APPROVED MINUTES OF MEETING CALIFORNIA LAW REVISION COMMISSION

AUGUST 7, 2015

LOS ANGELES

A meeting of the California Law Revision Commission was held in Los Angeles on August 7, 2015.

Commission:

Present: Victor King, Chairperson

Crystal Miller-O'Brien, Vice Chairperson Diane F. Boyer-Vine, Legislative Counsel

Assembly Member Ed Chau

Taras Kihiczak Susan Duncan Lee

Senator Richard D. Roth

Absent: Damian Capozzola

Judge Patricia Cowett (Ret.)

Staff: Brian Hebert, Executive Director (by teleconference)

Barbara Gaal, Chief Deputy Counsel

Kristin Burford, Staff Counsel Steve Cohen, Staff Counsel

Consultants: None

Other Persons:

Patrick J. Evans Bonnie Harris Christine Harwell Ron Kelly Jeff Kichaven John Lake

Deborah Blair Porter

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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 in connection with the affected decision.
Minutes of June 4, 2015, Commission Meeting
Memorandum 2015-21 presented a draft of the Minutes of the June 4, 2015, Commission meeting. The Commission approved the Minutes, without change. (Commissioners Chau and Kihiczak were not present when this decision was made.)
Administrative Matters
Report of Executive Director
The Executive Director reported that law student assistants will be assigned
<u>-</u>
various kinds of minor reform projects.
Meeting Schedule

The Commission considered Memorandum 2015-25, discussing the

Commission's meeting schedule. The Commission approved the schedule

- 1 proposed in that memorandum. (Commissioners Chau and Kihiczak were not present
- 2 when this decision was made.)

Election of Officers

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- 4 The Commission postponed consideration of Memorandum 2015-26,
- 5 discussing the election of officers. That memorandum will be presented at the
- 6 October 2015 meeting. The existing officers will continue to serve at the
- beginning of that meeting, until new officers are elected. (Commissioners Chau and
- 8 Kihiczak were not present when this decision was made.)

9 2015 Legislative Program

- The Commission considered Memorandum 2015-27 and its First Supplement, reporting on the Commission's 2015 legislative program.
- Regarding Assembly Bill 139 (Gatto), the Commission assented to the amendments described in Memorandum 2015-27 and approved the Comment revisions attached to the memorandum.
- Regarding Assembly Bill 1527 (Committee on Water, Parks, and Wildlife), the Commission approved the Comment revision set out in the First Supplement to
- 17 Memorandum 2015-27.
- (Commissioner Kihiczak was not present when those decisions were made.)
- 19 STUDY D-1200 RECOGNITION OF TRIBAL AND FOREIGN COURT MONEY JUDGMENTS
- The Commission considered Memorandum 2015-28, discussing adjustments
- 21 that other states have made in their enactments of the 2005 Uniform Foreign-
- 22 Country Money Judgments Recognition Act and the 1962 Uniform Foreign
- 23 Money-Judgments Recognition Act.
- No Commission action was required or taken.
- 25 STUDY G-300 STATE AND LOCAL AGENCY ACCESS TO CUSTOMER INFORMATION
- 26 FROM COMMUNICATION SERVICE PROVIDERS
- 27 The Commission considered Memorandum 2015-31, discussing public
- comment and providing a draft of a final report on Constitutional and Statutory
- 29 Requirements. The Commission approved the draft as its final report, with the
- 30 revisions recommended by the staff.

STUDY G-301 — GOVERNMENT INTERRUPTION OF COMMUNICATION SERVICE

The Commission considered Memorandum 2015-32, discussing government interruption of area communications to protect public safety, for a purpose that is not directly related to free expression.

The Commission made the following decisions:

- It should be made clear that state and local government may interrupt communications to protect public "welfare," which can include the protection of property.
- No substantive change should be made to the "extreme emergency" provisions of Public Utilities Code Section 7908.
- It should be made clear that Public Utilities Code Section 7908 is not intended to preclude any existing remedy for an injury that results from government interruption of communications under that section. In preparing draft language, the staff should exercise discretion as to phrasing and whether the clarifying language is included in a statute or a Commission Comment.
- The staff should consult with the office of the Homeland Security Advisor on whether Public Utilities Code Section 7908 should be revised to better coordinate with the federal Emergency Wireless Protocol.
- State and local officials should have discretion to decide whether the benefit of interrupting communications outweighs any harm that could result from disrupting emergency communications.

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

The Commission considered Memorandum 2015-33 (compilation of possible approaches), Memorandum 2015-34 (scope of study), Memorandum 2015-35 (scholarly commentary), and Memorandum 2015-36 (public comment) and its First Supplement. The staff distributed a 2-page chart that summarizes the longer chart attached to Memorandum 2015-33. The Commission received written materials from Bonnie Harris and Deborah Blair Porter.

(Commissioner Chau was not present for the discussion of this topic. Commissioner Boyer-Vine was only present at the beginning of the discussion. She was not present for any of the decisions.)

The Commission made the following decisions:

General Concept

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The Commission directed the staff to begin the process of preparing a draft of a tentative recommendation that would propose an exception to the mediation confidentiality statutes (Evid. Code §§ 1115-1128) to address "attorney malpractice and other misconduct." (Commissioner King voted against this decision.)

6 Types of Misconduct to Cover

- The proposed new exception should apply to alleged misconduct of an attorney or an attorney-mediator.
- The proposed new exception should only apply to alleged misconduct in a professional capacity.
- The proposed new exception should apply regardless of whether the alleged misconduct occurred during a mediation.

Types of Proceedings in Which the Exception Would Apply

- The proposed new exception should apply in the following types of proceedings:
 - (1) A disciplinary proceeding against an attorney for alleged misconduct while acting as an attorney.
 - (2) A disciplinary proceeding against an attorney for alleged misconduct while acting as an attorney-mediator.
 - (3) A malpractice case against an attorney for conduct in the role of an attorney.
 - (4) A malpractice case against an attorney for conduct in the role of attorney-mediator.
- 24 (Commissioner Miller-O'Brien abstained from this decision.)

25 Purpose for Invoking the Exception

The proposed new exception should apply evenhandedly, permitting use of mediation evidence to prove or disprove a claim.

In Camera Screening Process

- The proposed new exception should utilize an in camera screening process.
- 30 The Commission discussed but did not resolve whether an in camera hearing
- 31 should be mandatory whenever a person invokes the exception. The
- 32 Commission did not discuss or resolve any other details regarding the nature of
- 33 the in camera screening process.

1 Limitation on Extent of Disclosure of Mediation Communications

- 2 The proposed new exception should only permit disclosure of mediation
- 3 evidence that is relevant to the malpractice case or disciplinary proceeding in
- 4 which it is sought or proffered.

5 Code Placement

- The proposed new exception should be placed in the Evidence Code.
- 7 (Commissioner Lee abstained from this decision.)

8 Further Details

- The Commission discussed but did not resolve whether the proposed new exception should apply while the underlying mediated dispute is still pending.
 - The staff mentioned the issue, but the Commission did not discuss or resolve whether there should be any special rule relating to mediator testimony.
 - The Commission will consider those and other details at a future meeting.

STUDY M-301 — DEADLY WEAPONS: MINOR CLEAN-UP ISSUES

- The Commission considered Memorandum 2015-37 discussing minor cleanup of various Penal Code provisions relating to deadly weapons.
- The Commission approved the preparation of a tentative recommendation that will include all of the reforms described in the memorandum. In preparing the tentative recommendation, the staff will do both of the following:
 - Look more closely at the distinction between "family violence" and "domestic violence."
 - Adjust the proposed revision to Penal Code Section 18255 to request a *residential* address.

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1	STUDY R-100 — FISH AND GAME LAW
2	The Commission considered Memorandum 2015-30, presenting a draft of
3	sport fishing provisions. The Commission provisionally approved the draft for
4	inclusion in a draft tentative recommendation.
	☐ APPROVED AS SUBMITTED Date
	APPROVED AS CORRECTED (for corrections, see Minutes of next meeting)
	Executive Director