### APPROVED MINUTES OF MEETING

# CALIFORNIA LAW REVISION COMMISSION

# **DECEMBER 10, 2015**

### LOS ANGELES

A meeting of the California Law Revision Commission was held in Los Angeles on December 10, 2015.

### **Commission:**

Present: Taras Kihiczak, Chairperson

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

Damian Capozzola Thomas Hallinan Victor King

Susan Duncan Lee Jane McAllister

Absent: Assembly Member Ed Chau

Senator Richard D. Roth

**Staff:** Brian Hebert, Executive Director

Barbara Gaal, Chief Deputy Counsel

Kristin Burford, Staff Counsel Steve Cohen, Staff Counsel

**Consultants:** None

#### **Other Persons:**

Maurice J. Attie

Mark B. Baer

Leon Bennett, LACFLA

Lee Blackman

Susan Viau Chamberlain

Hon. Keith M. Clemens (ret.)

Robert Flack

Wendy Forrester, Southern California Mediation Association

Jami Fosgate, Fosgate Family Law

Frederick J. Glassman, LACFLA, Collaborative Practice California (CP Cal)

Jeffery S. Jacobson

Michelle (Mickey) Katz, LACFLA/LACSCDP

Janet Kaplan

Ron Kelly

Jeff Kichaven

John Adam Lazor

Kelly Cohen-Leider, Jill Cohen Mediation

Mark Lewis

Dvorah Markman, FLAMES - Mediation Study Group

Janet Martinez, Stanford Law School

Judith Nesburn, LACFLA, LAWCDP, FLAMES

Cari M. Pines

Phyllis G. Pollock

Joan Patsy Ostroy, LACFLA, State Bar Family Law Section, Consensual Dispute Resolution

Kelly Chang Rickert

Delilah Knox Rios

Lynette Berg Robe

Karen Rosin

Warren Sacks

Fern Topas Salka, LACFLA, FLAMES

Ana Sambold, San Diego County Bar Association and National Conflict Resolution Center

Joe Spirito

Hon. Gretchen Taylor (ret.)

Heidi S. Tuffias, LAWCDP

Barry Vaughan, Inland Valley Arbitration and Mediation Services (IVAMS)

Karinya Verghese

Darlene Wanger

Jennifer Winestone

Marvin Whistler

Bonnie Yaeger, State Bar Family Law Section, Consensual Dispute Resolution

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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 OCTOBER 8, 2015, COMMISSION MEETING

Memorandum 2015-39 and its First Supplement presented a draft of the Minutes of the October 8, 2015, Commission meeting. The Commission approved the Minutes, with the revision set out in the First Supplement. (Commissioner Miller-O'Brien was not present when this decision was made.)

### ADMINISTRATIVE MATTERS

# Report of Executive Director

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The Executive Director had no administrative matters to report.

# New Topics and Priorities

The Commission considered Memorandum 2014-41 and its First and Second Supplements, presenting the status of the Commission's current program of work, the new topics suggestions received in 2015, and discussing work priorities for 2016. The Commission made the following decisions:

- The Commission accepted the staff recommendations made in Memorandum 2015-47 and its supplements, including a recommendation to adopt the priority scheme summarized on pages 33-36 of the memorandum.
- The staff will continue including a "Projected Completion of Active Studies" chart in future New Topics and Priorities memoranda.
- Future meeting agendas will include an opportunity for Commissioners to suggest new topics of study.
- 29 (Commissioner Miller-O'Brien was not present when these decisions were made.)

# **Annual Report**

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- The Commission considered Memorandum 2015-48, presenting a draft of the
- 3 2015-2016 Annual Report. The Commission approved the report for publication
- 4 and distribution to the Legislature and the Governor, without change.
- 5 (Commissioner Miller-O'Brien was not present when this decision was made.)

# 6 Meeting Schedule

- 7 The Commission changed the location of its February 4, 2016, meeting to
- 8 Sacramento. At the February meeting, the Commission will consider a possible
- 9 change to the date of its April 1, 2016, meeting.
- 10 STUDY D-1200 RECOGNITION OF TRIBAL AND FOREIGN COURT MONEY JUDGMENTS
- The Commission considered Memorandum 2015-50, discussing the standards
- 12 for recognition of foreign and tribal court defamation judgments.
- With respect to foreign court defamation judgments, the Commission decided
- to incorporate the standards of the federal SPEECH Act (28 U.S.C. §§ 4101-4105)
- into California law by reference. (Commissioner Boyer-Vine abstained from this
- 16 decision.)
- 17 With respect to tribal court defamation judgments, the staff will conduct
- 18 further review into whether the SPEECH Act governs these judgments. If the
- 19 SPEECH Act does not govern these judgments, the Commission directed the staff
- 20 to leave the current provisions on recognition of a tribal court defamation
- 21 judgment unchanged. If the SPEECH Act governs tribal court judgments, the
- 22 Commission directed the staff to incorporate the federal SPEECH Act standards
- for tribal court judgments into California law. (Commissioner Boyer-Vine abstained
- 24 from these decisions.)
- The staff will conduct further research into the Legislative intent with respect
- to the grounds for declaratory relief under Code of Civil Procedure Section
- 27 1717(c).
- 28 STUDY G-300 STATE AND LOCAL AGENCY ACCESS TO CUSTOMER INFORMATION
- 29 FROM COMMUNICATION SERVICE PROVIDERS
- The Commission considered Memorandum 2015-51, discussing relevant 2015
- legislation and possible next steps in the study. The Commission decided to table

- the study for a year, turning back to the related study of Government 1
- Interruption of Communication Services. 2

#### STUDY K-402 — RELATIONSHIP BETWEEN MEDIATION CONFIDENTIALITY AND 3

#### ATTORNEY MALPRACTICE AND OTHER MISCONDUCT 4

The Commission considered Memorandum 2015-54 and its First and Second 5

- Supplements (public comment) and Memorandum 2015-55 and its First 6
- Supplement (in camera screening process). The Commission also considered the 7
- three documents attached to the Third Supplement to Memorandum 2015-54, 8
- which were submitted during the meeting. The Commission heard testimony
- from numerous speakers, almost all of whom expressed concern about 10
- weakening the existing protections for mediation communications. No 11
- Commission action was required or taken. 12

### STUDY L-3032 — REVOCABLE TRANSFER ON DEATH DEED

The Commission considered Memorandum 2015-53, discussing a new study of the efficacy of the revocable transfer on death deed that was authorized by AB

16 139 (Gatto) (2015 Cal. Stat. ch. 293).

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With one change, the Commission approved the study approach 17 recommended in the memorandum — in addition to the methods recommended 18

- in the memorandum, the staff should contact the Uniform Law Commission to
- 19
- 20 request their assistance in gathering information about the operation of the
- Uniform Real Property Transfer on Death Act. 21

#### STUDY M-301 — DEADLY WEAPONS: MINOR CLEAN-UP ISSUES 22

The Commission considered Memorandum 2015-49, presenting a draft 23

recommendation proposing minor clean-up of various Penal Code provisions 24

relating to deadly weapons. 25

The Commission approved the draft as a final recommendation for 26 publication and distribution to the Legislature and the Governor. 27

### STUDY R-100 — FISH AND GAME LAW

29 The Commission considered Memorandum 2015-52 and its First Supplement, presenting a draft of gill and trammel net provisions. With respect to those 30

- 1 provisions, the Commission decided to follow the conservative drafting
- 2 approach described on page 4 of Memorandum 2015-52. The Commission
- 3 provisionally approved the draft attached to the memorandum, with the
- 4 following exceptions:

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- Comment language stating that a section "has been continued without change, except to update cross-references," will be revised to make clear that the only changes made to cross-references are those required to reflect the renumbering of provisions as a result of recodification.
- The draft will be revised to correct an apparent error in the application of Fish and Game Code Section 8610.2(b) to a cross-reference in Fish and Game Code Section 8610.13. That issue is described on page 6 of Memorandum 2015-52.

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