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

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.

(Commissioner Miller-O’Brien was not present when these decisions were made.)
Annual Report

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

Meeting Schedule

The Commission changed the location of its February 4, 2016, meeting to Sacramento. At the February meeting, the Commission will consider a possible change to the date of its April 1, 2016, meeting.

STUDY D-1200 — RECOGNITION OF TRIBAL AND FOREIGN COURT MONEY JUDGMENTS

The Commission considered Memorandum 2015-50, discussing the standards 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 decision.*)

With respect to tribal court defamation judgments, the staff will conduct further review into whether the SPEECH Act governs these judgments. If the SPEECH Act does not govern these judgments, the Commission directed the staff to leave the current provisions on recognition of a tribal court defamation judgment unchanged. If the SPEECH Act governs tribal court judgments, the Commission directed the staff to incorporate the federal SPEECH Act standards for tribal court judgments into California law. (*Commissioner Boyer-Vine abstained 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 1717(c).

STUDY G-300 — STATE AND LOCAL AGENCY ACCESS TO CUSTOMER INFORMATION 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 Interruption of Communication Services.

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

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

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

With one change, the Commission approved the study approach recommended in the memorandum — in addition to the methods recommended in the memorandum, the staff should contact the Uniform Law Commission to request their assistance in gathering information about the operation of the Uniform Real Property Transfer on Death Act.

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

The Commission considered Memorandum 2015-49, presenting a draft recommendation proposing minor clean-up of various Penal Code provisions relating to deadly weapons.

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

**STUDY R-100 — FISH AND GAME LAW**

The Commission considered Memorandum 2015-52 and its First Supplement, presenting a draft of gill and trammel net provisions. With respect to those
provisions, the Commission decided to follow the conservative drafting approach described on page 4 of Memorandum 2015-52. The Commission provisionally approved the draft attached to the memorandum, with the following exceptions:

- 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.