37 Sections 71600-71675).



1 (3) Enactment of three bills adjusting the Government Claims  
2 Act (Sections 810-998.3) to reflect enactment of the Trial Court  
3 Funding Act and the TCEPGA: 2000 Cal. Stat. ch. 447, § 4.5; 2002  
4 Cal. Stat. ch. 1007; and 2005 Cal. Stat. ch. 706, §§ 16-17, 19, 39. Those  
5 bills made the Judicial Council responsible for providing  
6 representation, in accordance with the Government Claims Act, for  
7 trial courts and trial court personnel in matters relating to their  
8 work. For the provision in the Government Claims Act governing  
9 reimbursement of a public employee’s attorney’s fees, costs, and  
10 expenses, see Section 996.4. See also Section 811.9 (defining Judicial  
11 Council’s role and scope of responsibility “[n]otwithstanding any  
12 other provision of law).

13 **Government Code Section 68111**

14 Government Code Section 68111 should be amended along the following  
15 lines:

16 **Gov’t Code § 68111 (amended). Representation of judge**  
17 **appearing as witness in official capacity**

18 68111. (a) Whenever any judge of any court of this state is a  
19 witness in ~~his~~ official capacity as judge in any action or proceeding,  
20 ~~such~~ the judge shall be entitled to be represented at ~~such~~ the action  
21 or proceeding by counsel of ~~his~~ the judge’s choice, at the judge’s  
22 own expense.

23 (b) Representation of a judge at public expense is governed by  
24 the Government Claims Act (Division 3.6 (commencing with  
25 Section 810) of Title 1), including, but not limited to, Section 995.9.

26 **Comment.** Section 68111 is amended for purposes of  
27 clarification. This is not a substantive change. See 62  
28 Ops.Cal.Atty.Gen. 611 (1979) (Section 68111 “does not provide ...  
29 for the expenditure of public funds for the expense of counsel  
30 retained by the judge.”); see also Section 811.9 (establishing system  
31 under which Judicial Council is responsible for handling claims  
32 affecting trial courts and trial court personnel, which applies  
33 “[n]otwithstanding any other provision of law) and Section 995.9  
34 (stating rules for defense and indemnification of witness who  
35 testifies on behalf of public entity, which apply “[n]otwithstanding  
36 any other provision of law”).

1                                    STUDY R-100 — FISH AND GAME LAW

2            The Commission considered Memorandum 2021-39 and its First Supplement,  
3 and Memorandum 2021-40.

4            The Commission approved the staff recommendations made in  
5 Memorandum 2021-39, after incorporating the following revisions:

- 6            • In the proposed revision of Fish and Game Code Section 8037 on  
7 page 10 of the memorandum, the subdivision (a) designation was  
8 restored.
- 9            • The staff recommendation under the heading “Proposed Section  
10 22800 (Existing Section 7710)” on page 14 of the memorandum was  
11 revised to replace an erroneous reference to Section 7720 with a  
12 reference to Section 7710.

13           The Commission approved the staff recommendations made in the First  
14 Supplement to Memorandum 2021-39, after incorporating the following  
15 revisions:

- 16           • In the proposed revision of Fish and Game Code Section 15700 on  
17 page 2 of the supplement, the underlined text “Department of  
18 Health Services” was revised to read “State Department of Public  
19 Health.”
- 20           • The proposed revision of Fish and Game Code Section 4304 on  
21 pages 7-8 of the supplement was temporarily withdrawn from  
22 Commission consideration and will be presented to the  
23 Commission at a later time.

24           No Commission action was required or taken relating to Memorandum 2021-  
25 40.

26                                    STUDY X-100 — EMERGENCY-RELATED REFORMS

27           The Commission considered Memorandum 2021-36, presenting a “Survey of  
28 COVID-Related Legislation.”

29           The Commission directed that these Minutes express gratitude to Alexandra  
30 Azad for her hard work and dedication in the preparation of the report attached  
31 to Memorandum 2021-36.

APPROVED AS SUBMITTED

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Chairperson

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