A meeting of the California Law Revision Commission was held in Sacramento on September 22, 2016.

Commission:

Present: Susan Duncan Lee, Chairperson
         Thomas Hallinan, Vice Chairperson
         Diane F. Boyer-Vine, Legislative Counsel
         Damian Capozzola
         Taras Kihiczak
         Jane McAllister
         Crystal Miller-O’Brien

Absent: Assembly Member Ed Chau
        Senator Richard D. Roth
        Victor King

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

Other Persons:

James Acres, Acres Bonusing
Allison Andersen, Community Associations Institute, California Legislative Action Committee
Jacqueline Serna Anguiano, Consumer Attorneys of California
David Bess, California Department of Fish and Wildlife
Charlie Born, Frontier Communications
Lawrence Doyle, Conference of California Bar Associations
Paul Dubow, California Dispute Resolution Council
Daniel Felizatto, Los Angeles District Attorney’s Office
Robert Flack
Cassandra Glanville, Herring Law Group
Donn Hoffman, Los Angeles District Attorney’s Office
Ron Kelly
Jeff Kichaven
David Miller, ADR Services
Elizabeth Dietzen Olsen, Senate Office of Research
Ken Von Helmolt, Los Angeles District Attorney’s Office
John S. Warnlof, California Dispute Resolution Council
Stephanie L. Williams

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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 below.

MINUTES OF JULY 22, 2016, COMMISSION MEETING

Memorandum 2016-40 presented a draft of the Minutes of the July 22, 2016, Commission
meeting. The Commission approved the Minutes as submitted. (Commissioners Hallinan and
Kihiczak were not present when this decision was made.)

ADMINISTRATIVE MATTERS

Report of Executive Director

The Executive Director reported that the reappointment of Commissioners Hallinan, King, Lee,
and McAllister was approved by the Senate.

Commissioner Suggestions

No new Commissioner suggestions were made.
Election of Officers

The Commission considered Memorandum 2016-41, relating to the election of Commission officers. The Commission elected Susan Duncan Lee as Chairperson and Thomas Hallinan as Vice Chairperson, for terms commencing immediately and ending August 31, 2017.

Tribal Consultation Policy

The Commission considered Memorandum 2016-42 and its First Supplement, proposing the adoption of a tribal consultation policy. The Commission approved the following policy, for inclusion in its Handbook of Practices and Procedures and transmission to the Governor’s Office of the Tribal Advisor:

Tribal Consultation Policy

Consistent with Executive Order B-10-11, the Commission shall take all practicable steps to encourage early and frequent communication and consultation with California Native American Tribes, including all of the following:

(1) Before the Commission begins a new study, it shall send notice to Tribes explaining the scope and nature of the study, inviting consultation regarding the study, and offering to add Tribes to the distribution list for materials prepared as part of the study. This notice shall be sent by the Commission’s Chair or Executive Director.

(2) If an official of a Tribe wishes to address the Commission at one of its public meetings, the Commission shall set aside time for that purpose.

(3) The Executive Director shall be available for consultation with representatives of Tribes on their request.

In addition, the Commission directed the staff to send notice to Tribes advising them of the Commission’s currently active studies and inviting consultation regarding those studies.

(Commissioners Hallinan and Kihiczak were not present when these decisions were made.)

2016 Legislative Program

The Commission considered Memorandum 2016-43, 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 2016-44, presenting a draft recommendation and public comment on the tentative recommendation.

The Commission approved the draft as a final recommendation for printing and submission to the Governor and Legislature. (Commissioner Boyer-Vine was not present when this decision was made.)

STUDY G-301 — GOVERNMENT INTERRUPTION OF COMMUNICATION SERVICES

The Commission considered Memorandum 2016-46 and its First Supplement, presenting a draft recommendation regarding government interruption of communication services.

The Commission directed the staff to prepare a revised draft recommendation, for presentation at the December meeting, with the following changes:

• Delete the definitions of “electronic communication” and “communication service” in proposed Penal Code Section 11470(a) and (b), and replace them with the existing definition of “communication service” provided in Public Utilities Code Section 7908(a)(1).

• Delete the proposed reforms of Business and Professions Code Sections 149 and 7099.10 and Public Utilities Code Sections 5322 and 5371.6.

• Delete the definitions of “general interruption of communication service” and “specific interruption of communication service” in proposed Penal Code Section 11470(c) and (h), and make conforming revisions to the proposed provisions that used those terms. To the extent practicable, the conforming revisions should use language drawn from Public Utilities Code Section 7908.

• Delete the exception for “incidental interruption” in proposed Penal Code Section 11481(a)(7) and replace it with an exception for an interruption caused by the execution of a search warrant.

• Standardize the use of the plural and singular with regard to the term “communication service” and similar terms.
STUDY H-859 — COMMON INTEREST DEVELOPMENTS:
MECHANICS LIENS AND COMMON AREA

The Commission considered Memorandum 2016-45, presenting a draft recommendation relating to the application of mechanics lien law to common interest developments.

The Commission directed the staff to prepare a revised draft recommendation, for presentation at the December meeting, with the following changes:

- Require that an association use “individual delivery” methods when giving members notice of receipt of a claim of lien.
- Expressly authorize the use of a lien release bond in Civil Code Section 4615(c).

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

The Commission considered Memorandum 2016-49 and its First Supplement, relating to specialist certificates of merit. The Commission also considered Memorandum 2016-50 and its First Supplement, relating to public comment on this study.

The Commission made the following decisions:

(1) The Commission will not further pursue the idea of requiring a specialist certificate of merit for a legal malpractice case that alleges mediation misconduct.

(2) The Commission will not further pursue self-certification or any other mechanism for preliminary filtering of a legal malpractice case that alleges mediation misconduct.

(3) The staff should begin drafting the proposed legislation for the Commission’s tentative recommendation, along the lines previously decided.

(4) The staff should also prepare a memorandum that discusses the possibility of including additional reforms in the tentative recommendation, either as complements to the proposed new mediation confidentiality exception or as possible alternatives.

(Commissioner Kihiczak was not present for any of the decisions relating to this study.)
STUDY R-100 — FISH AND GAME LAW

The Commission considered Memorandum 2016-47 and its First through Fifth Supplements, and Memorandum 2016-48. (Commissioner Kihiczak was not present for any of the decisions relating to this study.)

The Commission made the following decisions:

Scope of Study

The Commission considered the First and Fourth Supplements to Memorandum 2016-47, discussing the scope of the Fish and Game study.

The Commission decided that issues relating to the interpretation and application of the term “prima facie evidence” should not be addressed in this study.

Although the Commission did not approve any general guidance for determining what matters are within the scope of the authority conferred by the Legislature in this study, it did provide practical guidance on the kinds of reforms that should be included in the proposed recodification of the Fish and Game Code. Specifically, the Commission approved the standard used in the recodification of the Davis-Stirling Common Interest Development Act, which was described on page 6 of the First Supplement to Memorandum 2016-47:

A proposed change should only be considered for inclusion in the proposed law if it meets all three of the following criteria:

1. It is plainly beneficial.
2. It does not present a significant risk of unintended consequences (i.e., its effects seem straightforward and circumscribed).
3. It is not likely to be controversial.

Those criteria reflect the Commission’s past practice in developing the proposed law. They are grounded in pragmatic concerns about the difficulty of achieving enactment of the proposed law. With a proposal of this type and size, the Legislature needs to receive a noncontroversial bill, so that it can focus its analytical resources on the primary purpose of the bill: to make the Davis-Stirling Act easier to use and understand.

If the staff concludes that a possible reform would not meet that standard, the staff may exclude it from the proposed law without presenting the matter to the Commission for decision.
The Commission also generally indicated that the approach described above should probably be used in any future technical clean-up project.

"Game" as a Modifier

The Commission considered the Second, Third, and Fifth Supplements to Memorandum 2016-47, discussing the use of the term “game” as a modifier.

For the purposes of a tentative recommendation, the Commission made the following decisions:

• No changes should be made to a use of the term “game” that is unambiguous on its face.

• Provisions that govern “domesticated game breeders” should be revised to use the term “game” consistently.

• The tentative recommendation should include proposed revisions along the following lines, with Commission Notes inviting public comment on the merits of the revisions:

Fish & Game Code § 307. Population decline

307. (a) Whenever after due investigation the commission finds that game fish, resident or game birds, migratory game birds, game mammals, or fur-bearing mammals, game amphibians, or game reptiles have decreased in numbers in an area, district, or portion of an area or district to the extent that a scarcity exists, the commission may reduce the daily bag limit and the possession limit on those game fish, birds, mammals, amphibians, or reptiles that are in danger of depletion, for a period of time that the commission may specify, or until new legislation addressing the scarcity becomes effective.

…

Fish & Game Code § 2003. Contests

2003. (a) Except as specified in subdivisions (b), (c), and (d), it is unlawful to offer a prize or other inducement as a reward for the taking of a game bird, or the taking of any mammal, fish, reptile, or amphibian in an individual contest, tournament, or derby.

(b) The department may issue a permit to a person authorizing that person to offer a prize or other inducement as a reward for the taking of a game fish, as defined by the commission by regulation, if it finds that there would be no detriment to the resource. The permit is subject to regulations adopted by the commission. The application for the permit shall be accompanied by a fee in the amount determined by the department as necessary to cover the reasonable administrative costs incurred by the department in issuing the permit. However, the department may waive the permit fee if the contest, tournament, or derby is for persons who are under 16 years of age or have a physical or mental disability, and
the primary purpose of the contest, tournament, or derby is to introduce those anglers to or educate them about fishing. All permits for which the fee is waived pursuant to this subdivision shall comply with all other requirements set forth in this section.

(c) This section does not apply to a person conducting what is generally known as a frog-jumping contest, or, in waters of the Pacific Ocean, what is generally known as a fish contest.

(d) This section does not apply to a person conducting an individual contest, tournament, or derby for the taking of a game bird or game mammal, if the total value of all prizes or other inducements is less than five hundred dollars ($500) for the individual contest, tournament, or derby.

Fish & Game Code § 3080. Donations

3080. (a) For the purposes of this section, “donor intermediary” means a recipient who receives a game bird, or game mammal, or fur-bearing mammal from a donor to give to a charitable organization or charitable entity.

(b) A person may possess a game bird, or game mammal, or fur-bearing mammal during a period other than the open season for that game bird or mammal, up to the possession limit allowed for that game bird or mammal during the open season, in any of the following circumstances:

(1) The person possesses a hunting license and a validated tag or tags for the species possessed, or a copy of the license and tag or tags. The license and tag or tags shall have been issued to that person for the current or immediate past license year.

(2) The person is a donor intermediary who received the game bird, or game mammal, or fur-bearing mammal from a donor described in paragraph (1), and has a written confirmation of the donation that is signed and dated by the donor, and a photocopy of the donor’s hunting license and the applicable validated tag or tags from the current or immediate past license year.

(3) The person is a donor intermediary who received the game bird, or game mammal, or fur-bearing mammal from a donor described in paragraph (1), and has a written confirmation of the donation signed and dated by the donor, which includes the donor’s name, address, hunting license number, and applicable tag numbers for the species possessed. The license and tag or tags shall be for the current or immediate past license year.

(c) The documentation required by subdivision (b) shall be made available to the department as described in Section 2012. There is no required format for the documentation. Any written documentation containing the required information shall be deemed to comply with this section. A charitable organization or charitable entity receiving and distributing a game bird, or game mammal, or fur-bearing mammal for a charitable or humane purpose shall maintain the documentation described in paragraph (2) or (3) of subdivision (b) for one year from the date of disposal.
(d) This section does not authorize the possession of a game bird contrary to regulations adopted pursuant to the federal Migratory Bird Treaty Act (16 U.S.C. Sec. 703 et seq.).

(e) On or before January 1, 2015, and subject to the requirements of subdivision (d), the commission shall recommend legislation or adopt regulations to clarify when a possession limit is not violated by processing into food lawfully taken game birds, or game mammals, or fur-bearing mammals.

**Fish & Game Code § 3086. Stored game**

3086. Cold storage plants and frozen food locker plants shall make and keep a complete detailed record of all game birds, or game mammals, or fur-bearing mammals stored in such plants. A record of each game bird or game mammal, or fur-bearing mammal shall be made at the time it is received at the plant for storage.

The record shall be open for inspection at all times by wardens of the department.

- The tentative recommendation should propose no changes to the use of the term “game” in Fish and Game Code Sections 1502 and 3003. Commission Notes following those sections should ask for public comment on whether revisions should be made.
- A definition of “game fish, amphibian, and reptile” should be included in the tentative recommendation, along the lines proposed on pages 12 and 13 of the Second Supplement to Memorandum 2016-47.

**Tribal Fishing and Hunting**

The Commission considered Memorandum 2016-48, discussing a request that the Commission defer action on tribal fishing and hunting issues. The staff reported that the Commission had just received a letter from Cher-Ae Heights Indian Community of the Trinidad Rancheria, which is attached to the First Supplement to Memorandum 2016-48.

The Commission will postpone consideration of those issues, to provide additional time for public comment and discussions between interested groups.