A meeting of the California Law Revision Commission was held in Sacramento on June 1, 2016.

**Commission:**

*Present:* Taras Kihiczak, Chairperson  
Diane F. Boyer-Vine, Legislative Counsel  
Thomas Hallinan  
Victor King  
Susan Duncan Lee

*Absent:* Assembly Member Ed Chau  
Senator Richard D. Roth  
Damian Capozzola  
Jane McAllister  
Crystal Miller-O’Brien, Vice Chairperson

**Staff:** Brian Hebert, Executive Director  
Barbara Gaal, Chief Deputy Counsel  
Kristin Burford, Staff Counsel  
Steve Cohen, Staff Counsel

**Other Persons:**

Allison Andersen, Community Associations Institute, California Legislative Action Committee  
Prof. William Dodge, U.C. Davis School of Law  
Lawrence Doyle, Conference of California Bar Associations  
Rachel Ehrlich, Ehrlich Mediation  
Robert Flack  
Ron Kelly  
Jeff Kichaven  
Phyllis G. Pollack, PGP Mediation  
Harold Thomas, Butte County District Attorney’s Office  
John S. Warnlof, California Dispute Resolution Council  
Michel Wigney  
Dena Wilson, California Office of Emergency Services
C O N T E N T S

Approval of Actions Taken................................................................. 2
Minutes of April 14, 2016, Commission Meeting ........................................ 2
Administrative Matters ........................................................................... 2
  Report of Executive Director ........................................................................ 2
  Commissioner Suggestions .......................................................................... 2
2016 Legislative Program............................................................................. 3
Study D-1200 — Recognition of Tribal and Foreign Court Money Judgments 3
Study G-301 — Government Interruption of Communication Services .......... 3
Study H-859 — Common Interest Developments: Mechanics Liens and Common Area 4
Study K-402 — Relationship Between Mediation Confidentiality and Attorney Malpractice and Other Misconduct ............... 4
Study R-100 — Fish and Game Law ............................................................. 6

A P P R O V A L O F A C T I O N S T A K E N

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.

(Commissioner Boyer-Vine was not present for the discussion of Studies G-301, H-859, K-402, or R-100.)

M I N U T E S O F A P R I L 1 4 , 2 0 1 6 , C O M M I S S I O N M E E T I N G

Memorandum 2016-20 presented a draft of the Minutes of the April 14, 2016, Commission meeting. The Commission approved the Minutes as submitted.

A D M I N I S T R A T I V E M A T T E R S

R e p o r t o f E x e c u t i v e D i r e c t o r

The Executive Director introduced Michel Wigney, a third-year student at U.C. Davis School of Law, who is currently serving the Commission as a law student assistant.

C o m m i s s i o n e r S u g g e s t i o n s

No Commissioner suggestions were made.
2016 LEGISLATIVE PROGRAM
The Commission considered Memorandum 2016-21, discussing the status of its 2016 Legislative Program. No Commission action was required or taken.

STUDY D-1200 — RECOGNITION OF TRIBAL AND FOREIGN COURT MONEY JUDGMENTS
The Commission considered Memorandum 2016-22 and its First Supplement, presenting a draft tentative recommendation.

The Commission made the following decisions:

• The Comment to Code of Civil Procedure Section 1716 was revised to include the language shown on page 3 of the First Supplement, to emphasize that the definition of “due process” in the Tribal Court Judgment Act does not apply to foreign-country judgments. The staff will review the draft preliminary part to ensure that it is compatible with that understanding.

• The tentative recommendation should repeal the “sunset” provision that governs the Tribal Court Judgment Act. This does not require any change to the draft tentative recommendation.

• The Comment to Code of Civil Procedure Section 1716 was revised to include the language shown on page 2 of the First Supplement, with one change. The Comment will indicate that the omission of Uniform Law Commission commentary “does not necessarily” imply disapproval of the omitted comment.

With the changes discussed above, the Commission approved the draft for circulation as a tentative recommendation.

STUDY G-301 — GOVERNMENT INTERRUPTION OF COMMUNICATION SERVICES
The Commission considered Memorandum 2016-23, presenting a staff draft tentative recommendation regarding government interruption of communication services.

The Commission approved the draft for circulation as a tentative recommendation.

Once the tentative recommendation has been publicly released, the staff will contact the Contractors State License Board, the Department of Consumer Affairs, and the Public Utilities Commission to request their input on issues affecting their agencies.
STUDY H-859 — COMMON INTEREST DEVELOPMENTS:
MECHANICS LIENS AND COMMON AREA

The Commission considered Memorandum 2016-24, presenting a staff draft tentative recommendation relating to the application of mechanics lien law to common interest developments.

The Commission approved the draft for circulation as a tentative recommendation.

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

The Commission considered Memorandum 2016-27 (preliminary in camera filtering), Memorandum 2016-28 (existing in camera approaches), Memorandum 2016-29 (scope of public disclosure), and Memorandum 2016-30 (public comment) and its First Supplement. The Commission also considered two letters that arrived shortly before the meeting, which are attached to the Second Supplement to Memorandum 2016-30.

The Commission’s decisions are reported below.

Memorandum 2016-27: Preliminary In Camera Filtering

The Commission directed the staff to further investigate and report back on two concepts for preliminary in camera filtering of a legal malpractice case that alleges mediation misconduct:

(1) A mandatory pre-filing Early Neutral Evaluation Conference (“ENEC”) conducted by a private mediator (preferably with legal malpractice expertise), not by a judicial officer. As conceived by the Commission, this ENEC would be an opportunity for the putative parties to try to resolve their differences in private and thereby keep their mediation communications from becoming public.

(2) An approach modeled on Civil Code Section 1714.10 (alleged conspiracy between attorney and client), but conducted in a manner that would protect mediation communications from public disclosure.

These options would not necessarily have to focus solely on achieving settlement; they could perhaps also address the proper use of mediation communications if the legal malpractice case proceeds.
Among other things to consider, the staff should explore the possibility of providing notice to all mediation participants whose communications might be disclosed as the case progresses. The staff should prioritize its work on these concepts, but may bring other possible approaches to the Commission’s attention as appears appropriate.

**Memorandum 2016-28: Existing In Camera Approaches**

No Commission action was required or taken in connection with Memorandum 2016-28, which reiterates previously presented information on existing *in camera* approaches to the intersection of mediation confidentiality and mediation misconduct.

**Memorandum 2016-29: Scope of Public Disclosure**

Under the Commission’s proposed new mediation confidentiality exception, evidence of mediation communications would sometimes be disclosed and used in a legal malpractice case that alleges mediation misconduct. The Commission discussed whether its proposal should restrict public access to such evidence.

In particular, the Commission considered three main options:

1. No special restrictions on public access.
2. Only restrict public access with regard to a determination of admissibility.
3. Require or permit a court to more broadly restrict public access.

These options are described in greater detail at pages 3-4 of Memorandum 2016-29.

Aside from possible preliminary *in camera* filtering (see above), the Commission decided not to propose any special restrictions on public access. In other words, it chose Option #1.

The Commission made clear that this would not preclude a court from using existing procedural mechanisms to restrict public access. For example, a party could seek a sealing order pursuant to the existing rules governing sealing of court records (Cal. R. Ct. 8.45-8.47, 2.550-2.551).

**Memorandum 2016-30 and Its Supplements: Public Comment**

The Commission heard from members of the audience who wished to speak. Among other things, questions surfaced regarding the availability of relevant data from the State Bar.
The Commission discussed whether to request that a State Bar representative attend and participate in its next meeting. The Commission decided not to make such a request at this time. Instead, the staff should prepare a memorandum on possible questions to ask a State Bar representative.

STUDY R-100 — FISH AND GAME LAW

The Commission considered Memorandum 2016-25 and its First, Second and Third Supplements (presenting a draft of provisions governing specific types of fish, invertebrates, amphibians, and reptiles), and Memorandum 2016-26 (discussing whether to prepare a tentative recommendation at this time).

The Commission made the following decisions:

- The provisional organization of the proposed law presented on pages 3 and 4 of Memorandum 2016-25 was approved, but without a separate division for insects. Provisions governing specific types of insects will be included in the division of the proposed law that governs invertebrates.
- The use of the three types of signposting provisions presented on page 5 of Memorandum 2016-25 was approved.
- The Commission Comment to proposed Section 30600 was expanded, as indicated on page 2 of the First Supplement to Memorandum 2016-25.
- In general, proposed Divisions 6 through 11 will not include provisions that are primarily aimed at protecting wildlife (rather than regulating the take and use of wildlife). Such provisions will be located elsewhere in the proposed code.
- The Staff Note shown on page 5 of the First Supplement to Memorandum 2016-25 was added to the staff draft, following proposed Section 27410.
- The staff should continue to research the constitutionality of provisions that provide that certain facts are “prima facie evidence” of an element of a crime, and will present the results of that research to the Commission at a future meeting.
- All of the staff recommendations in the Second Supplement to Memorandum 2016-25 were approved.
- The staff will prepare a draft tentative recommendation, containing the content of the staff drafts that have been presented to the Commission to date, including the staff draft presented by Memorandum 2016-25. The draft tentative recommendation will be presented for Commission review at a future meeting.