MINUTES OF MEETING CALIFORNIA LAW REVISION COMMISSION AUGUST 2, 2013 LOS ANGELES

A meeting of the California Law Revision Commission was held in Los Angeles on August 2, 2013.

Commission:

Present:	Xochitl Carrion, Chairperson Damian Capozzola, Vice-Chairperson Diane Boyer-Vine, Legislative Counsel Taras Kihiczak Victor King Susan Duncan Lee Crystal Miller-O'Brien
Absent:	Judge Patricia Cowett (ret.) Assembly Member Roger Dickinson Senator Ted Lieu
Staff:	Brian Hebert, Executive Director Barbara Gaal, Chief Deputy Counsel Kristin Burford, Staff Counsel
Consultants:	None

Other Persons:

John Andrusko John P. Chamberlain Suzanne V. Chamberlain Esther Epstein Jeff Kichaven Jayne Lee, State Bar Trusts and Estates Section, Executive Committee Elizabeth Moreno Deborah Blair Porter

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Minutes of June 13, 2013, Commission Meeting

The Commission approved the Minutes of the June 13, 2013, Commission meeting as submitted by the staff.

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Administrative Matters

5 **Report of Executive Director**

6 The Executive Director reported on the following matter:

Stanford Law School is launching a new program, the "Stanford Law & Public Policy Initiative." The purpose of the program is to provide faculty-supervised student-drafted policy reports to entities that would benefit from the input. Commission staff met with Professors Paul Brest and Michael Asimow to discuss the prospect of the program providing input on Commission studies.

13 Election of Officers

The Commission considered Memorandum 2013-29, relating to the election of Commission officers. The Commission elected Damian Capozzola as Chairperson and Victor King as Vice Chairperson, for terms commencing September 1, 2013, and ending August 31, 2014.

18 LEGISLATIVE PROGRAM
 19 The Commission considered Memorandum 2013-34 and its First Supplement,

20 reporting on the Commission's 2013 legislative program. The Commission made

- 21 the following decisions:
- The Commission approved for publication all of the Comment revisions set out in the First Supplement.

The Commission assented to the proposed amendments to Senate
 Bill 752 (Roth) that are discussed on pages 10-15 of the First
 Supplement.

4 STUDY H-855 — STATUTORY CLARIFICATION AND SIMPLIFICATION OF CID LAW

The Commission considered Memorandum 2013-42, presenting a revised draft of the Commission's recommendation on *Statutory Clarification and Simplification of CID Law (Further Clean-Up Legislation)*. The Commission approved the draft as its final recommendation.

9 STUDY K-402 — RELATIONSHIP BETWEEN MEDIATION CONFIDENTIALITY AND 10 ATTORNEY MALPRACTICE AND OTHER MISCONDUCT

11 The Commission considered Memorandum 2013-39 and its First and Second 12 Supplements, addressing the relationship between mediation confidentiality and 13 attorney malpractice and other misconduct. The Commission made the following 14 decisions:

- The Commission will not define the precise scope of its study at • 15 this time. Comments on the proper scope of the study would be 16 helpful. The staff should begin by focusing on attorney 17 malpractice and other attorney misconduct, which is clearly within 18 the scope intended by the Legislature in Assembly Concurrent 19 Resolution 98 (Wagner & Gorell), 2012 Cal. Stat. res. ch. 108. The 20 Commission may adjust the scope of the study as the study 21 proceeds. 22
- The Commission expressed skepticism about the existence of true, 23 • scientifically-controlled data on matters such as how much 24 attorney misconduct goes unpunished due to mediation 25 confidentiality requirements and how a particular mediation 26 confidentiality rule affects the use of mediation, the frankness of 27 mediation communications, and settlement rates. To avoid 28 conveying an unwarranted aura of authority, the Commission 29 decided to use the term "information" rather than "data" to refer 30 to pertinent statistics, views, and anecdotes. The Commission 31 encourages interested persons to bring such information to its 32 attention. The Commission will not delay its study to engage in, or 33 await the results of, a systematic data gathering effort. 34
 - The Commission will not select an expert adviser for this study.

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The staff's next memo will be a preliminary analysis of relevant
 policy interests relating to the intersection of mediation
 confidentiality and attorney misconduct. The memo will focus on
 identifying and discussing relevant considerations. The staff will

1 2	not attempt to weigh competing interests or recommend any particular approach.
2	puricular approach.
3	Study L-750 — Uniform Adult Guardianship and
4	PROTECTIVE PROCEEDINGS JURISDICTION ACT
5	The Commission considered Memorandum 2013-40, discussing changes that
6	other jurisdictions have made to Articles 1 and 2 of the Uniform Adult
7	Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA). (Future
8	memoranda will discuss changes made to the other articles of UAGPPJA.)
9	The Commission directed the staff to prepare further analysis of the following
10	changes made to UAGPPJA in other jurisdictions:
11	• The change to Section 103 made in Maryland, which requires
12	courts to make a determination that a foreign country offer
13	substantive due process protections before treating that country as
14	a state under certain UAGPPJA provisions (as discussed on pages
15	8-9 of the memorandum). The staff's analysis of that change will
16	discuss the extent to which the issue has been addressed in other
17	uniform acts enacted in California.
18	• The change to Section 206 made in Idaho, which expands one of
19	the factors that a court must consider when determining whether it
20	is an appropriate forum. Specifically, Idaho modifies the factor
21	related to abuse, neglect, and exploitation to include situations
22	where there is <i>a reason to suspect</i> that abuse, neglect, or exploitation
23	has occurred (as discussed on page 23 of the memorandum).
24	• The change to Section 207 made in Connecticut, which adds
25	medical examination expenses to the list of expenses that courts
26	are authorized to assess against a party that invoked the court's
27	jurisdiction through unjustifiable conduct (as discussed on page 24 of the memorandum).
28	
29	• The change to Section 208 made in Ohio, which clarifies who is
30	responsible for providing notice to persons entitled to notice in the
31 32	respondent's home state (as discussed on page 26 of the memorandum).
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33	The analysis described above will be presented when the Commission
34	considers public comments on the tentative recommendation on Uniform Adult
25	Cuardianchin and Protectize Proceedings Invicticition Act

35 *Guardianship and Protective Proceedings Jurisdiction Act.*

Study R-100 — Fish and Game Law

2 The Commission considered Memorandum 2013-35, Memorandum 2013-36,

3 Memorandum 2013-37 and its First Supplement, and Memorandum 2013-38.

4 Those memoranda discuss the Commission's study of fish and game law.

5 **Revisions to Proposed Division 2 (Administration)**

6 The Commission considered Memorandum 2013-35 and made the following 7 decisions:

- The Commission approved the draft revisions to proposed Fish and Wildlife Code Sections 50, 560, 1255, and 1310 (and their Comments), set out on pages 1, 2, and 4 of the memorandum.
- The Commission approved the draft revisions to proposed Fish
 and Wildlife Code Sections 1700-1895 (and their Comments),
 attached to the memorandum.
- The staff will not draft language to revise proposed Fish and
 Wildlife Code Section 575 until after the Commission receives
 input from the Fish and Game Commission on whether to
 preserve the distinction between "Article 1 Rulemaking" and all
 other rulemaking.

19 Finance

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20 The Commission considered Memorandum 2013-36 and made the following 21 decisions:

- The finance provisions of the proposed Fish and Wildlife Code
 should be organized as the staff recommended. General code-wide
 provisions should be consolidated in one location. Program specific provisions should be distributed throughout the code,
 near the programs to which they relate.
- The Legislative Counsel's office will inform the staff of the results of its research into the effect of Proposition 26 (2010) on any recodified fee provisions.

The Commission expressed its appreciation of William Stanger, a third-year student at U.C. Davis School of Law, for his assistance in the preparation of Memorandum 2013-36.

33 Law Enforcement

The Commission considered Memorandum 2013-37 and approved the attached draft. The Commission reaffirmed its prior decision that offense-specific penalty provisions should be distributed throughout the proposed Fish and

- 1 Wildlife Code, near the provisions to which they relate. See Minutes (June 2013)
- 2 p. 16.

3 Inter-Jurisdictional Compacts

4 The Commission considered Memorandum 2013-38 and approved the 5 attached draft.

Date

APPROVED AS SUBMITTED

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

Executive Director